Law Commission

Reforming the law

Getting Married:
A Consultation Paper on Weddings Law

Consultation Paper 247

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03 September 2020

This publication is available at https://www.lawcom.gov.uk/project/weddings/.

THE LAW COMMISSION – HOW WE CONSULT

About the Law Commission: The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Law Commissioners are: The Rt Hon Lord Justice Green, Chair, Professor Sarah Green, Professor Nicholas Hopkins, Professor Penney Lewis, and Nicholas Paines QC. The Chief Executive is Phillip Golding.

Topic of this consultation: We are consulting on weddings law – the rules governing which formalities a couple needs to comply with in order to be legally married, from giving notice through to registration of the marriage.

Geographical scope: This consultation applies to the law of England and Wales.

Duration of the consultation: We invite responses from 3 September 2020 to 3 December 2020.

Responses to the consultation may be submitted using an online form at: https://consult.justice.gov.uk/law-commission/weddings. Where possible, it would be helpful if this form was used.

Alternatively, comments may be sent:
By email to weddings@lawcommission.gov.uk
OR
By post to Weddings Team, Law Commission, 1st Floor, Tower, 52 Queen Anne's Gate, London, SW1H 9AG.

If you send your comments by post, it would be helpful if, whenever possible, you could also send them by email.

Availability of materials: The consultation paper is available on our website at https://www.lawcom.gov.uk/project/weddings/.

We are committed to providing accessible publications. If you require this consultation paper to be made available in a different format please email weddings@lawcommission.gov.uk or call 020 3334 0200.

After the consultation: We will analyse the responses to the consultation, which will inform our final recommendations for reform to Government, which we will publish in a report.

Consultation Principles: The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at: https://www.gov.uk/government/publications/consultation-principles-guidance.

Information provided to the Law Commission: We aim to be transparent in our decision-making, and to explain the basis on which we have reached conclusions. We may publish or

disclose information you provide in response to Law Commission papers, including personal information. For example, we may publish an extract of your response in Law Commission publications, or publish the response itself. We may also share responses with Government. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. We will process your personal data in accordance with the General Data Protection Regulation.

Consultation responses are most effective where we are able to report which consultees responded to us, and what they said. If you consider that it is necessary for all or some of the information that you provide to be treated as confidential and so neither published nor disclosed, please contact us before sending it. Please limit the confidential material to the minimum, clearly identify it and explain why you want it to be confidential. We cannot guarantee that confidentiality can be maintained in all circumstances and an automatic disclaimer generated by your IT system will not be regarded as binding on the Law Commission.

Alternatively, you may want your response to be anonymous. That means that we may refer to what you say in your response, but will not reveal that the information came from you. You might want your response to be anonymous because it contains sensitive information about you or your family, or because you are worried about other people knowing what you have said to us.

We list who responded to our consultations in our reports. If you provide a confidential response your name will appear in that list. If your response is anonymous we will not include your name in the list unless you have given us permission to do so.

Any queries about the contents of this Privacy Notice can be directed to: enquiries@lawcommission.gov.uk.

Contents

GLOSSARY

In this Glossary, references to other words and terms contained in the Glossary are in bold.

"Anglican": the Church of England and the Church in Wales. These organisations are treated differently from other religious organisations under weddings law.

"Anglican clergy", "clergy" or "Clerk in Holy Orders": a bishop, priest or deacon of the Church of England or the Church in Wales. Only Anglican clergy can solemnize **Anglican** marriages.

"Anglican preliminaries": the **preliminaries** conducted by the Church of England and the Church in Wales, to authorise **Anglican** weddings. They are the publication of **banns** and the issuing of **common licences** and **special licences**.

"Annulment" or "decree of nullity": a court declaration that a marriage was never legally valid or has, following the declaration, become legally invalid.

"Appropriate immigration status": a person has the appropriate immigration status under section 49(2) of the Immigration Act 2014 if they have a right of permanent residence under European Union law, are **exempt from immigration control,** or are settled in the United Kingdom.

"Approved premises": premises at which civil weddings can take place, following approval by a local authority (for example, a hotel) under the Marriages and Civil Partnerships (Approved Premises) Regulations 2005.[1]

"Authorised person": a person appointed by the trustees or governing body of a **registered building** to be present at and register the marriages that take place at that registered building, meaning that a **registrar** does not need to be present.

"Banns" or "banns of matrimony": a form of **Anglican preliminaries** for weddings in **Anglican** churches or chapels, involving an announcement in church of an intended marriage.

"Certified place of worship": a place of worship certified under the Places of Worship Registration Act 1855. Once certified as a place of worship, a building can also be registered to **solemnize** marriages (see "**registered building**").

"Civil partnership": a legal status acquired by couples who register as civil partners which provides substantially the same legal rights and responsibilities as marriage.

"Civil preliminaries": **preliminaries** conducted by the **registration service**, in distinction to **Anglican preliminaries**.

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1 SI 2005 No 3168.

"Common licence": a document issued by the Church of England or Church in Wales, as part of one of the three types of **Anglican preliminaries**. A common licence authorises a wedding in an **Anglican** church or chapel with no **waiting period**.

"Diocese": an administrative district of the Church of England and Church in Wales which is under the supervision of a bishop. Dioceses are divided into **parishes**.

"Dissolution": the legal termination of a valid **civil partnership**.

"Divorce": the legal termination of a valid marriage.

"Ecclesiastical preliminaries": see "**Anglican preliminaries**".

"Established church": the church recognised by the law as the official church of a state. The Church of England is the established church of England; the Church in Wales is not an established church but retains vestiges of being an established church within Wales, with implications for weddings law.

"European Economic Area": comprises the European Union member states (Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden) and Iceland, Liechtenstein, and Norway.

"Exempt from immigration control": a person is exempt from immigration control if they are a Commonwealth citizen who had a right of abode by virtue of the Immigration Act 1971; a member of a diplomatic mission, or a family member of such a person; a member of a class of visiting service persons; a consular employee or officer, or a family member of such a person; a visiting member of a foreign government, or a family member of such a person; a specified representative or member of certain international organisations, or a family member of such a person; a specified dependant of a visiting member of the United States Armed Forces; or a head of state, or a family member of a head of state. See regulation 3 of the Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015.[2]

"Exempt person": a **relevant national**, or someone who has the **appropriate immigration status** or holds a **relevant visa** in respect of the proposed marriage or civil partnership. See section 49(1) of the Immigration Act 2014.

"Faculty Office": the Faculty Office of the Archbishop of Canterbury, which administers the issuing of **special licences**.

"Forced marriage": a marriage which one or both of the parties entered into without free and full consent due to violence, threats or any other form of coercion.

"General Register Office": the offices and staff of the **Registrar General** which oversees the civil registration in England and Wales of births, deaths and marriages.

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[2] SI 2015 No 122.

"Handbook": the Handbook issued to **registration officers** by the **Registrar General**, containing guidance in relation to weddings.

"Humanism": Humanists UK's website says that there are many definitions of Humanism. It says that a Humanist is someone who:

> trusts to the scientific method when it comes to understanding how the universe works and rejects the idea of the supernatural (and is therefore an atheist or agnostic)
>
> makes their ethical decisions based on reason, empathy, and a concern for human beings and other sentient animals
>
> believes that, in the absence of an afterlife and any discernible purpose to the universe, human beings can act to give their own lives meaning by seeking happiness in this life and helping others to do the same.[3]

"Impediment to marriage": a reason why two people are not legally able to marry each other. Impediments include being too closely related, being under 16 years old, and lacking mental capacity.

"Independent celebrant": a person who leads wedding ceremonies, but is not a **registration officer** and does not belong to a religious or **non-religious belief organisation**. The current law does not allow independent celebrants to conduct legally binding weddings. Under our Terms of Reference, we will consider how provision could be made for independent celebrants if Government chooses to enable them to do so.

"Independent officiant": an **independent celebrant** who, under our provisionally proposed scheme, has been authorised to officiate at legally binding weddings.

"Interfaith": an interfaith wedding is one that combines elements from different religious (and sometimes non-religious) traditions. An interfaith wedding could be a wedding that is conducted by an interfaith minister as a part of their interfaith ministry, or a wedding conducted by multiple officials from different faiths. By "interfaith couple" we mean a couple where the parties are of different faiths or hold different beliefs.

"Marriage certificate": a certified copy of the details of a marriage contained in the **marriage register**.

"Marriage document": a document that would be used to register weddings conducted after **Anglican preliminaries**, if a **schedule** system is introduced under the Civil Partnership, Marriages and Deaths (Registration etc) Act 2019.

"Marriage register": an official record of marriages legally recognised by the state.

"Non-conformist": historically, a Protestant who did not conform to the **usages** and governance of the **established church**.

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3 Humanists UK, *Humanism*, https://humanism.org.uk/humanism/ (last visited 1 May 2020).

“Non-qualifying ceremony”: a ceremony that results in a marriage that it is neither a valid nor a **void marriage** because the wedding ceremony did not comply with the required formalities under the law.

“Non-religious belief organisation”: an organisation that professes a secular belief system that claims to explain humanity’s nature and relationship to the universe, and to teach its adherents how they are to live their lives in conformity with the understanding associated with the belief system.

“Notice”: the process by which the parties give notice of their intention to marry each other to the **registration service** or, in the case of **Anglican preliminaries**, to the **Anglican** authorities. The parties may be required to provide certain information, for example, name, date of birth, and nationality.

“Officiant”: under our provisionally proposed scheme, all weddings would be attended by an officiant, who would have certain legal responsibilities. The officiant could, but would not be required to, lead the ceremony. Officiants would include **registration officers**, **Anglican clergy**, officiants nominated by religious organisations, and maritime officiants. If Government decided to enable them to conduct weddings, there could also be officiants nominated by **non-religious belief organisations**, and **independent officiants**.

“Open doors”: a statutory requirement applicable to weddings in **registered buildings** or **register offices**, generally interpreted to mean that the public must have unfettered access to witness the wedding and to make objections prior to or during the ceremony. A similar requirement applies to weddings on **approved premises**, which must be accessible to the public without charge.

“Parish”: within the Church of England and Church in Wales, an area overseen by a parish priest or cleric and which will have one or more parish churches. A number of parishes make up a **diocese**, which is overseen by a bishop.

“Preliminaries”: the steps that must be taken before a couple is authorised to have a legally binding wedding. Preliminaries ensure that there are no **impediments** to a couple marrying each other, and help to detect **sham marriage** and guard against **forced marriage**. **Civil preliminaries** are conducted by **superintendent registrars** and the **Registrar General**; **Anglican preliminaries** are conducted by the Church of England and Church in Wales.

“Prescribed words”: declarations and words of contract that must be said by the parties during the wedding ceremony, except **Anglican**, Jewish and Quaker weddings. Since 1996 there has been a choice between three alternative authorised versions of the prescribed words.

“Register office”: the office of a **superintendent registrar**, being one of the two categories of locations at which a couple may have a civil marriage (the other being on **approved premises**). There must be a register office in each registration district.

“Registered building”: a **certified place of worship** which is also registered for weddings to take place there. Under the current law, weddings conducted by religious organisations other than those of the **Anglican**, Jewish and Quaker faiths must take place in registered buildings.

"Registering officer": a person appointed by the **Society of Friends** responsible for registering marriages solemnized according to its **usages**.

"Registrar" or "registrar of marriages": an officer appointed by a local authority, who registers civil weddings and religious weddings in **registered buildings** (except where an **authorised person** is present).

"Registrar General": the head of the **General Register Office**.

"Registrar General's licence": a document issued as **civil preliminaries**, used to authorise a wedding involving a person with a **terminal illness**, with no **waiting period**.

"Registration district": each **superintendent registrar** has authority over a registration district. The registration district might cover a county or a smaller area such as a London borough or a metropolitan district. Registration districts are divided into sub-districts.

"Registration officer": either a **registrar of marriages** or a **superintendent registrar**. Although the current roles of registrar and superintendent registrar are distinct under the Marriage Act 1949, in practice many local authorities appoint the same individuals to both roles. Under our provisionally proposed scheme, there will be no distinction between the two roles.

"Registration service": collectively, the civil authorities responsible for the process of getting married: the **Registrar General**, the **General Register Office**, local authorities and **registration officers**. Some local authorities refer to their own departments responsible for the registration of births, deaths and marriages as "registration services", but in this Consultation Paper we do not adopt that usage.

"Relevant national": a British citizen, **European Economic Area** national or Swiss national. See section 62(1) of the Immigration Act 2014.

"Relevant visa": entry clearance or leave to enter as a visitor for the purpose of marriage or **civil partnership**, or entry clearance, leave to enter or leave to remain as a fiancé(e) or proposed civil partner, in respect of the proposed marriage or civil partnership. See regulation 4 of The Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015.[4]

"Religious leader": a member of the **clergy**, granthi, imam, minister, priest, rabbi or other person who takes a leading role in conducting religious wedding ceremonies.

"Religious-only marriage": a marriage that is recognised by a religious community or organisation but not by the state, because the wedding did not follow the legal requirements. From the perspective of the state, a religious-only marriage is a form of **non-qualifying ceremony**.

"Rites": in this context, the ceremonies, practices or customs associated with a particular wedding ceremony. We use the word "usages", which appears in the marriage legislation with reference to Jewish and Quaker weddings, to mean the same thing.

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4 SI 2015 No 122.

“Schedule”: a document issued by the **registration service** as part of **civil preliminaries**, which authorises the couple’s wedding, and is used to register their marriage. A schedule system is used in Scotland and Northern Ireland, and is anticipated to be introduced in England and Wales by regulations to be made under the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019. Schedules would replace **superintendent registrar’s certificates**. Also called a “marriage licence” in other jurisdictions.

“Sham marriage”: a marriage between parties of whom at least one is not a **relevant national**, and where there is no genuine relationship between them and either one or both entered into the marriage for the purpose of gaining an immigration advantage.

“Society of Friends” or “Religious Society of Friends”: Quakers.

“Solemnize”: the term used to refer to performing a legally binding wedding ceremony under the current legal framework.

“Special licence”: a document issued by the Archbishop of Canterbury under the Ecclesiastical Licences Act 1533, as part of one of the three types of **Anglican preliminaries**. A special licence can authorise an **Anglican** wedding to take place at any location named in the licence, with no **waiting period**.

“Superintendent registrar”: an officer appointed by a local authority, who conducts **civil preliminaries** and attends civil weddings.

“Superintendent registrar’s certificates”: a document issued as part of **civil preliminaries**, which authorises the couple’s wedding after the parties have given **notice** and a **waiting period** has elapsed. This is the only type of document (apart from the **Registrar General’s licence**) that provides legal authority for civil weddings, Jewish and Quaker weddings, and other religious weddings in **registered buildings**. It can also be used instead of **Anglican preliminaries** to authorise an **Anglican** wedding in a church or chapel.

“Terminally ill”: a person who is seriously ill and not expected to recover, and to whom special **preliminaries** apply. In other areas of law, “terminally ill” has a different, specific meaning.

“Universal civil preliminaries”: a system in which all couples would be required to undergo **civil preliminaries** before getting married.

“Usages”: see “**rites**”.

“Void marriage”, “invalid marriage” and “avoid a marriage”: a void marriage or a marriage which has been avoided, is invalid or a nullity, meaning the marriage is treated as never having come into existence. The parties to a void marriage are entitled to apply for financial relief, as if they were divorcing; this is not the case for parties to a **non-qualifying ceremony**.

“Voidable”: a marriage is voidable if certain criteria, for example, non-consummation of the marriage, can be established. Unlike a **void marriage**, a voidable marriage is a valid marriage until it has been **annulled** by a **decree of nullity**.

“Waiting period”: a minimum length of time between when the parties give **notice** of their intention to marry and when they can get married. For weddings authorised by **superintendent registrar’s certificates** under the current law, the standard waiting period is 28 days.

Chapter 1: Introduction

1.1 Weddings are generally celebrated with pomp, ceremony, tradition, and, frequently, considerable expense. And why not? A wedding day is an important day. Important for the couple getting married, for their families and friends, and for the community helping them celebrate. A wedding also has critical legal importance, marking the day the couple takes on new and significant legal obligations to each other.

1.2 Many people do not consider weddings from a legal point of view. But this transition to legal marriage is strictly regulated by the law. In this project, we are considering how weddings are regulated, from the perspective of what the law is now, and what the law ought to be.

The COVID-19 pandemic

The COVID-19 pandemic has affected everyone. In addition to the tragic loss of life, daily life has been put on hold in England and Wales and across the world. As a result of emergency measures introduced on 23 March 2020 to prevent the spread of COVID-19, weddings were unable to go ahead, with many couples having to reschedule or cancel their weddings.

Because of the pandemic, we delayed publication of our Consultation Paper. Consultation is central to all of our projects, and pivotal to our ability to make recommendations for reform to Government. We did not think that the recent circumstances would have allowed us to consult meaningfully. Moreover, we were acutely aware of the sensitivity of consulting on weddings law during a time when weddings were not able to go ahead. However, we had drafted the majority of the Consultation Paper prior to the public health emergency. Therefore, the pandemic, and its impact on weddings, does not feature in our discussions about the current law and our proposals for general reform within the paper.

But it is important that this consultation provides an opportunity to consider the impact of the COVID-19 pandemic on weddings law. Our project will not be able to provide solutions for those whose wedding plans have been ruined by the current pandemic. However, we can learn from what has happened to ensure that a reformed weddings law is resilient, and is able to respond effectively in the event of further disruption on a similar scale.

In order to do so, we need to understand the impact that the pandemic has had on people – couples planning their weddings, registration services, religious groups and others involved in weddings – and so at paragraph 1.65 below we ask consultees to tell us of their experiences.

We also consider how our provisionally proposed scheme would operate during a national emergency, and whether specific reform is necessary to allow the rules governing weddings to be adapted to the situation of a national emergency. We have not exclusively focussed on a pandemic, but considered any emergency during which people are unable to meet in person. We make a provisional proposal for an emergency scheme that could be brought into force during a future national emergency, which would allow weddings to go ahead.

1.3 Weddings law in England and Wales is in desperate need of reform.

1.4 The law is ancient, with most of the current rules dating from the 18th and 19th centuries. The rules were devised at a time when virtually everyone lived, married and died within a single community, and when most people shared the same faith and beliefs; indeed, religion would have been the dominating force in most people's lives. Weddings today are still governed by this system. The law is based on a way of life that bears little resemblance to life in England and Wales today.

1.5 Unsurprisingly, then, the law does not work for many. It restricts how couples are permitted to celebrate their weddings, for historical rather than current policy reasons. For many couples, how they wish to celebrate their wedding, and how the law requires them to celebrate it, often conflict. Because of unnecessary regulation, many couples cannot marry in a place that is meaningful to them and cannot have a ceremony with the vows, rituals and music that reflect their beliefs. Following tradition and religious ceremony, some couples celebrate in a way the law does not recognise at all, sacrificing the protections of legal marriage. Others have – and pay for – two weddings: one that meets the legal requirements, and one that meets their own beliefs and desires. Others do not realise that the ceremony they have had is not legally recognised, and find that out only at a point of crisis, such as the breakdown of their relationship or the death of the person who they believed was legally their spouse. The fact they are not legally married can then have devastating financial consequences.

1.6 The jurisdiction of England and Wales is unique in its steadfast commitment to its ancient weddings law. Our closest neighbours – Scotland, Northern Ireland, Ireland, Jersey and soon Guernsey – have all reformed their laws to reflect modern sensibilities, giving couples more choice. There are similar freedoms in the laws of other Commonwealth countries that we often look to when assessing our laws, including in Australia, Canada and New Zealand. The law of England and Wales is now arguably the most restrictive of all common law jurisdictions. This is the result of the way that our law has developed historically rather than any consistent application of social policy.

1.7 The purpose of this Consultation Paper is to examine possible options for reform of the law. We will be asking questions and making provisional proposals for reform. The reform we provisionally propose is fundamental, aiming to bring weddings law into the 21st century, to reflect the celebration of marriage in England and Wales today. These reforms would create a system that is simple, fair, and efficient, that ensures the state's interest is protected, but which recognises and respects the wishes and beliefs of individuals.

1.8 However, our proposals are only provisional. The purpose of this Consultation Paper is to explain our initial thinking about how the law could be made better, and to gather feedback on that thinking. We have not yet publicly consulted on our provisional proposals, so we have not heard what many interested groups and individuals think about them and whether they agree or disagree. The recommendations that we will make to Government in the final report will reflect what we have heard during this consultation.

1.9 Almost everyone is interested in and affected by this area of law, either because they have, or will, get married themselves, or will attend the wedding of a loved one. We encourage you to share your views in response to our provisional proposals.

1.10 You can respond to our Consultation Paper online at https://www.lawcom.gov.uk/project/weddings/ until 3 December 2020.

THE LAW OF WEDDINGS

What we mean by "weddings law"

1.11 In this project, we are considering the law which governs weddings: how and where couples can get married. We are not considering "marriage" itself, meaning the legal status of being married and the legal consequences that flow from it. The fact that being married has legal consequences provides significant context for our project, however: it is why it is essential for the couple, and for the state, to know whether a marriage is legally recognised, and why the state has an interest in keeping a record of marriages. As explained recently by the Court of Appeal:

> Certainty as to the existence of a marriage is in the interests of the parties to a ceremony and of the state. Indeed, it could be said that the main purpose of the regulatory framework …, since it was first established over 250 years ago, has been to make this easily ascertainable and, thereby, to provide certainty.[1]

1.12 We are exclusively looking at weddings, or all of the formalities which result in a legal marriage between the couple. The law governing weddings includes –

(1) the preliminaries to the wedding (also known as giving notice of the intended marriage);

(2) the location of the wedding;

(3) the content of the ceremony, including any vows that must be made;

(4) who must attend, including the role of any person required to officiate or register the wedding; and

(5) the registration of the marriage.[2]

1.13 In arranging a wedding, a couple are likely to do many other things that are not on the list above. For example, many couples will invite guests, dress up for the day, decorate their wedding venue, and host a reception, serving their guests food and drink. In doing these things, the couple may encounter other areas of law, including contract law, consumer protection law, or health and safety law. We are not looking at the law that governs these aspects of a wedding because they are not necessary elements to change the status of the couple to that of being legally married. In essence, therefore, our project is confined to the law that governs the steps that a couple must take in order to be recognised as being married.

1.14 There are some aspects of weddings law that we are not considering, which are matters of policy that are reserved for Government or have been the subject of recent reforms.

(1) We are not considering whether non-religious belief organisations, including Humanists, and independent celebrants should be able to conduct legally

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1 *Attorney General v Akhter* [2020] EWCA Civ 122, [2020] 2 WLR 1183 at [10].

2 The full Terms of Reference for our project are included in Appendix 1.

binding weddings. However, we are considering, if they were permitted to conduct weddings, how they could be incorporated into a reformed law.

(2) We are not reviewing the recently enacted provisions to introduce a schedule system, which will be the subject of regulations under the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019.[3]

(3) We are not considering the recommendation of the Independent Review into the Application of Sharia Law in England and Wales to amend the Marriage Act 1949 so that celebrants of marriages would face penalties should they fail to ensure that the marriage is also civilly registered.[4]

1.15 There are also aspects of the law on which certain policy presumptions apply, so will not be matters that we are considering as a part of our project. For example, it is assumed that recommendations we make in relation to the solemnization of marriage would also apply (in so far as is relevant) where a civil partnership is being converted into a marriage, so we do not discuss the conversion of civil partnerships separately. Our review does not otherwise include consideration of civil partnerships; it will be for Government to consider making any corresponding provision where appropriate between weddings and civil partnership ceremonies.

1.16 We discuss the scope of our work in more detail at paragraph 1.68 and following below.

The current law and its history

1.17 Although weddings law is a discrete area, it is nevertheless complex. The specific rules that apply depend on the type of ceremony the couple is having. Couples must choose between a civil or a religious ceremony. Religious weddings are further divided by the law into four different types: Anglican (meaning the Church of England and the Church in Wales), Jewish, Quaker, and any other religious group. Most couples having an Anglican wedding can get authority to marry from the church; all other couples must give notice at the register office.[5] With few exceptions, all couples must have their wedding either in a place of worship or a licensed secular venue;[6] they cannot marry outdoors, even in the garden of a licensed venue.[7] Jewish and

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3 See s 1(2). See also Home Office: Registration of Births, Deaths, Marriages and Civil Partnerships: Written Answer (HC) 21404 (6 March 2020) (Kevin Foster).

4 The Independent Review into the application of Sharia Law in England and Wales (2018) Cm 9560, p 5.

5 See Appendix 3 for an illustration of when the different forms of preliminaries are available.

6 Either in a register office or on approved premises.

7 Alongside the Law Commission project, Government is currently exploring the extent to which regulations governing approved premises could be reformed to allow outdoor locations for civil weddings and civil partnership ceremonies, whilst maintaining the requirement that venues be seemly and dignified: see *First ever marriage review to free-up dream wedding venues*, https://www.gov.uk/government/news/first-ever-marriage-review-to-free-up-dream-wedding-venues (last visited 1 May 2020).

Quaker weddings, and to a degree also Anglican weddings, are excepted from these strict rules about place.[8]

1.18 At present, couples have no option to have a ceremony reflecting non-religious beliefs (such as Humanist beliefs). Interfaith weddings are not facilitated, and couples have no choice to include anything more than incidental religious content into their civil wedding.

1.19 If a couple fails to comply, either intentionally or without realising, with the legal requirements for a wedding, the law might not recognise them as being legally married. This risk arises most often with some religious wedding ceremonies. Couples often only discover their lack of legal status when their relationship breaks down, or on the death of one of them. When that happens, the parties may have no legal rights against each other, or against their estate. In practice, the effect of this position will be felt by the financially weaker party, disproportionately women, and can cause hardship for any children of the relationship.

1.20 This complexity in the law is the result of the law developing incrementally over centuries. The current Marriage Act 1949 was a consolidating measure which did not fundamentally change the law.[9] The central elements of the law date from much earlier: the 18th and 19th centuries.

1.21 The origins of the current law date from 1753. While the earlier canon law directed that weddings should be preceded by certain preliminaries and conducted in churches, these requirements were not essential to the validity of a marriage. As a result, many weddings were conducted hastily, without any scope for potential impediments to be discovered or parental objections to be made. Concern that the children of the propertied classes were making unsuitable matches resulted in Government passing the Clandestine Marriages Act 1753, also called Lord Hardwicke's Act. It made the earlier requirements of the canon law essential to the validity of the marriage: the wedding had to be conducted by a minister of the Anglican church, within a parish church or public chapel, following the publication of banns or on the authority of a licence.[10] The law made exceptions for weddings of members of the royal family, and for Jewish and Quaker weddings: Jewish and Quaker weddings were left unregulated on the basis that these groups were small and had long histories

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8 Jewish weddings and Quaker weddings are not subject to any legal restrictions as to place. The rules governing the ceremony instead flow from the requirements as to who may marry in Jewish or Quaker ceremonies and that those ceremonies are conducted "according to the usages" of those groups: Marriage Act 1949, ss 26(1)(c) and (e), 26B(2) and (4), and 47. Anglican weddings generally must take place in "a church or other building in which banns may be published"; however, on the authority of an Archbishop's special licence, an Anglican wedding can take place anywhere. Authority to conduct weddings vests directly in clergy, without consideration of a link to a church: Marriage Act 1949, ss 12, 15, 22 and 26(1)(e), and Ecclesiastical Licences Act 1533.

9 Which contained corrections and improvements under the Consolidation of Enactments (Procedure) Act 1949.

10 One of the types of licence, the Archbishop's special licence, remains governed by the Ecclesiastical Licences Act 1533.

of self-regulation.[11] Apart from these few exceptions, therefore, the practical effect of the law was to impose a requirement for universal Anglican marriage.

1.22 Only in 1836 was the law changed to allow for a wider range of ceremonies. The Marriage Act 1836 allowed members of other religious groups to marry in their own places of worship as long as the building had been registered for marriage and a registrar was present. It also introduced the possibility of a civil wedding in the superintendent registrar's office. New civil preliminaries were required for all non-Anglican weddings, including Jewish and Quaker ones. These civil preliminaries were also made available for Anglican weddings.

1.23 This fundamental structure of weddings law remains largely unchanged from 1836, with separate rules for Anglican weddings, Jewish weddings, Quaker weddings, all other religious weddings, and civil weddings.

1.24 There have been some more recent reforms, but they have left the structure of the law intact. Some reflect the fact that the state's interest today is not directed at preventing heirs and heiresses from marrying without parental consent, but rather at identifying legal impediments to marriage, preventing forced and sham marriages, and recording marriages. Beyond those concerns, the most significant reform has been the introduction of approved premises, in the Marriage Act 1994, giving couples the option of celebrating a civil wedding outside the register office on premises that have been approved for holding civil weddings.

THE LAW COMMISSION'S SCOPING PAPER AND THE CASE FOR REFORM

Previous calls for reform

1.25 There have been calls for wholesale reform of the law for some time. Although a few amendments to the law have been made, fundamental change has not occurred.

1.26 In 1971, a joint working party of the Law Commission and the Registrar General reviewed the law. They concluded that the law was complex and that rationalisation in the form of a new Marriage Act was "clearly long overdue".[12] But that reform did not materialise.

1.27 Reforms were again proposed in 1988 to 1990, by the then Conservative Government. Some of the proposed reforms were enacted, including that civil ceremonies should be permitted to take place in locations other than a register office, on approved premises. However, other proposed reforms were not taken forward. These included that parties should be able to give notice outside their district of

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11 Clandestine Marriages Act 1753 (commonly referred to as Lord Hardwicke's Act). For a more detailed history, see W Kennett, "The Place of Worship in Solemnization of a Marriage" (2015) 30 *Journal of Law and Religion* 260; and R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009).

12 Family Law: Solemnization of Marriage in England and Wales (1971) Law Commission Consultation Paper No 35; Family Law: Solemnization of Marriage in England and Wales (1973) Law Com No 53, para 6.

residence, that only one registration officer should need to attend a civil wedding, and that the process of publicising intended marriages be reformed.[13]

1.28 Fundamental reform of the law was proposed in 1999 to 2003. In a series of documents,[14] the then Labour Government proposed moving from a buildings-based system to a celebrant system,[15] together with an elimination of the current restrictions on wedding locations. The proposals also included near-universal civil preliminaries, with clergy of the Church of England being responsible for completing the marriage notice form and submitting it to the registration service.[16] However, Parliamentary select committees decided that the proposed route to enact these changes – through secondary legislation – was inappropriate given the nature of the reform. Consequently, the proposals were abandoned.[17]

1.29 The most recent impetus for reform came about during the debates leading to the introduction of marriage for same-sex couples. The issue of non-religious belief organisations (such as Humanists) conducting legally binding weddings was raised in debates.[18] As a result, the Marriage (Same Sex Couples) Act 2013 gave Government the power to make provision for marriages by organisations "whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics";[19] the Act also required Government to conduct a consultation on the issue.[20]

1.30 Although responses to Government's consultation were very positive, there remained difficult questions about how a new option for legal weddings could be achieved in a way that was fair to all and did not create new anomalies in the already complex law.[21] Once again, fundamental reform appeared necessary. Government decided not to proceed with making an order to permit marriage by non-religious belief organisations,

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13 Registration: A Modern Service (1988) Cm 531; Registration: Proposals for Change (1990) Cm 939; Marriage Act 1994.

14 General Register Office, *Registration: Modernising a Vital Service* (1999); Civil Registration: Vital Change. Birth, marriage and death registration in the 21st century (2002) Cm 5355; General Register Office, *Civil Registration: Delivering Vital Change: A public consultation document about proposed changes to the legislation relating to the Civil Registration Service in England and Wales by means of a Regulatory Reform Order* (2003).

15 A celebrant system focusses regulation on the person conducting the ceremony.

16 The Church of England agreed with this proposal, but the Church in Wales wished to retain the existing ecclesiastical preliminaries: see General Register Office, *Civil Registration: Delivering Vital Change: A public consultation document about proposed changes to the legislation relating to the Civil Registration Service in England and Wales by means of a Regulatory Reform Order* (2003) paras 3.7.31 to 3.7.38.

17 Written Statement, *Hansard* (HC), 1 March 2005, vol 431, col 77WS.

18 Not for the first time: see the Marriage (Approved Organisations) Bills 2012-13 and 2013-14, both introduced by Lord Harrison.

19 Marriage (Same Sex Couples) Act 2013, s 14(7).

20 Marriage (Same Sex Couples) Act 2013, s 14(2); Ministry of Justice, *Marriages by Non-Religious Belief Organisations* (26 June 2014).

21 Ministry of Justice, *Marriages by Non-Religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response* (18 December 2014) para 58 and following, and Annex A p 17.

and instead asked the Law Commission to conduct a scoping project in December 2014.

The Scoping Paper

1.31 In 2015, the Law Commission conducted a scoping review of weddings law.

1.32 This scoping phase was a preliminary study of the law, identifying the issues that would need to be addressed in order to develop proposals for reform. The conclusion of that work, published in a Scoping Paper in December 2015,[22] was that there are clear problems with the law: it is unduly complex, uncertain, and inefficient; and it is also perceived to be unfair and overly restrictive. These problems can have a profound effect on couples. They make it more likely that mistakes will be made, impacting on the validity of a marriage, or that a couple will have a non-legally binding ceremony, because the law does not recognise the ceremony that has meaning to them. Some couples may travel to another jurisdiction which permits a wider range of weddings, or choose not to marry at all because they cannot have a wedding that is meaningful to them. The law restricts choice, without good reason, and adds unnecessary costs to getting married.

The case for reform

1.33 As we explain at paragraph 1.17 above, the law is an ancient and complex hodgepodge of different rules for different types of ceremonies. For each of the five types of ceremony, it imposes different rules governing preliminaries; the location and content of and witnesses to the ceremony; registration of the marriage; the validity of the marriage; and offences for failure to comply with the formalities. These complexities are the product of historical policy choices, not current needs.

1.34 The result is a confusing maze of rules, which couples and religious officials must navigate. A wrong turn, by the couple or religious official not adhering to a formality, leads to further confusion and uncertainty as to the consequences for the validity of the marriage. Inefficiencies abound. Perhaps most fundamentally, the law is unfair: couples and communities face different rules and limitations, depending on the type of wedding ceremony, with some given more freedom to have a ceremony that is meaningful to them than others.

Complexity and uncertainty

1.35 An example of the complexity in the law is the different requirements for who must attend a given wedding, meaning the person who in most cases conducts or registers the ceremony, and the witnesses.

(1) For all civil weddings, two registration service staff – a superintendent registrar and a registrar of the registration district – and two witnesses must attend.[23]

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22 Law Commission, *Getting Married: A Scoping Paper* (17 December 2015) (hereafter, "Scoping Paper").

23 Marriage Act 1949, ss 45(1) and 46B(1).

(2) Anglican weddings must be attended by a person in Holy Orders and two witnesses.[24]

(3) Other religious weddings (except Jewish and Quaker weddings) must be attended by a registrar of the registration district or an authorised person of the place of worship and two witnesses.[25]

(4) Jewish and Quaker weddings do not have to be attended by anyone in particular, and there is no legal requirement for witnesses (although the law requires certain persons to register those marriages, with witnesses required to sign the registration forms).[26]

Aside from causing unnecessary confusion for everyone who interacts with the law, this myriad of different rules raises the question of whether these differences are justified. More fundamentally, what should the role be for a person tasked with officiating at a marriage?[27]

1.36 Complexity might be forgivable if it resulted in certainty. However, the law governing weddings is also uncertain. Nowhere in the legislation does it state when exactly a couple is legally married: is it after they say the vows? After they sign the marriage register books? The line between a valid and a void marriage is also uncertain, depending on which formalities the couple fail to comply with, as well as each person's subjective state of mind.[28] Far from providing certainty, the complexity in the law results in uncertainty on a matter as fundamental as whether a couple are legally married.

Inefficiency

1.37 The antiquity of the law has also resulted in inefficiencies, following from detailed and in many cases unnecessary regulation. Writing out entries in marriage register books in duplicate, and in special ink,[29] may have been the best way to record a marriage in the 18th and 19th centuries, but it hardly seems so today. Nor is it clear that in today's largely urban and mobile society, posting a notice of an intended marriage in the couple's local register offices[30] is an effective way of discovering legal impediments to a marriage (such as a prior existing marriage). It is also not clear that the many

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24 Marriage Act 1949, ss 22 and 25(3).

25 Marriage Act 1949, s 44(2).

26 See Marriage Act 1949, ss 26(1)(c) to (d), 26B(2) and (4), 47, 50(1)(d) to (e), 53(b) to (c), and 55(1) to (2).

27 In Ch 5, we explain that some faiths believe the marriage is a contract between the two spouses and does not depend on a third party "marrying" them. We explore this issue, and what a role could be for an officiant that might work for all faiths and beliefs, at para 5.44 and following below.

28 See Marriage Act 1949, ss 25, 48, 49 and 49A.

29 See the Registration of Marriages Regulations 2015 (SI 2015 No 207); Marriage (Authorised Persons) Regulations 1952 (SI 1952 No 1869), reg 7; General Register Office, *Guidebook for The Clergy* (March 2019) para 1.15; General Register Office, *Guidebook for Authorised Persons* (March 2019) para 1.17.

30 See para 4.12 below.

detailed regulations governing where civil weddings can take place, imposing significant costs on businesses, are serving a clear purpose.

Unfair and restrictive

1.38 As we explained in the Scoping Paper, many also perceive the law to be unfair and restrictive, preventing them from having a wedding that is meaningful to them. The law requires couples to have either a religious wedding or a civil wedding. There is no option to have a wedding according to beliefs that are non-religious, the subject of Government's consultation in 2014.[31] The sharp distinction between civil and religious weddings in the law also does not accommodate couples who have different beliefs, including couples made up of persons of different faiths, and couples in which one person is religious and the other is not. Couples wanting an interfaith wedding will generally have to choose between a ceremony that reflects the faith or beliefs of one and a ceremony that reflects the faith or beliefs of neither. Nor can couples have their religious beliefs honoured in a civil wedding.[32]

1.39 The rules governing where various weddings can take place do not accommodate couples whose beliefs do not dictate that they marry indoors, in a particular type of venue. With exceptions for Jewish and Quaker weddings,[33] all religious weddings must take place in a place of worship. However, some religious groups do not see their place of worship as the best or most meaningful place to get married: we understand these include some Muslims, Jains, Hindus, Buddhists and Pagans. As we explore in Chapter 2, few places of worship are registered for marriage within these faiths.[34] Some couples in these faiths would prefer to marry outdoors, or in a restaurant or community centre, or at home.

1.40 The rules governing where a religious wedding can take place may be contributing to the significant issue of "non-qualifying ceremonies". Typically, these are weddings conducted according to religious rites that failed to comply with all, or virtually all, of the requirements in the Marriage Act 1949, and so have no legal status. The Marriage Act 1949 did not anticipate this issue, but considerable hardship is being suffered by those finding themselves in this position.[35]

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31 See paras 1.29 and 1.30 above.

32 Marriage Act 1949, ss 45(2) and 46B(4).

33 And, as a matter of law, Anglican weddings, as an Archbishop's special licence can be used to authorise a Church of England or Church in Wales wedding to take place anywhere; however, special licences are only used to allow weddings to take place in churches and chapels which are customarily used for Anglican worship but which are not otherwise licensed for weddings (such as in Oxbridge chapels and the Inns of Court) and in homes or hospitals where a member of a couple or a family member is ill: see Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 3.8.

34 No Pagan places of worship are registered for marriages. For other religions the percentage is 45% for Hindus, 43% for Jains, 21% for Muslims, and 11% for Buddhists. Data from General Register Office, *Places of worship registered for marriage* (February 2020), https://www.gov.uk/government/publications/places-of-worship-registered-for-marriage (last visited 1 May 2020).

35 See paras 10.10 and following, and 10.171 and following below.

1.41 Couples having a civil wedding are also constrained by rules on where they can get married. They are limited to register offices and approved premises. For premises to be approved, by application through the local authority, the premises must be a permanently immovable structure made up of at least one room (or a permanently moored boat or vessel). Outdoor locations are not permissible. The approval process, including its cost and the rules governing which premises can be approved, also may prevent smaller businesses from being approved.[36] These rules restrict couples' choice as to where to get married, and it is not apparent that there is good reason to do so. They may prevent a couple from getting married in a place that has the most meaning to them, or in their own home or garden.

Out of step with modern society

1.42 The law is fundamentally structured around Christian wedding ceremonies in places of worship. However, without question, England and Wales have experienced profound social changes since the central elements of weddings law were settled in the past two centuries. As a society, we are far more culturally and religiously diverse, and we are far more secular. In the Scoping Paper, we cited the 2011 Census to show that 40% of the population in England and Wales did not identify as Christian.[37]

1.43 A recent report by the Office for National Statistics estimates that, in 2016, when asked about religion the population was 56.5% Christian, 5.4% Muslim, 1.6% Hindu, 0.7% Sikh, 0.5% Jewish, 0.5% Buddhist, and 1.5% having another religion, with 33.2% not having a religion or not stating a religion when asked.[38]

1.44 The most recent British Social Attitudes survey, from 2018, suggests that a higher proportion of people are not religious: 52% of the British public did not regard themselves as belonging to any religion, with a 26% being "confidently atheist", agreeing with the statement that they do not believe in God. Comparing this with the results from the 2008 survey, when 43% did not belong to any religion and 18% did not believe in God, the 2018 survey highlights the long-term and continuing secularisation of Great Britain.[39] The survey explains that this shift away from religion is generational: "people tend to be less religious than their parents, and on average their children are even less religious than they are".[40] Of those surveyed, a total of

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36 Elsewhere, we explored that these rules have been stretched to their limits by some local authorities, with premises being approved that barely qualify as permanent structures or rooms: see Scoping Paper, para 1.31; and para 7.25 below.

37 In the Scoping Paper, we cited the 2011 Census: Office for National Statistics, *2011 Census*.

38 Using data from the Annual Population Survey: see Office for National Statistics, *Research report on population estimates by ethnic group and religion* (December 2019) table B, https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/articles/researchreportonpopulationestimatesbyethnicgroupandreligion/2019-12-04#summary (last visited 1 May 2020).

39 J Curtice, E Clery, J Perry, M Phillips and N Rahim (eds), *British Social Attitudes: the 36th Report* (2019) p 27. Although the British Social Attitudes Survey includes Scotland (but not Northern Ireland), we think that the results are likely to be representatives of views in England and Wales.

40 J Curtice, E Clery, J Perry, M Phillips and N Rahim (eds), *British Social Attitudes: the 36th Report* (2019) p 21.

38% identified as Christian, with 12% identifying as Anglican,[41] 13% as non-denominational Christian, and 7% Roman Catholic. 6% identified as Muslim.

1.45 Although the results of different surveys and estimates vary, they show increasing diversification of religious beliefs, and increasing secularisation, in England and Wales.

1.46 If the law is not working well for couples having civil weddings and weddings according to different faiths, the law is not working well for modern England and Wales. Simply put, the law is not giving all couples a choice to marry in a way that is meaningful to them.

Developments since the Scoping Paper

1.47 Since our Scoping Paper in 2015, concerns about the law have only intensified.

1.48 Some people continue to suffer the hardship of having a marriage that is not legally recognised, an issue highlighted particularly in respect of Islamic religious-only weddings. The Independent Review into the Application of Sharia Law in England and Wales considered this issue, with one of its key findings being that "a significant number of Muslim couples" fail to comply with the requirements in the Marriage Act 1949 and "therefore some Muslim women have no option of obtaining a civil divorce",[42] with no ability to apply to court for financial provision. The Independent Review found that there were several reasons why some Muslim couples did not have a legally recognised wedding. For some, it was a lack of awareness of the law or confusion in relation to the recognition of weddings conducted overseas. Others, either as a couple or just one member of the couple, choose not to have a legal marriage, for example, in order to have a relationship in a religiously-sanctioned way or to avoid the financial obligations of legal marriage.[43]

1.49 There have also been developments with respect to the case for non-religious belief weddings, led by Humanists UK and the All-Party Parliamentary Humanist Group ("APPHG"). In February 2018, the APPHG launched an inquiry into the legal recognition of Humanist marriage, and published its report in May 2018. It recommended the legal recognition of Humanist weddings, to be achieved by Government using its power under the Marriage (Same Sex Couples) Act 2013. In the APPHG's view, "we do not believe that any of the concerns [about recognition] are remotely sufficient to prevent this. The case for such reform is overwhelming…".[44] Recently, six couples have challenged the current law's lack of recognition of Humanist weddings on human rights grounds. In a decision published shortly before

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41 Meaning the Church of England, the Church in Wales, or the Scottish Episcopal Church.

42 The Independent Review into the application of Sharia Law in England and Wales (2018) Cm 9560, p 5.

43 The Independent Review into the application of Sharia Law in England and Wales (2018) Cm 9560, p 14. See also C Fairbairn, *Islamic marriage and divorce in England and Wales* (House of Commons Library Briefing Paper 08747, November 2019).

44 All-Party Parliamentary Humanist Group, *Any Lawful Impediment: A report of the All-Party Parliamentary Humanist Group's inquiry into the legal recognition of humanist marriage in England and Wales* (2018) p 58. The Report criticised the conclusion in the Law Commission's Scoping Paper that the power in the Marriage (Same Sex Couples) Act 2013 should not be exercised.

this Consultation Paper was published, the court determined that weddings law treats Humanist couples differently to those who hold religious beliefs, but that the difference in treatment is justified because of the wider review of weddings law that is taking place. The court agreed that it had been demonstrated that there was "a legitimate aim in seeking to address differences in treatment as part of a wholesale reform of the law of marriage".[45]

1.50 In June 2018, the Northern Ireland Court of Appeal determined that the statutory prohibition against having a Humanist celebrant conduct a legal marriage would have constituted unlawful discrimination under the Human Rights Act 1998. However, the court found that there was a basis in the law of Northern Ireland for avoiding the discrimination, by using a power of appointment of officiants for civil weddings in Northern Ireland to appoint Humanist celebrants.[46]

1.51 The Human Rights Act 1998 makes the rights afforded under the European Convention on Human Rights (which was ratified by the United Kingdom in 1951) directly enforceable in England and Wales (as well as in Northern Ireland and Scotland). The rights protected in the Convention include the right to freedom of thought, conscience and religion, the right to marry and the prohibition of discrimination in the enjoyment of Convention rights.[47]

1.52 Concerns have also increasingly been expressed about the lack of choice couples have about where they can get married, particularly focussing on the costs and unnecessary red tape surrounding civil wedding venues.[48] This has led to a separate, interim review by Government into the Marriages and Civil Partnerships (Approved Premises) Regulations 2005[49] for civil weddings, noted below.[50]

1.53 Since 2015, there has been progression on reform of one aspect of the law – registration of marriages. The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 came into force in May 2019. It allows for registration to be reformed by way of regulations, and in particular, allows the current documentation required for most weddings (two superintendent registrar's certificates)[51] to be replaced by a single marriage schedule; the marriage schedule itself, after it has been signed at the ceremony, will be returned to register the marriage, replacing the current system of quarterly returns and marriage register books.[52] As we note at paragraph 1.77 below, the regulations to make these reforms have not yet been made, so we do not yet

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45 *Harrison v Secretary of State for Justice* [2020] EWHC 2096 (Admin) at [129]. This decision does not affect the scheme that we provisionally propose in this paper, which could apply whether or not it extends to Humanist (and independent celebrant) weddings.

46 *Re Smyth's Application for Judicial Review* [2018] NICA 25.

47 In arts 9, 12 and 14 respectively. The United Kingdom continues to be a party to the European Convention on Human Rights regardless of the United Kingdom's exit from the European Union.

48 See HM Treasury, *Budget* (29 October 2018) para 5.52.

49 SI 2005 No 3168.

50 See para 1.83 below.

51 See Ch 4.

52 See Ch 8.

know the detail of how the reformed registration system will work. However, we support this reform to adopt a schedule system, a suggestion we stated deserved serious consideration in our Scoping Paper.[53]

Recent reforms elsewhere

1.54 Many couples expect that they should have meaningful choice in how they celebrate their weddings. Societal changes have contributed to couples' desire to have a personal, individualised wedding. Couples' expectations may also be influenced by the law in other jurisdictions.

1.55 Many other jurisdictions offer couples more choice, both in where they can celebrate their wedding and how personalised the ceremony can be. The law in those jurisdictions also tends to be much simpler. For example, systems that authorise the person conducting the ceremony rather than the place where the ceremony takes place, like those in Australia, New Zealand, and Canadian provinces, generally have no restrictions on where a civil or religious wedding can take place. The law sets out relatively straightforward rules for who is authorised to officiate at a wedding and any requirements for the ceremony.[54]

1.56 Jurisdictions closer to home have recently reformed their laws to give couples more choice and to simplify and clarify the law. A notable trend in these reforms has been a move away from building-based models, towards organisation- or celebrant-based models.

(1) Scotland has recently reformed its law, in the Marriage and Civil Partnership (Scotland) Act 2014. Rather than having separate preliminaries for Church of Scotland weddings, Scots law provides for universal civil preliminaries, using a schedule system which combines a couple's authority to marry and the document for the registration of their marriage. There are no restrictions on where religious (or non-religious belief) weddings can take place, and the rules for civil weddings allow for weddings to take place outdoors.[55] It operates an organisational model, in which approved celebrants belonging to both religious bodies and non-religious belief bodies conduct legal weddings. Civil weddings continue to be conducted by district or assistant registrars.[56]

(2) The law in Northern Ireland was also reformed this century, by the Marriage (Northern Ireland) Order 2003. The Order provides for universal civil preliminaries, using a schedule system. Religious weddings are conducted by officiants, appointed on application by their religious body; civil weddings are conducted by registrars or deputy registrars. There is no requirement that a religious wedding must be conducted in a place of worship. Instead, a religious

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53 Scoping Paper, para 4.17.

54 Marriage Act 1955 (New Zealand); Marriage Act 1961 (Australia); and eg Marriage Act 1996 (British Columbia); Marriage Act 1990 (Ontario).

55 Marriage (Scotland) Act 1977.

56 There are four categories of religious and belief celebrants who can solemnize weddings: see Marriage (Scotland) Act 1977, s 8(1).

wedding must simply be conducted in the place specified in the marriage schedule. Conversely, a civil wedding can only take place in a registration office or in an approved place; the local registration authority approves places, including outdoor locations, in accordance with regulations. The system for approving places is similar to the approved premises system in England and Wales.[57] Since the Court of Appeal decision on Humanist weddings, Humanist celebrants are being authorised to solemnize civil marriages.[58]

(3) The law in Ireland was amended in 2004 and again in 2012. In Ireland, there are universal civil preliminaries: like a schedule system, a marriage registration form gives a couple authorisation to marry and is also the document that needs to be registered. Registrars conduct civil ceremonies, and appointed members of religious and secular bodies solemnize religious and belief weddings. Ceremonies can take place in a building or in the gardens or grounds of a building, which is open to the public and has been agreed with by the solemniser, with venues for civil weddings having to be approved in advance by the Health Services Executive.[59]

(4) Jersey very recently reformed its law, in the Marriage and Civil Status (Jersey) Order 2018. Jersey retained Anglican preliminaries, but has a schedule system for non-Anglican weddings. Both civil and religious weddings are subject to the same rules about location, with venues requiring pre-approval by a public official; however, weddings can take place in a wide range of venues, including outdoors. Religious weddings are conducted by religious officials, authorised on application from their religious organisation. Civil weddings are conducted by superintendent registrars or authorised independent celebrants, the latter of which includes Humanist celebrants.[60]

(5) Proposed reform to the law in Guernsey will be implemented in 2021. Under the reforms, Anglican preliminaries will remain, but the three existing forms of civil preliminaries will be replaced by a single form, a licence. Wedding venues will not be subject to any pre-approval process. Instead, it will be for the celebrant to approve the location. Religious celebrants will be nominated by a recognised religion to conduct religious weddings, and civil celebrants, which will include non-religious belief celebrants, will apply themselves to conduct civil weddings.[61]

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57 Marriage (Northern Ireland) Order 2003 (SI 2003 No 413); Marriage Regulations (Northern Ireland) 2003 (SI 2003 No 468).

58 *Re Smyth's Application for Judicial Review* [2018] NICA 25.

59 Civil Registration Act 2004.

60 Marriage and Civil Status (Jersey) Law 2001.

61 States of Deliberation Policy and Resource Committee, *Policy Letter: Reform of the Marriage Law* (12 November 2018); States of Deliberation Policy and Resources Committee, Policy Letter: The Marriage (Bailiwick of Guernsey) Law, 2020 (30 March 2020); The official website of the States of Guernsey, *Getting married*, https://www.gov.gg/article/120125/Getting-married (last visited 1 May 2020).

Personal experience of the current law

1.57 The case for reform is clear. However, in order to better gauge the scale of the problems caused by the current law, and the effect on people's lives, we welcome consultees sharing with us their personal experiences with the law.

Consultation Question 1.

1.58 We invite consultees to tell us if they are in a marriage that is not recognised by the law, whether celebrated in a religious or non-religious ceremony. And if so:

(1) did you understand that the marriage would not be recognised by the law at the time of the wedding, and if not, when did you find out?

(2) was it your choice not to have a legally binding wedding (and if so, what were your reasons for doing so)?

(3) have you experienced any consequences from not being in a legally recognised marriage?

Consultation Question 2.

1.59 We invite consultees to tell us about any legal barriers that prevented them from having a legally binding wedding that was meaningful or personal to them, whether they are legally married or not.

Personal experiences with weddings during the COVID-19 pandemic

1.60 On 23 March 2020, the Prime Minister announced a raft of emergency measures aimed at limiting the spread of COVID-19. These measures included stopping all social events, including weddings.[62] Although wedding ceremonies themselves were not specifically banned by the regulations brought into force, weddings were, in practice, prevented from taking place.[63]

1.61 These measures will have affected couples in different ways. The most tragic consequences will be for couples where one or both died (whether through COVID-19 or from unrelated causes) before a wedding could take place. For most couples, the effect will have been that they have had to postpone their wedding. Having to postpone a wedding may cause significant distress and financial hardship. Additionally, some couples, and in particular some religious couples, will have had to delay the point at which they start living together.

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62 Prime Minister's Office, 10 Downing Street, *PM address to the nation on coronavirus: 23 March 2020*, https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020 (last visited 22 May 2020).

63 See para 11.45 and following below.

1.62 We explain at paragraphs 1.12 to 1.13 above that our project focusses exclusively on the formalities which result in a legal marriage between the couple. The project does not cover other elements of the law that will apply to the celebration of a marriage: for example, we are not considering contract law, insurance law, or consumer protection law. We are aware that for many couples the distress caused by postponing their wedding has been heightened by disputes over refunds with weddings venues and those providing catering and other services for their wedding. Disputes have also arisen with insurance companies as to whether financial losses suffered by couples postponing their wedding are covered by their insurance. These matters, however, lie outside the scope of our review. We will not be able to make recommendations for how disputes that have arisen should be resolved, or as to the consequences of weddings being cancelled in any future emergency from an insurance, contract or consumer protection point of view. We note that these matters may be addressed by work being undertaken by the Competition and Markets Authority.[64]

1.63 However, it is within the scope of our project to consider whether the law governing weddings needs to be able to adapt to a national emergency, to allow couples to marry while social distancing and under lockdown restrictions. We consider this issue in Chapter 11.

1.64 Although we cannot propose legal reform to address all of the problems that couples have faced during this period, we nevertheless think that hearing about people's experiences with weddings will be useful – whether from couples who had to postpone their weddings, or from religious leaders, registration officers, and venues working with couples whose wedding plans have had to be put on hold. Their experiences may shed light on the operation of the law governing weddings generally, and in relation to our provisional proposal to make emergency provision should we face a pandemic or other national emergency again. We are therefore interested in people's experiences with weddings law during the pandemic, and invite consultees to share them with us

Consultation Question 3.

1.65 We invite consultees to share with us their experience with weddings during the COVID-19 pandemic.

THE CURRENT PROJECT

1.66 Government announced in the October 2018 Budget that it would be asking the Law Commission to conduct a full review of the law governing weddings, saying:

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64 The Competition and Markets Authority has started a work programme to investigate concerns that businesses are not respecting cancellation rights during the COVID-19 pandemic, and weddings and private events has been identified as one of the three sectors of particular concern. The Authority has also issued a statement expressing its views on consumer protection law. See Competition and Markets Authority, *Press Release: COVID-19: CMA to investigate cancellation policy concerns* (30 April 2020), https://www.gov.uk/government/news/covid-19-cma-to-investigate-cancellation-policy-concerns (last visited 22 May 2020).

> England and Wales have outdated laws about how and where couples can marry. The Government has asked the Law Commission to propose options for a simpler and fairer system to give modern couples meaningful choice. This will include looking at reducing unnecessary red tape and lowering the cost of wedding venues for couples.[65]

1.67 After agreeing the Terms of Reference, the current project began in July 2019.

The scope of our project

Terms of Reference

1.68 Our Terms of Reference (available in full in Appendix 1)[66] state the objective of our review: to seek to provide recommendations for a reformed law of weddings that allows for greater choice within a simple, fair, and consistent legal structure.[67]

1.69 Our recommendations for reform will be underpinned by five principles:

(1) certainty and simplicity;

(2) fairness and equality;

(3) protecting the state's interest;

(4) respecting individuals' wishes and beliefs; and

(5) removing any unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples.[68]

1.70 Our Terms of Reference require us to consider, and make recommendations, on all aspects of weddings law:

(1) whether the legal preliminaries that must take place before a wedding could be streamlined;

(2) how the law should be reformed to enable marriage ceremonies to take place in a wider range of venues, including outdoor locations, at sea, and on military sites;

(3) how the law should be reformed in relation to who can solemnize a marriage and how it could be reformed to enable a wider range of persons to solemnize a marriage. This will include how marriage by Humanist and other non-religious belief organisations could be incorporated into a revised or new scheme, and how provision could be made for the use of independent celebrants, but the

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65 HM Treasury, *Budget* (29 October 2018) para 5.52.

66 The full Terms of Reference are also available on the Law Commission's weddings project page: https://www.lawcom.gov.uk/project/weddings/.

67 We identified this as the aim for reform in our Scoping Paper, para 3.32.

68 We identified and suggested that the first four principles should underpin a revised law in the Scoping Paper, para 3.2 and following. The fifth principle reflects a priority of Government, reflected in HM Treasury, *Budget* (29 October 2019) para 5.52.

Law Commission will not make recommendations as to whether the groups who can solemnize marriages should be expanded;

(4) what content is either required or prohibited as part of a wedding ceremony;

(5) how marriages should be registered, and by whom;

(6) what the consequences of failing to comply with all or some of the requirements for a valid marriage should be; and

(7) what offences are necessary to underpin the system governing weddings.

1.71 Our Terms of Reference also outline some policy presumptions that our review will proceed upon. These presumptions mean that we will not be making recommendations in respect of the following issues:

(1) the introduction of universal civil marriage (as opposed to universal civil preliminaries);

(2) the principle that (provided other requirements are met) religious groups should be able to solemnize legal marriages; and

(3) the definition of religion for the purpose of marriage, a point of law decided by the Supreme Court in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*.[69]

1.72 Our review will also not include consideration of civil partnerships; it will be for Government to consider making any corresponding provision for civil partnership ceremonies where appropriate. Similarly, we will also not be conducting a policy analysis of conversions of civil partnerships into marriage; however, a policy assumption is that any recommendations we make would also apply (in so far as is relevant) to conversions.

1.73 There are some matters that are explicitly outside our Terms of Reference. Most are matters that simply fall outside a consideration of the law governing weddings. These include the rights and responsibilities that marriage creates, including the consequences of divorce. We will not be considering the law of divorce generally, or the grounds on which a marriage can be void or voidable for reasons other than a failure to comply with the formalities of weddings law. We are also not considering ancillary weddings services unrelated to the law governing how and where people can marry, as we explain at paragraph 1.13 above.

1.74 Finally, there are some aspects of weddings law that we will not be considering, as outlined in our Terms of Reference. These include who is eligible to enter marriage, as well as the duty of the Church of England and the Church in Wales to conduct marriage ceremonies of their parishioners. We are not considering the question of whether or not religious groups should be obliged to solemnize marriages of same-sex couples, which was decided by Parliament following wide public debate. However, it is a policy assumption underlying our review that any non-religious belief organisations

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69 [2013] UKSC 77, [2014] AC 610.

or independent celebrants given the right to conduct marriage ceremonies cannot discriminate between opposite- and same-sex couples. We will also not be considering how the law deals with weddings which take place in jurisdictions outside England and Wales.

Devolution and applicability to Wales

1.75 Our project considers the law of England and Wales. The law governing weddings is devolved to the Scottish Parliament and the Northern Ireland Assembly, and those jurisdictions have their own legislation. Both jurisdictions have reformed the law of weddings recently; we have considered these reforms in our work in order to take any lessons that can be learned for England and Wales.

1.76 Under the Government of Wales Act 2006 (as amended by the Wales Act 2017), "marriage, civil partnership and cohabitation" are not devolved to the Senedd Cymru, but are instead matters reserved to the United Kingdom Parliament.[70] Accordingly, the Marriage Act 1949 applies to both England and Wales. However, there are some subtleties to the law about the respective positions of the Church in Wales and the Church of England, which we explore in more detail below.[71]

Government's separate work

Reform to marriage registration

1.77 As we note at paragraph 1.53 above, the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 allows for the law governing registration of marriages to be reformed by way of regulation, paving the way for a schedule system to be introduced in England and Wales. Government is progressing with these regulations separately to our project on weddings law.[72] Until draft regulations are made, we do not know the detail of how the new schedule system will work. However, as we explain in Chapters 4 and 8, in considering our provisional proposals for reform, we bear in mind that the broad principles reflected in the 2019 Act are recent policy decisions of Parliament. Therefore, we ensure that our provisional proposals for reform are compatible with the Act.

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70 Government of Wales Act 2006, sch 7A para 176. Similarly, the "registration of births and deaths and of places of worship" is also reserved: sch 7A para 181.

71 The Church in Wales is disestablished (by the Welsh Church Act 1914), whereas the Church of England is not. The Church of England has a General Synod that can change the law by making Measures, which have to be approved by Parliament, relating to any matter concerning the Church of England. Ecclesiastical law generally no longer applies in Wales, but there are some "vestiges of establishment" in which ecclesiastical law does apply, including in relation to marriage. In all, it creates the issue of limping, in which Church of England Measures (usually in relation to the calling of banns) apply to the Church of England but do not apply to the Church in Wales, despite references in the Marriage Act 1949 to the "Church of England" including the Church in Wales. In order for rules enacted in Church of England Measures to apply to the Church in Wales, a Private Member's Bill is required. See para 4.112 below.

72 See Home Office: Registration of Births, Deaths, Marriages and Civil Partnerships: Written Answer (HC) 21404 (6 March 2020) (Kevin Foster).

The Sharia Review

1.78 The Law Commission's review will include an analysis of the offences under the Marriage Act 1949 in order to make recommendations as to the offences that are necessary to underpin a reformed law of weddings.

1.79 As one of its recommendations, the Independent Review into the Application of Sharia Law in England and Wales recommended amendments to the Marriage Act 1949 so that celebrants of marriages would face penalties should they fail to ensure that the marriage is also civilly registered.[73]

1.80 Government has committed, as part of the integrated communities strategy, to explore the legal and practical challenges of limited reform relating to the law on marriage and religious weddings, following publication of the Independent Sharia Review.[74] Government is taking forward this work separately from the Law Commission's wider review of the law on marriage ceremonies.

1.81 The Law Commission will therefore not consider the creation of a new offence along the lines suggested in the Independent Sharia Review as part of its work.

1.82 Government will ensure that it considers the work and recommendations of the Law Commission as it takes forward its separate work on the recommendation of the Independent Sharia Review.

Interim reform of approved premises rules

1.83 Alongside the Law Commission project, Government will take forward separate work to explore what can be done to deliver interim reform within the existing buildings-based system for certain civil ceremonies. Government will explore the extent to which regulations governing approved premises could be reformed to allow outdoor locations for civil weddings and civil partnership ceremonies, whilst maintaining the requirement that venues be seemly and dignified.[75]

Structure of the project

1.84 In preparing this Consultation Paper, we have been able to draw on a significant knowledge base, both in assessing the current law and considering possible options for reform.

1.85 We have had the benefit of our earlier scoping work and, in particular, the information and views stakeholders shared with us at that time.[76] We have also had the benefit of responses received to the consultation on our 13th programme of law reform in 2016: 31 groups and individuals responded on the topic of weddings law, every one

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73 The Independent Review into the application of Sharia Law in England and Wales (2018) Cm 9560, p 5.

74 HM Government, *Integrated Communities Strategy Green Paper* (March 2018) p 58.

75 See *First ever marriage review to free-up dream wedding venues*, https://www.gov.uk/government/news/first-ever-marriage-review-to-free-up-dream-wedding-venues (last visited 1 May 2020).

76 The stakeholders we met with during our scoping work are identified in the Scoping Paper, para 1.61.

supporting reform.[77] Since the current project began in July 2019, we have again spent considerable time and effort engaging with key stakeholders, including religious groups, Humanists UK, registration authorities and officers, and independent celebrants. We have also met with a selection of representatives of approved premises and other wedding venues. Some stakeholders have conducted surveys of their memberships in order to engage with us, including Bridebook.co.uk,[78] Historic Houses, the Tourism Alliance, and the Wedding Celebrancy Commission. While our engagement during the preparation of the Scoping Paper focussed on identifying problems with the law, our pre-consultation discussions with stakeholders have focussed on discussing potential options for reform.[79]

1.86 We have also engaged with the many Government departments who have a policy interest in aspects of weddings law,[80] as well as with the Welsh Government. We have otherwise researched the law, with a particular focus on comparative law: we have had the benefit of the insight of the lawyers, policy officials and registration authorities of neighbouring jurisdictions who spoke to us about their weddings laws, including recent reforms.

1.87 We are extremely grateful to everyone who has shared their views with us on the current law and possibilities for reform. We have greatly benefitted from the thoughts that stakeholders have shared with us whilst considering the current law and weighing up potential options for reform. As such, throughout this Consultation Paper we refer to what stakeholders have told us during our engagement with them to date.

1.88 However, we have not yet been able to hear the views of everyone with an interest in this area of the law. Therefore, while this Consultation Paper contains our provisional proposals for reform, as well as setting out questions where we have not reached a provisional conclusion, its purpose is to encourage all interested and affected groups, and the public, to respond and tell us their views.

1.89 The consultation period will last for three months, from 3 September until 3 December 2020. During the consultation period, we will be speaking with stakeholders at meetings and public consultation events.

1.90 Once consultation closes, we will analyse responses to the consultation in order to formulate our final policy. We will make our recommendations to Government for reform of weddings law in our final report. We had planned to report with our final recommendations to Government for reform of weddings in Summer 2021. The timetable is likely to be changed due to the delay to publication of this Consultation Paper as a result of the COVID-19 pandemic.

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77 See Thirteenth Programme of Law Reform (2017) Law Com No 377, paras 4.64 to 4.67.

78 Bridebook.co.uk, *UK Wedding Industry Law Review Report* (October 2019).

79 The stakeholders we have met with since the current project began in July 2019 are identified at para 1.105 below.

80 The Ministry of Justice; the General Register Office; the Home Office; the Foreign and Commonwealth Office; the Forced Marriage Unit; the Government Equalities Office; the Department for Transport; the Ministry of Defence; HM Treasury; and the Ministry of Housing, Communities and Local Government.

FORMAT OF THIS CONSULTATION PAPER

1.91 This paper begins with an explanation of the current law in Chapter 2. We provide an overview of the current framework, before detailing the law governing different types of weddings: civil weddings, religious weddings, and weddings in special circumstances, where a person is housebound, detained, terminally ill, or where it takes place on a military site.

1.92 In Chapter 3 we provide a summary of our proposed scheme, to help place individual provisional proposals in context of the wider scheme. It explains that our proposed scheme is based on the regulation of officiants, rather than the regulation of the locations where weddings can take place. It also explains the considerable importance the scheme places on providing a robust system of preliminaries, to provide ample opportunity for impediments to be discovered, and forced and sham marriages to be identified. Closely regulating preliminaries allows the law to give couples more freedom and flexibility over their wedding itself.

1.93 The paper then moves on to considering in detail each stage in the process of a wedding.

1.94 Chapter 4 considers preliminaries. We explain the significance of preliminaries in assessing whether there are any legal impediments to the couple getting married, and providing protection against forced and sham marriages. We welcome the recent moves to introduce a schedule system. However, we make provisional proposals for further reforms, that would be consistent with that system.

(1) In relation to civil preliminaries, we provisionally propose that the district where couples can give notice should not be governed by residence rules, and that it should be possible to give notice in a two-stage process: first, giving notice, which could take place remotely, including online; and second, meeting a registration officer in-person to confirm the information given at the notice stage and to ensure each party wishes the wedding to go ahead. These reforms will make giving notice more convenient for all couples, and in particular will make it simpler for couples resident overseas to marry in England and Wales.

(2) We ask consultees whether the dual systems of civil and Anglican preliminaries should be retained, or whether we should move to a system of universal civil preliminaries. If Anglican preliminaries are retained, we ask whether there should be some amendments to the rules governing them, including to require both parties to indicate consent to the wedding going ahead.

1.95 Chapter 5 focusses on officiants, the persons responsible for ensuring that the legal requirements of the ceremony are met. As the system that we propose is based on authorisation and regulation of officiants, this chapter contains much of the detail of our proposed scheme.

(1) Building on the structure of the current law, we chose the term “officiant” to convey a focus not on the various ceremonial roles that a person may play in the wide variety of ceremonies that take place in England and Wales, but on the person responsible for ensuring that the legal requirements of the ceremony are met. We consider how the various roles that exist under the current law could

be rationalised, and we provisionally propose that all weddings should be attended by an officiant who has a duty to ensure that 1) the parties freely consent to marry each other, 2) the other requirements of the ceremony are met, and 3) the schedule is signed.

(2) Chapter 5 then turns to consider who should be able to be an officiant. Registration officers would continue to officiate at civil weddings, but we propose that only one would need to attend, not two. We provisionally propose that clerks in Holy Orders within the Church of England and the Church in Wales should be recognised as officiants by virtue of their office. We provisionally propose that the relevant governing authority of all other religious groups, which have at least 20 members and either a wedding service or a belief about marriage, should be able to nominate officiants, by application to the General Register Office. Similarly, if Government decides that non-religious belief organisations should be able to solemnize marriages, we provisionally propose that the relevant governing authority of those organisations should also be able to nominate officiants, and we consider how non-religious belief organisations should be defined. Should Government decide to allow independent celebrants to conduct legally binding weddings, we also make a provisional proposal that independent officiants should apply for authorisation directly to the General Register Office.

(3) Chapter 5 then considers the detail of the requirements that nominated officiants and, if authorised, independent officiants, would have to fulfil to apply for and retain authorisation. We also consider the responsibilities that we think should fall on all officiants, including Anglican clergy and registration officers. We provisionally propose that officiants should have an obligation to uphold the dignity and solemnity of marriage.

1.96 Chapter 6 focusses on the ceremony itself. We consider what should be required and permitted within a wedding ceremony, aiming to eliminate the separate treatment of different weddings in the current law, to find rules that would work for all weddings. We provisionally propose that all weddings should take place according to the form and ceremony chosen by the parties, and agreed by the officiant. We also provisionally propose that the parties should be required to express their consent to be married, but that no specific form of words should be required; indeed, we think that consent should be able to be conveyed non-orally, for example by participating in a ritual according to religious rites. We further provisionally propose to liberalise the prohibition on religious content in civil weddings, and to remove the existing requirement for open doors that applies to some types of wedding.

1.97 Chapter 7 considers where the law should permit weddings to take place. Because we propose to move away from a buildings-based system to an officiant system, our initial view is that the law should be reformed to liberalise where weddings can take place and to de-regulate the process of approval. Doing so would eliminate many of the barriers that prevent some couples from having a ceremony that is meaningful to them, and the unnecessary regulation that results in the high (and in some cases, prohibitive) costs borne by venues seeking approval to host civil weddings. We suggest that the law should permit a wedding to take place anywhere that the parties and officiant agree, with the General Register Office issuing guidance to officiants to

offer advice on how to ensure that weddings take place in safe and dignified places. Religious groups and, if they were authorised to officiate at weddings, non-religious belief groups, would be able to impose their own criteria about where they would conduct weddings.

1.98 Chapter 8 looks at the process of registration. The schedule system will eliminate many of the inefficiencies and complexities of the current system of registration. Therefore, rather than considering the problems of the current law, our attention in this chapter is on how registration should work as part of the system we propose. We also consider opening up the possibility for electronic registration in the future.

1.99 In Chapter 9 we explain how the special provisions for religious groups in relation to same-sex weddings and weddings involving transgender people would be maintained under our proposed scheme. This is an area in which policy has been settled, so we do not make provisional proposals or ask consultation questions in this chapter. We simply describe what consequential amendments would be necessary for the existing special provisions to work, in the same way that they currently do, within our proposed scheme. As under the current law, the Church of England and the Church in Wales would continue to be unable to conduct same-sex weddings under our provisional scheme without an amendment to primary legislation. Other religious groups would be able to conduct same-sex weddings only where they opt into doing so.

1.100 In Chapter 10, we consider the requirements for a valid marriage, including when a marriage would be void, and the offences necessary to underpin our proposed scheme. We provisionally propose that the factors that render a marriage void should be only those that are within the knowledge or control of the parties, including a failure to give notice or a failure, known to both parties, to have an authorised officiant present at the ceremony. We also make provisional proposals to clarify and limit the circumstances in which a wedding will be a non-qualifying ceremony, with a focus in the final section of the chapter on considering the issue of religious-only marriages. We consider the presumptions of marriage, and the specific issue of the time limit for a petition of nullity on the basis of duress, mistake, or lack of mental capacity. Turning to offences, we make a provisional proposal that it should be an offence for an officiant, or a person who purports to be an officiant, deliberately to mislead a couple about the legal effect of their ceremony.

1.101 Chapter 11 looks at some special circumstances for which the law currently makes specific provision: weddings involving persons who are terminally ill, housebound or detained and weddings on military sites. We explain that the effect of our proposed scheme is that the need to have special rules for these cases is generally removed. We identify the few aspects on which specific provision will continue to be necessary, making provisional proposals in relation to each. We also provisionally propose a different set of rules governing weddings which could be brought into force to apply during a national emergency similar to the COVID-19 pandemic. The rules would allow weddings to take place in the face of social distancing or other restrictions which prevent couples from complying with the ordinary formalities to get married. The chapter also considers the possibility of weddings at sea. It outlines a provisional scheme that would allow weddings to take place in international waters on cruise ships registered in the United Kingdom with a port of choice in England or Wales. These weddings would be officiated by deck officers authorised to officiate at

weddings, who would be a special category of authorised officiant for this purpose only.

1.102 In Chapter 12, we consider how the different types of fee charged by local authorities in relation to weddings could be adapted to work in the context of our proposed reforms. As we highlight, our proposed scheme will achieve the aim of removing any unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples. This chapter considers the fees that would remain necessary under our proposed scheme. Our focus is on the types of fee, who sets them, and how they are set; we do not consider the level at which the fees are or should be set.

1.103 Finally, in Chapter 13 we set out our initial thinking about the impact of the proposals we make throughout this paper. We consider the possible benefits of reform to couples getting married, businesses (particularly wedding venues), local authorities, and the economy as a whole. To help us to assess the economic impact of our final recommendations to Government, we ask consultees to tell us about their experiences of the costs resulting from the current law, and their thoughts on the impact that our provisional proposals might have.

ACKNOWLEDGEMENTS AND THANKS

1.104 We remain very grateful to all the stakeholders who met with us during our scoping work in 2015, and who responded to our consultation on the 13th programme of law reform in 2016, for sharing their views with us on the current law and potential avenues for reform.

1.105 We would like to extend our thanks to the individuals and organisations who have met with us since our current project began in July 2019, for sharing with us their time and expertise. We would particularly like to thank Ashlea Bernard; the Board of Deputies of British Jews; Bridebook.co.uk; Carnival UK; the Church in Wales; the Church of England; the Churches' Legislation Advisory Service; Enable Leisure and Culture; the Faculty Office of the Archbishop of Canterbury; the Family Justice Council; Fiesta Fields; Guides for Brides; Historic Houses; David Hodson; Humanists UK; Inner Temple; the Marriage Foundation; the Muslim Council of Britain; the National Panel for Registration; the National Secular Society; One Law for All; OneSpirit Interfaith Foundation; The Outside Bride; Pembroke Lodge; Register our Marriage; Ribble Valley Wedding Heaven; the Society of Friends and Quakers in Britain; Southall Black Sisters; Tourism Alliance; Professor Thomas Watkin; and the Wedding Celebrancy Commission. We are grateful to the members of the National Celebrants Convention 2019, the Local Registration Services Association Year Ahead Conference 2019, and the Warwickshire County Council Registration Services Conference, for sharing their views.

1.106 We are thankful to officials from the Department for Transport; the Foreign and Commonwealth Office; the General Register Office; the Government Equalities Office; HM Treasury; the Home Office; the Ministry of Defence; the Ministry of Housing, Communities and Local Government; the Ministry of Justice; and the Welsh Government.

1.107 We are also extremely grateful for the expertise shared with us by members of registration services, lawyers and policy officials from neighbouring jurisdictions:

(1) Claire Follain, Superintendent Registrar of Jersey;

(2) Officials from the Policy and Resources Committee of the States of Guernsey and the Greffe;

(3) Rod Burns, Deputy Registrar General and Head of Registration Division, National Records of Scotland, and Simon Stockwell, Family Law Policy, Scottish Government;

(4) Christine O'Rourke, Attorney General's Office, TJ Fleming, tArd-Chláraitheoir, Civil Registration Service and Brendan O'Loughlin, Civil Registration Service of Ireland; and

(5) Michael Foster, Head of Civil Law Reform Division, Departmental Solicitor's Office, Department of Finance, Northern Ireland Executive.

THE TEAM WORKING ON THE PROJECT

1.108 The Commissioners would like to record their thanks to the following members of staff who worked on this Consultation Paper: Professor Rebecca Probert (specialist consultant), Elizabeth Welch (team lawyer), Samuel Hussaini (research assistant), and Matthew Jolley (head of legal services and team head).

Chapter 2: The current law

OVERVIEW OF THE LEGAL FRAMEWORK

2.1 There are three key stages to the legal process of getting married:

(1) obtaining legal authorisation for the wedding to go ahead (also called giving notice or the preliminaries);

(2) going through a legally recognised wedding ceremony; and

(3) registration of the marriage.

All legal weddings in England and Wales, whether civil or religious, contain these three stages.

2.2 The preliminaries are designed to ensure that there is no legal impediment to the wedding going ahead, and that it is not a forced or sham marriage. It is a legal impediment to a marriage if:

(1) either person is under the age of 16;[1]

(2) either person is already married or in a civil partnership; or

(3) the two persons are within the "prohibited degrees", that is to say, closely related.[2]

If the wedding does go ahead in such cases, the marriage will be void.[3] If one person is being forced into a marriage, the court can make an order to prevent the wedding from going ahead.[4] If the marriage is thought to be a sham, the wedding will be permitted to proceed, but the Home Office can investigate and may take action to prevent those involved from gaining any legal right to remain in the United Kingdom on the basis of that marriage.

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1 Marriage Act 1949, s 2. Special rules regarding parental consent apply to the marriages of those aged 16 or 17 (see para 2.13 below), but the absence of such consent does not render the marriage void.

2 Marriage Act 1949, s 1. There are prohibitions on marriages between parent/child (including adoptive relationships), siblings, grandparent/grandchild, sibling of parent/child of sibling. There is also a specific prohibition on a marriage taking place between a former step-parent and step-child, unless both are over 21 and the younger person was not treated as a child of the family before reaching the age of 18.

3 Matrimonial Causes Act 1973, s 11.

4 Family Law Act 1996, s 63A (a "forced marriage protection order").

2.3 The legal purpose of the ceremony is to ensure that each of the couple consent to marry each other. If either person did not validly consent to the marriage – whether on account of impaired mental capacity, duress, or mistake – it will be voidable.[5]

2.4 The requirements relating to registration ensure that there is a record that the wedding has taken place so that it can be proved when needed. However, a failure to register has no impact on the validity of the marriage.

2.5 While all weddings involve these three stages, there is considerable variation between civil and religious weddings, and between different forms of religious weddings, in terms of what is required at each stage. See Appendices 2 and 3 for illustrations of the different requirements under the current law. In this chapter we consider what is required for each type of wedding, looking first at civil weddings, and then at religious weddings. We then examine the separate rules that apply to the weddings of those who are terminally ill, housebound or detained, and consider the scope for weddings to be celebrated on military sites.

2.6 For each type of wedding, we also explain the impact of failing to comply with the legal requirements. The law aims to uphold marriages wherever possible, and there is a strong presumption that a couple who have gone through a wedding have done all that is legally required.[6] However, if it can be proved that they did not, the marriage will be:

(1) valid, because the failure to comply was relatively trivial, or innocent, or because a validating order has been made under the Provisional Order (Marriages) Act 1905;

(2) void, because the couple both "knowingly and wilfully" failed to comply with certain requirements; or

(3) non-qualifying, because the couple did not marry under the provisions of the Marriage Act 1949.[7]

If a marriage is void, a court has the same powers to reallocate assets between the parties as when granting a divorce.[8] In the case of a non-qualifying ceremony it has no such powers.

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5 Matrimonial Causes Act 1973, s 12. However, the focus is on preventing the wedding from going ahead in cases of duress or incapacity.

6 For discussion see R Probert, "The Presumptions in Favour of Marriage" (2018) 77 *Cambridge Law Journal* 375.

7 The Court of Appeal held that "non-qualifying ceremony" is a more appropriate term than "non-marriage". It also confirmed that "there is a threshold which has to be crossed before it can be said that the parties have intermarried under the provisions of Part II of the 1949 Act": *Attorney General v Akhter* [2020] EWCA Civ 122, [2020] 2 WLR 1183 at [7] and [45].

8 Matrimonial Causes Act 1973, ss 21 to 24, set out the orders that a court can make when granting a decree of divorce, nullity, or judicial separation.

2.7 Unless otherwise stated, the rules that we set out apply equally to opposite-sex and same-sex couples, and to cisgender and transgender individuals. Such differences as do exist relate solely to religious weddings, and will be explained as they arise.

CIVIL WEDDINGS

2.8 Most weddings in England and Wales are now civil weddings. Such weddings may take place in a register office or on "approved premises", the latter being by far the most popular option.[9] These two options will be considered separately.

2.9 Registration officers[10] play a key role in all stages of civil weddings. In addition to what is required of them by the Marriage Act 1949, they are given extensive guidance in the Handbook issued by the Registrar General.[11]

Register office

2.10 Every local authority must provide a register office in which weddings may take place.[12] A wedding in a register office is a "statutory ceremony", the cost of which is set by regulation.[13] The apparent simplicity and accessibility of this is complicated by the fact that in some municipal buildings the boundaries of the register office have been redrawn to exclude the more attractive marriage rooms, which have been reclassified as approved premises.[14] It is further complicated by the fact that a *register* office is distinct from a *registration* office. Those registration offices that offer weddings are in fact approved premises and so not limited to offering statutory ceremonies, although many will do so.[15] As a result, relatively few weddings are now formally classified as taking place in a register office.

What preliminaries are required?

2.11 In summary, each of the couple must give notice of their intended wedding to a superintendent registrar. That notice will be publicised to see if anyone knows of an impediment to the wedding. After a short waiting period the superintendent registrar will issue a certificate allowing the wedding to go ahead. However, exactly what is

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9 In 2016, 78% of weddings were civil weddings and 92% of civil weddings were on approved premises: Office for National Statistics, *Marriages in England and Wales: 2017* (14 April 2020).

10 This is a generic term that covers superintendent registrars and registrars. Where these officials have distinct roles we use the specific terms.

11 The Registrar General has the power to issue guidance "supplementing the provision made by the regulations": Marriage Act 1949, s 46A(2)(k).

12 The meaning of a "register office" is defined in the Registration Service Act 1953.

13 Under the Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1, the maximum cost should be £120. This includes two fees for giving notice (£35 each), a fee for the attendance of the registrar (£46) and a certificate issued at the time of registration (£4).

14 A higher fee can be charged for a wedding on approved premises.

15 For example, in Devon there are eight registration districts – East Devon, Exeter, Mid Devon, North Devon, South Hams, Teignbridge, Torridge and West Devon – but only Teignbridge has a register office. Its website directs those who wish to marry there to a room described as "Devon Register Office, Newton Abbot (Old Kitchen)", which is in fact approved premises: www.devon.gov.uk/registrationservice/venues/registration-offices/Teignbridge (last visited 1 May 2020).

required at each stage will depend on the age, location and immigration status of each of the couple.

2.12 The general rule is that each of the couple must give notice of their intended wedding in person in the registration district where they have lived for the previous seven days.[16] The notice must include each person's name, date of birth, occupation, place of residence and nationality. It must also state whether either has previously been married or formed a civil partnership and, if so, whether that previous relationship was ended by death, divorce or dissolution.[17] If the couple give notice together, the registration officer will see them each separately to ensure that both are genuinely consenting to the marriage.

2.13 Each person must also make a solemn declaration in writing confirming that there is no legal impediment to the wedding going ahead and that they believe all the information provided is true.[18] Where one of them is under 18 they must also declare that the necessary persons have given their consent.[19] They must sign this declaration in the presence of a registration officer.[20]

2.14 If either of the couple is not a relevant national, and not exempt from immigration control, then both must give notice at a designated register office.[21] In addition, if either of them is not an exempt person the proposed wedding will be referred to the Secretary of State to determine whether it needs to be investigated as a potential sham.[22]

2.15 There are also certain exceptions to the general rule that notice must be given in England and Wales. Where one of the couple is resident in Scotland, that person may give notice of the intended wedding to the appropriate registrar in Scotland, and

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16 Marriage Act 1949, s 27(1). Notice may be given at either a register office or a registration office, depending on the provision that is made within their district.

17 Marriage Act 1949, s 27(3). Supporting documentary evidence is required by s 28B. In practice, we understand that registration officers will ascertain whether notice can be given before the process starts.

18 Where one of the couple was previously married to a parent or grandparent of the other, each must make a declaration that the conditions for the marriage to go ahead – ie that both are over 21 and that the relationship has never been quasi-parental – are satisfied: Marriage Act 1949, ss 1(3) and 27B.

19 The significance of this declaration is reduced by the fact that registration officers will now require written evidence of consent. It will generally be necessary to have the consent of each parent with parental responsibility, although if certain orders are in place the consent of other persons or bodies will be needed: Marriage Act 1949, s 3. Consent may be dispensed with where it cannot be obtained because of the absence, inaccessibility or disability of a person whose consent is required, as long as any other person whose consent is required has consented, or, if there is no such other person, the Registrar General agrees. Where consent has been refused, it may be given by a court.

20 Marriage Act 1949, s 28.

21 Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s 19. See the Glossary for the meaning of "relevant national" and "exempt from immigration control". Seeing both of the couple can assist registration officers to discharge their duty to report suspicions of a sham marriage to the Home Secretary: see the Immigration and Asylum Act 1999, s 24.

22 Marriage Act 1949, s 28H. See the Glossary for the meaning of an "exempt person". On the meaning and consequences of a marriage being a "sham", see the Glossary and para 2.21 below.

obtain a certificate confirming their legal capacity to marry.[23] In addition, British subjects resident in certain specified Commonwealth countries and territories may give notice according to the requirements of their country of residence.[24] Special provision is also made for those in the Naval Service to give notice to their captain while at sea.[25] These special options for notice to be given outside England and Wales are only available where one of the couple is resident in England and Wales and where both are relevant nationals or exempt from immigration control.[26]

2.16 For those who have given notice in England and Wales, details of the intended wedding will be displayed in the register office for 28 days, beginning from the day after notice was entered.[27] If the wedding is being investigated by the Secretary of State as a potential sham then the waiting period will be extended to 70 days.[28]

2.17 The scope for either the 28-day or 70-day period to be shortened is limited. One or both of the couple must apply to the Registrar General, or, if the marriage has been referred, to the Secretary of State. The application will only be granted if the relevant person is satisfied that there are "compelling reasons" for reducing the period "because of the exceptional circumstances of the case".[29] The Handbook gives the example of the serious illness of one of the couple or of a parent who was due to attend the wedding, and makes it clear that the waiting period is unlikely to be reduced to allow couples to fulfil the legal preliminaries while on holiday in England and Wales.

2.18 The purpose of the period of publicity is to allow those who are aware of an impediment to object to the wedding going ahead. If one of the couple is under the age of 18, the person whose consent is required may forbid the issue of the certificate,

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23 Marriage Act 1949, s 37; Marriage (Scotland) Act 1977, s 7(2). A similar provision for notice to be given in Northern Ireland was removed by the Immigration Act 2014, sch 12 para 12(4).

24 Marriage of British Subjects (Facilities) Act 1915. The list of specified countries and territories comprises Bahamas, Barbados, Belize, Bermuda or Somers Island, Botswana, Canada (Newfoundland only), Cyprus, Dominica, Eswatini, Fiji, The Gambia, Ghana (former Gold Coast Colony only), Gibraltar, Gilbert and Ellice Islands Colony, Grenada, the Bailiwick of Guernsey (including Alderney and Sark), Isle of Man, Jamaica, Jersey, Kenya, Leeward Islands, Lesotho, Malawi, Malaysia (former Straits Settlement of Labuan, Malacca and Penang only), Mauritius, New Zealand, Nigeria, Pacific Protectorate (ie any island or group of islands, or place under the jurisdiction of HM High Commissioner for the Western Pacific, St Lucia, St Vincent, the Seychelles, Sierra Leone, Sri Lanka, Tanzania (Zanzibar only), Trinidad and Tobago, Uganda, Zambia and Zimbabwe.

25 Marriage Act 1949, s 39.

26 Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s 19. See the Glossary for the meaning of "relevant national" and "exempt from immigration control".

27 The 28-day period begins on the day after the notice of marriage was entered in the marriage book or its online equivalent: Marriage Act 1949, s 31(1) to (1A). The details may be displayed in paper or electronic form.

28 An investigation can only be undertaken when there are reasonable grounds to suspect it is a sham, and the proposed marriage involves a person who is not an exempt person (meaning the person is not a relevant national and does not have the appropriate immigration status or a relevant visa in respect of the proposed marriage). See the Glossary for the meaning of "relevant national", "appropriate immigration status" and "relevant visa". See also the Marriage Act 1949, s 28H(9) and sch 3A para 3.

29 Marriage Act 1949, s 31(5A); Proposed Marriages and Civil Partnerships (Waiting Period) Regulations 2015 (SI 2015 No 159). An additional fee of £60 is payable for each application: Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), reg 3 and sch 1.

even if they have previously given written consent. In this case the notice will be void.[30]

2.19 In addition, any person may identify a potential impediment to the marriage by entering a "caveat", or warning, against a certificate being issued. In this case the superintendent registrar must examine the issue and determine whether the caveat is a valid one. If they are satisfied that the caveat should not prevent the wedding going ahead, then a certificate will be issued. If they are not so satisfied, then the certificate will not be issued and the wedding cannot proceed.[31]

2.20 Even in the absence of an objection or caveat, a superintendent registrar may refuse to issue the certificate if they are not satisfied that there is no impediment to the marriage.[32] They may also refuse to issue the certificate if the other member of the couple has not yet given notice, or if certain required documentation has not been produced.[33]

2.21 In addition, if the wedding is being investigated as a potential sham by the Home Office, and the Secretary of State takes the view that the couple have not complied with that investigation, then a certificate will not be granted.[34] In all other cases, a certificate will be issued, even if the Secretary of State has determined that the wedding is a sham. The fact that a wedding is not genuine is not a legal impediment to it taking place. However, as the Home Office notes, it can prevent "those we believe have entered into a sham marriage from benefitting from the deception, by not permitting them to legally remain in the UK".[35]

2.22 Once a certificate has been granted to each of the couple, the wedding can take place. Each certificate remains valid for 12 months.[36]

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30 Marriage Act 1949, s 30. An objection does not necessarily prevent the wedding from taking place, as a court may give consent instead: Marriage Act 1949, s 3(1)(b). Given the decline in the number marrying under the age of 18, this option is little used: see R Probert, "Parental Responsibility and Children's Partnership Choices" in R Probert, S Gilmore, and J Herring (eds), *Responsible Parents and Parental Responsibility* (2009).

31 Marriage Act 1949, s 29. In cases of doubt the matter may be referred to the Registrar General, and if the certificate is refused, appeal may similarly be made to the Registrar General. If the caveat was made on frivolous grounds, the person responsible will be liable for the costs of the proceedings and for damages.

32 Marriage Act 1949, s 31(2)(a).

33 The Registrar General's Handbook states that a certificate will not be granted where evidence of consent to the wedding (where either is under 18), the consent of the relevant governing authority (where the wedding involves a same-sex couple) or evidence of a divorce from or the death of a former spouse has not been produced.

34 Marriage Act 1949, s 28H(9) and sch 3A para 2(1) to (7).

35 Home Office, *The Home Office response to the Independent Chief Inspector's report: 'An inspection of the implementation of the Immigration Act 2014 provisions for tackling sham marriage'* (August to September 2016) para 1.2.

36 Marriage Act 1949, s 33(3). If notice was given in Scotland the relevant period is three months.

Where can the ceremony take place?

2.23 The couple may marry in any register office in England and Wales.[37] On the day of the wedding a further interview will normally take place to confirm the information given at the notice stage.

2.24 Within the register office, the rooms available for weddings will depend on the policy of the local authority. Some may still offer attractive marriage rooms, while in others the wedding will take place in the office of the superintendent registrar.

Who is required to be present and what form must the ceremony take?

2.25 A superintendent registrar, registrar, and two witnesses are required to attend the ceremony.[38] The superintendent registrar will generally be responsible for conducting the ceremony.[39] Neither a superintendent registrar nor a registrar may act as a witness to the wedding they are responsible for.

2.26 The ceremony must be conducted with open doors and the couple must state, in words prescribed by statute, that they are free to marry one another, and that they consent to marry each other.[40] These statements are known respectively as the "declarations"[41] and "words of contract",[42] and we refer to them collectively as the "prescribed words". These are the key part of the ceremony, in that it is generally accepted the couple are married as soon as the words are spoken.[43] Provision is made for the prescribed words to be said in English or Welsh,[44] but not in any other language.[45]

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37 Marriage Act 1949, s 35(2A).

38 Marriage Act 1949, s 45(1).

39 This is assumed rather than required by the legislation. The ambiguity of the superintendent registrar's role is reflected in the fact that wedding certificates refer to the marriage having been solemnized "before" rather than "by" the superintendent registrar.

40 Marriage Act 1949, s 45(1).

41 There are three permitted versions of the declarations: "I do solemnly declare that I know not of any lawful impediment why I, [name], may not be joined in matrimony to [name]", or "I declare that I know of no legal reason why I [name] may not be joined in marriage to [name]" or simply answering "I am" to the question "Are you [name] free lawfully to marry [name]?": Marriage Act 1949, s 44(3) to (3A).

42 There are two permitted versions of the words of contract, either "I call upon these persons here present to witness that I, [name], do take thee, [name], to be my lawful wedded wife [or husband]" or "I [name] take you [or thee] [name] to be my wedded wife [or husband]": Marriage Act 1949, s 44(3) to (3A).

43 However, as we discuss in Ch 10, there is nothing in the Marriage Act 1949 stating that a marriage is not valid if these words are not spoken, and the case law suggests that other expressions of consent will be accepted.

44 Marriage Act 1949, ss 44 and 52. The option of saying the prescribed words in Welsh is only available in Wales and in places where the Welsh language is commonly used.

45 However, the Handbook advises that an interpreter should be used where either of the couple do not speak or understand English and that each of the couple should say the prescribed words in their own language and "to the best of their ability in English".

2.27 A wedding in a register office must not include any "religious service".[46] This would not necessarily rule out including material of a religious nature that is not part of a specific service. However, the Handbook additionally states that a ceremony in a register office cannot include any material which is religious in nature.[47] The scope for including any additional non-religious material will depend on the policy of the individual register office.[48]

2.28 Similarly, whether any additional guests are permitted will depend on the facilities available at the register office and the nature of the ceremony. In Exeter's register office, for example, only the two witnesses are allowed in the room if it is a statutory ceremony, but six further guests are allowed if it is not (for an additional cost of £104).[49]

Who is responsible for registering the marriage?

2.29 The registrar present at the wedding is responsible for registering it as soon as it has taken place.[50]

When might a marriage in a register office be void or non-qualifying?

2.30 If the couple "knowingly and wilfully" marry in a register office:

(1) without giving "due"[51] notice to the superintendent registrar;

(2) without a valid certificate having been duly issued for each of the parties, or after either certificate has become void;

(3) other than in the register office specified in the notice of marriage; or

(4) in the absence of either the superintendent registrar or a registrar of that registration district;

then the marriage will be void.[52]

2.31 It is highly unlikely that a wedding in a register office would ever be classified as non-qualifying.[53] The very fact of it being in a register office would bring it within the scope

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46 Marriage Act 1949, s 45(2).

47 The meaning of this rule is explored further at para 2.54 below.

48 See S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies" [2018] *Child and Family Law Quarterly* 415.

49 Devon County Council, *Exeter*, http://www.devon.gov.uk/registrationservice/venues/registration-offices/Exeter (last visited 1 May 2020).

50 Marriage Act 1949, ss 53(f) and 55(1).

51 "Due" here means "in the form required by the statute" (*Plummer v Plummer* [1917] P 163), rather than that the details be accurate. The scope to give false names and ages has however been reduced by the requirement for documentary evidence.

52 Marriage Act 1949, s 49.

53 Unless the couple had previously gone through a valid marriage elsewhere: see *Galloway v Goldstein* [2012] EWHC 60 (Fam), [2012] Fam 129. On the concept of a non-qualifying ceremony see Ch 10.

of the Act. In any case, superintendent registrars and registrars are regularly briefed as to the legal requirements.

What offences may be committed?

2.32 The importance of complying with the specific requirements set out above is reinforced by potential criminal liability.[54]

2.33 If done "knowingly and wilfully", it is an offence punishable by up to five years imprisonment for:

(1) a superintendent registrar to issue a certificate too soon or too late, or after the issue of such certificate has been forbidden by a person entitled to do so;[55]

(2) a superintendent registrar to solemnize, or a registrar to register, a marriage that is void on account of a failure to comply with the required formalities;[56] or

(3) any person to solemnize a marriage on the authority of certificates that have not been duly issued or which have expired, or in any place other than the register office specified in the notice, or in the absence of a registrar of the registration district.[57]

2.34 It is also an offence punishable by a fine not exceeding £1,000 for:[58]

(1) a registrar to refuse or (without reasonable cause) fail to register any marriage that they are responsible for registering; or

(2) any person to "carelessly" lose or injure a marriage register book that is in their keeping, or allow it to be injured.

2.35 We are not aware of any convictions under any of these provisions.

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54 In addition to specific offences contained in the Marriage Act 1949 there is also a general offence of misconduct in public office that would be committed where a public officer such as a superintendent registrar or registrar without reasonable excuse or justification wilfully neglected to perform their duty to such a degree as to amount to an abuse of the public's trust in them. The Law Commission is currently reviewing the scope of misconduct in public office: Reforming Misconduct in Public Office (2016) Law Commission Consultation Paper No 229.

55 Marriage Act 1949, s 75(3). The minimum period is 28 days and the maximum period is 12 months (or three months if one of the couple gave notice in Scotland or is detained or housebound). For a discussion of who may forbid the issue of a certificate see para 2.18 above.

56 Marriage Act 1949, ss 75(3)(d) and 76(3).

57 Marriage Act 1949, s 75(2)(a).

58 Marriage Act 1949, s 76(1).

Approved premises

2.36 Marrying on approved premises has quickly become the most popular option since its introduction in 1995.[59] There are currently around 11,000 places listed as approved premises, including hotels, stately homes, and castles.[60]

What preliminaries are required?

2.37 The couple must follow the same process for giving notice as for a wedding in a register office. They will need to identify the approved premises where they intend to marry.

Where can the ceremony take place?

2.38 A couple may marry on any approved premises in England and Wales.[61] They do not need to be resident in the district in which the approved premises is located.

2.39 To be approved for weddings, the "premises" must be "a permanent immovable structure comprising at least a room, or any boat or other vessel which is permanently moored".[62] What constitutes a "room" is not defined in the regulations but the guidance issued by the Registrar General makes it clear that "the open air, a tent, a marquee or any other temporary structure and most forms of transport would not be eligible for approval".[63]

2.40 In addition, the premises must be "seemly and dignified" having regard to "their primary use, situation, construction and state of repair" and be readily available to the public for weddings.[64] They must have reasonable fire precautions and health and safety provisions, and the room or rooms in which it is proposed that weddings should take place "must be identifiable by description as a distinct part of the premises".[65]

2.41 While the same room cannot be both a register office and approved premises, there is nothing to prevent rooms within a register office from being reclassified as approved premises. In recent years a number of marriage rooms within register offices have become approved premises for which a higher fee can be charged.

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59 Marriage Act 1994.

60 General Register Office, *Civil marriages and partnerships: approved premises list* (9 October 2018), https://www.gov.uk/government/publications/civil-marriages-and-partnerships-approved-premises-list (last visited 1 May 2020).

61 Marriage Act 1949, s 35(2B).

62 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 2(1).

63 General Register Office, *The Registrar General's Guidance for the Approval of Premises as Venues for Civil Marriages and Civil Partnerships* (7th ed December 2019) para 2.3, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848875/registering_a_venue.pdf (last visited 1 May 2020).

64 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 1 paras 1 to 2.

65 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 5(1)(b) and sch 1 paras 3 and 5.

2.42 Similarly, while any building that is currently used mainly or solely for religious purposes cannot be approved premises, the fact that the building was once used for religious purposes does not prevent its approval.[66] However, the Handbook warns that where approved premises host additional non-legally binding religious ceremonies, "the local authority may wish to consider the nature and frequency of such events and whether this has any impact on the approval of such premises as a venue for marriage".

2.43 Application for the premises to be approved may be made by the owner or trustee to the "proper officer"[67] of the local authority. A fee can, and invariably will, be charged for the application.[68] Local authorities can decide whether to set the application fee on a case-by-case basis, on a class-by-class basis, or at single, fixed level. Whichever way it chooses to set its fees, a local authority is limited to charging fees on a cost-recovery basis. However, the regulations afford some leeway to local authorities by providing that fees must not exceed the amount that "reasonably represents" the authority's costs, or average costs as the case may be.[69] Further, where fees are set other than on a case-by-case basis, the restriction on fees is referable to the costs "likely" to be incurred by the authority, not only to the costs that actually are incurred.[70]

2.44 Most local authorities charge a single application fee, although some charge according to the number of rooms for which approval is sought and some charge a discounted fee for premises that already have a licence to serve alcohol. In our research into 58 authorities across England and Wales, the median application fee for England and Wales is £1,500, with the lowest in Haringey (£51) and the highest in Redcar and Cleveland (£3,210).

2.45 The authority will inspect the premises to ensure that they comply with the regulations and "any other reasonable requirements which the authority considers appropriate to ensure that the facilities provided at the premises are suitable".[71] This means that local authorities may set their own additional requirements, which may then vary between authorities. Southend on Sea, for example, has additional requirements about disabled access, facilities for interviewing the couple, toilet facilities, lighting, car parking for the superintendent registrar and the registrar, music systems, and

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66 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 1 para 4(a). "Religious premises" are defined as "premises which a) are used solely or mainly for religious purposes, or b) have been so used and have not subsequently been used solely or mainly for other purposes" (Civil Partnership Act 2004, s 6A(3C)). For an example of a deconsecrated church that has been approved for civil weddings see The Lost Village of Dode, *Weddings*, https://www.dodevillage.com/weddings/ (last visited 1 May 2020).

67 The "proper officer" is an appointed role that forms the main point of contact between the local authority and the Registrar General: Registration Service Act 1953, s 13(2)(h).

68 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 12.

69 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 12(2), (3) and (6).

70 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 12(3).

71 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 5(1)(c).

telephones, while Kent only has requirements about toilets and public liability insurance.[72]

2.46 The local authority must make the details of any application publicly available, and publish a notice either in a local newspaper or on the authority's website. It must consider any written objections to the application. The local authority must also consult with the fire and rescue authority in assessing the premises' fire precautions.[73]

2.47 There is no limit to the number of premises that may be approved. However, a local authority can refuse to approve premises that would otherwise be deemed suitable if it considers that the superintendent registrar and registrar are unlikely to be regularly available to attend weddings there on account of the number of other approved premises in the area.[74]

2.48 If approval is granted, it will be subject to the standard conditions contained in the regulations and any other conditions set by the local authority.[75] The holder of the approval must ensure that there is an appropriately qualified individual who is responsible for ensuring compliance with the conditions ("the responsible person").[76]

2.49 If the application is refused, or it is approved but non-standard conditions are attached, or it is approved despite an objection being lodged, then the authority must set out reasons for its decision and notify the applicant of their right to seek a review of the decision.[77]

2.50 The minimum period for which premises may be approved is three years.[78] There is no scope for one-off approvals. Local authorities have the power to determine whether approval will last for a longer period and whether a fee will be charged for review or renewal. In our research we found that a few authorities granted approval for more than three years.[79] Some (for example Lancashire), charge the same fee for renewals as for first applications. Others offer reduced fees for renewal, ranging from 86% of the application fee in Bracknell Forest to 4% of the application fee in Peterborough.

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72 See Southend on Sea Borough Council, *Notes on the requirements before an approval can be granted*, p 2, http://www.southend.gov.uk/download/downloads/id/516/approval_requirements.pdf (last visited 1 May 2020); Kent County Council, *Licensing your venue for Civil Marriages and Civil Partnerships* (March 2019) p 4, https://www.akentishceremony.com/assets/Info-Booklet-Ver-13-March-2019.pdf (last visited 1 May 2020).

73 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 1 para 3.

74 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 5(2).

75 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 6(1).

76 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 2 para 1. The individual should be qualified to ensure compliance with the conditions, whether by virtue of their occupation, seniority and position of responsibility in relation to the premises or other factors.

77 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 5(4) to (5). Reviews are governed by reg 9 and are carried out by the local authority.

78 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 7(1).

79 Most authorities did not state the duration for which approval would be granted. Of those that did, 14 said that approval would be for three years, two (Haringey and Stockton on Tees) for five years and one (Stoke on Trent) for up to six years, but with a proportionately larger application fee.

Who is required to be present and what form must the ceremony take?

2.51 The presence of both a superintendent registrar and registrar is required, along with two witnesses.[80] The fees for the attendance of the superintendent registrar and registrar are determined by the local authority.[81]

2.52 In the hour leading up to the wedding, and during the wedding itself, the responsible person or an appropriately qualified deputy must be present on the premises. There must be a notice posted on every public entrance stating that the premises have been approved and giving directions to the room where the wedding is taking place. Public access must be permitted without any charge. The wedding must take place in the specific room that has been approved, and no food or alcoholic drinks can be sold or consumed in that room during this time.[82]

2.53 The couple must repeat the same prescribed words as are required for a wedding in a register office, confirming that they are free to marry one another, and that they consent to marry each other.[83]

2.54 The wedding must not include any religious service, or any material that is "religious in nature".[84] Exactly what constitutes material that is "religious in nature" may be a matter of debate. According to the regulations, a civil wedding on approved premises cannot include extracts from a religious wedding service or from sacred religious texts, any religious rituals, hymns, chants, or any form of worship. Nor can it be led by a minister of religion or religious leader.[85] However, incidental religious references are permitted. In practice what is permitted – and what is recognised as religious in the first place – varies between different registration officers. The scope to include other non-religious material also varies.[86]

2.55 However, couples will often have an additional religious, Humanist or other ceremony on the same day. A couple might also want to have an independent celebrant conduct a more personalised ceremony for them. In such cases the civil wedding will take place in the approved room and the religious or other ceremony either in a separate part of the building or later in the day. The Handbook advises that the legal and other ceremonies must be clearly differentiated and that there "must be a clear break" between them.

2.56 In some districts superintendent registrars co-operate with independent celebrants to enable the latter to play a role in the civil wedding. For example, Staffordshire is

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80 Marriage Act 1949, s 46B(1).

81 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 12.

82 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 6 and sch 2 paras 6, 7, and 12.

83 Marriage Act 1949, s 46B(3).

84 Marriage Act 1949, s 46B(4); Marriage and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 2 para 11.

85 See the Glossary for the meaning of "religious leader".

86 See S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies" [2018] *Child and Family Law Quarterly* 415; see also paras 6.73 to 6.88 below.

running a pilot scheme involving celebrants as part of the legal ceremony. We were also told of one wedding that moved seamlessly from the legal civil wedding in the approved part of the premises to a handfasting (associated with Pagan ceremonies) conducted by an independent celebrant next to a lake within the grounds.

Who is responsible for registering the marriage?

2.57 The registrar present at the wedding is responsible for registering it as soon as it has taken place.[87]

When might a marriage on approved premises be void or non-qualifying?

2.58 All the conditions that apply to a wedding in a register office apply equally to one on approved premises. In addition, it will be void if the parties "knowingly and wilfully" marry in any place that is not in fact approved premises.[88]

2.59 While there have been no reported cases of ceremonies on approved premises being classified as non-qualifying, it is possible to envisage situations where that would be the result. An example would be where the venue advertises itself as one where weddings can be celebrated, but the ceremony is conducted by an independent celebrant in a part of the venue that has not been approved for weddings, and the parties have failed to give notice.

What offences may be committed?

2.60 The offences that may be committed in relation to a wedding in a register office apply equally to one on approved premises.[89] In addition, it is an offence for any person "knowingly and wilfully" to solemnize a marriage that is purporting to be a marriage on approved premises in a place that has not in fact been approved.[90]

2.61 The offence of solemnizing a marriage on approved premises in the absence of a registrar only applies where the wedding falls within the scope of the Marriage Act 1949.[91] Conducting a non-legally binding wedding ceremony on approved premises – for example with an independent celebrant – would not constitute an offence.

RELIGIOUS WEDDINGS

2.62 The legal framework governing the celebration of weddings according to religious rites is complicated by the fact that different rules apply to different religions. Specific rules govern Anglican, Jewish and Quaker weddings. A separate set of rules governs all other religious weddings.

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87 Marriage Act 1949, ss 53(g) and 55(1).

88 Marriage Act 1949, s 49(ee).

89 Section 75(2)(a)(ii) also refers to the solemnization of a marriage in any place other than the approved premises specified in the notice.

90 Marriage Act 1949, s 75(2)(aa). As a marriage would be void if the parties "knowingly and wilfully" married on premises that had not in fact been approved, the superintendent registrar solemnizing the marriage would potentially also be guilty of an offence under s 75(3)(d).

91 Marriage Act 1949, s 75(2)(cc).

2.63 In 2017, 54,346 weddings were celebrated according to religious rites.[92] The majority of these (74%) were Anglican weddings. The next most popular form were Roman Catholic weddings, accounting for 11% of religious weddings, and a further 11% were celebrated by other Christian denominations. Only 4% were conducted according to non-Christian religious rites. Just 43 religious weddings were between a same-sex couple.[93]

Anglican

2.64 An Anglican wedding is one that is celebrated according to the rites of the Church of England or the Church in Wales. For the most part the provisions set out in the Marriage Act 1949 apply equally to all Anglican weddings.[94] However, the origins of Anglican weddings lie in ecclesiastical law, and ecclesiastical law continues to regulate Church of England weddings in addition to the statutory provisions. This raises an importance point of distinction between the Church of England and the Church in Wales.

2.65 The Church of England is the established church. One consequence of this is that the General Synod of the Church of England has the power to pass Measures amending ecclesiastical law. When approved by both Houses of Parliament and given Royal Assent these Measures have the force of law. A number of Measures have been passed amending the way in which the Church of England may conduct weddings. Some of these Measures specifically amend the Marriage Act while others operate in addition to the terms of the Act.

2.66 By contrast, the Church in Wales was disestablished by the Welsh Church Act 1914. For present purposes, the main practical consequence of the 1914 Act was that ecclesiastical law ceased to exist as law in Wales. This means that any Measures passed by the General Synod do not apply in Wales. This is the case whether the Measure made amendments to the Marriage Act 1949 or operates in addition to the Act.[95] As a result, separate primary legislation is required in order for any such changes to take effect within the Church in Wales. Where such legislation has not been passed, the rules applicable to the Church in Wales will be different from those applicable to the Church of England.

2.67 There is a further important consequence of the relationship between the governing legislation and ecclesiastical law. A change to the legislation does not change ecclesiastical law. So, for example, when the restrictions on the hours within which

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92 Office for National Statistics, *Marriages in England and Wales: 2017* (14 April 2020).

93 This figure is not broken down by denomination, but the majority are likely to be Quaker, Unitarian, United Reformed Church or Spiritualist: see further at paras 2.125 and 2.141 below.

94 Part II of the Marriage Act 1949 refers only to marriages according to the rites of the Church of England, but s 78(2) states any such references "shall, unless the context otherwise requires, be construed as including a reference to the Church in Wales".

95 Schedule 6 of the Marriage Act 1949 contains a list of provisions that do not apply to Wales but does not reflect the discrepancies introduced by recent Measures.

weddings may take place were removed in 2012,[96] that change did not affect the ecclesiastical rule that weddings can only take place between 8am and 6pm.[97]

2.68 Despite the disestablished status of the Church in Wales, every person has a right to be married in their own parish church in both England and Wales unless specifically excluded.[98] However, members of the clergy are not able to conduct same-sex weddings.[99] They can also refuse to conduct the weddings of certain persons who are related by affinity,[100] or of those who have been divorced,[101] or of those who have undergone gender reassignment.[102] Nor are they obliged to permit any of these weddings in the church or chapel of which they are the minister.

What preliminaries are required?

2.69 The Church of England and the Church in Wales are afforded special treatment in that their own preliminaries – banns, common licence, or special licence – may be used instead of civil preliminaries.[103] Anglican weddings may also be preceded by civil preliminaries, and those who are not relevant nationals will now almost always have to use the civil route.[104]

Banns

2.70 The calling of the banns involves the intended wedding being announced during a church service on three Sundays prior to it taking place.[105] The three Sundays do not have to be consecutive, or immediately prior to the wedding. A set form of words must be used.[106] Within the Church of England, banns must be called at the "principal service", defined as the service which, in the opinion of the person responsible for publishing the banns, "the greatest number of persons who habitually attend public worship are likely to attend".[107] Within the Church in Wales, by contrast, banns must

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96 Protection of Freedoms Act 2012, s 114, removing Marriage Act 1949, s 4 and the offence of solemnizing a wedding outside the permitted hours.

97 Canon of the Church of England B35.3.

98 F Cranmer, "Wales and the Law of Marriage: 'Vestiges of Establishment' Revisited" (2015) 174 *Law & Justice* 96.

99 Marriage (Same Sex Couples) Act 2013, s 1(2) and (4).

100 Marriage Act 1949, s 5A. The marriages in question are those between a former step-parent and step-child (or step-grandchild), which are permitted if both are 21 and the younger was never a child of the family (Marriage Act 1949, s 1(3)) and those between a former parent-in-law and the spouse of their child (which were permitted following the Marriage Act (Remedial) Order 2007 (SI 2007 No 438)).

101 Matrimonial Causes Act 1965, s 8(2).

102 Marriage Act 1949, s 5B.

103 Marriage Act 1949, s 5.

104 For banns to be called (except on Her Majesty's ships), or a common licence granted, both of the couple must be relevant nationals: Marriage Act 1949, s 5(3).

105 Marriage Act 1949, s 7(1).

106 Marriage Act 1949, s 7(2). For the Church of England, there is a choice between the words in the Book of Common Prayer 1662 and those authorised by the Church of England Marriage (Amendment) Measure 2012, s 2(1). For the Church in Wales, the required wording is set out in the 1984 Prayer Book.

107 Marriage Act 1949, s 7(1A), as inserted by the Church of England Marriage (Amendment) Measure 2012.

be called at morning service; if there is no morning service on the Sunday when banns are to be called then they can be called at evening service.

2.71 If no member of the clergy is present at the service at which banns are usually called, then the banns may be published at another service.[108] Alternatively, the banns may be published by a layperson.[109] The canons of the Church of England authorise readers, deaconesses and lay workers to call banns.[110] The Faculty Office also told us that it is permissible for churchwardens to call banns.[111]

2.72 The provisions relating to where banns are to be called are even more complex. The primary requirement is for banns to be called in the parish church(es) of the parish(es) where each of the persons intending to marry live.[112] If they are marrying in a different church – which is possible if it is the usual place of worship of one or both,[113] or one with which they have a "qualifying connection"[114] – banns should be called there as well.[115] In this case the couple must provide the person conducting the wedding with a certificate confirming that the banns have been called in their home parish(es).[116]

2.73 These rules may entail some duplication of work where the couple live in different parishes and are marrying in a third. Matters become more difficult where alternative provision has been made for banns to be called. That alternative provision may affect both the parish(es) of residence and the church in which the wedding is to take place. These rules therefore need to be read alongside the rules on where couples may marry.[117]

2.74 Such alternative provision may be necessary if the parish church where banns should normally be called is unavailable, or if a particular parish has no parish church, or if one or both of the couple live in a place outside the usual parish structure. In such cases banns may be called in an alternative place.

(1) If the church is not being used for divine service because it is being repaired or rebuilt, banns may be called in a building within the parish or district licensed by

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108 Marriage Act 1949, s 9(2)(a).

109 In this case a member of the clergy must have authorised the entry of the intended wedding in the banns book: Marriage Act 1949, s 9(2). In addition, only clergy can certify that banns have been called: s 11(4).

110 Readers and deaconesses may do so by virtue of their role but lay workers may only do so if specifically licensed by their bishop: see Canons of the Church of England E4.2(b) (readers), D1.4(d) (deaconesses) and E7.5(d) (lay workers).

111 See the Glossary for the meaning of "Faculty Office".

112 Marriage Act 1949, s 6(1). No specific period of prior residence is required, but members of the clergy are under no obligation to publish the banns unless the parties have provided written notice of their names, addresses, and period of residence at least seven days in advance: Marriage Act 1949, s 8(1)(a).

113 As evidenced by that person being enrolled on the church electoral roll: Marriage Act 1949, s 72.

114 See further para 2.96 below.

115 Marriage Act 1949, s 6(4); Church of England Marriage Measure 2008, s 1(5); Marriage (Wales) Act 2010, s 2(5).

116 Marriage Act 1949, s 11.

117 See paras 2.93 to 2.98 below.

the bishop of the diocese for divine service, or (at the direction of the bishop) in any consecrated chapel in the parish or district.[118]

(2) If a parish does not have a parish church, in a church or other building licensed for public worship that has been designated by the bishop of the diocese as a parish centre of worship.[119] This is only possible in England.

(3) If one or both of the couple live in a parish that has no parish church or chapel or no regular Sunday service, or if the parish church is unavailable because it is undergoing repair and no alternative arrangements have been made by the bishop, or if the parish has only a parish centre of worship and the couple elect not to be married there, in an adjoining parish.[120]

(4) If a church in which the publication of banns was started either ceases to be the parish church or ceases to be licensed for weddings, the calling of the banns is to be completed in such other place as the bishop directs.[121]

(5) If one or both of the couple live in an extra-parochial place, in a church or chapel in that place that has been licensed by the bishop for the calling of banns.[122]

(6) If one of the couple is at sea as an officer, seaman or marine of the Naval Service, on board one of Her Majesty's ships.[123]

2.75 In other cases, the alternative provision for banns to be called is a matter of convenience rather than necessity:

(1) in a public chapel in the same parish, if it has been licensed by the bishop for the calling of banns;[124] or

(2) in another parish church within a group under the control of the same member of the clergy, if the bishop has so directed.[125]

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118 Marriage Act 1949, s 18(1)(a) to (b); Church of England Marriage Measure 2008, s 1A(2).

119 Mission and Pastoral Measure 2011, s 43.

120 Marriage Act 1949, ss 6(3) and 18(1)(c); Mission and Pastoral Measure 2011, s 43(3).

121 Marriage Act 1949, s 10(2). This section does not apply to the Church in Wales: Marriage Act 1949, sch 6.

122 Marriage Act 1949, s 21. An extra-parochial place is one that lies outside the parish structure and so by definition does not have a parish church.

123 Marriage Act 1949, s 14. In this case the banns must be published on three successive Sundays by the chaplain or, if there is no chaplain, by the captain or other officer commanding the ship.

124 Marriage Act 1949, s 20. A "chapel" in this context is by definition an Anglican one. Banns may only be called in such chapels if one or both of the couple either live in the district specified in the licence (s 6(1)) or usually worship in that chapel (s 6(3)), or have a qualifying connection with a parish that is wholly or partly within the district specified in the licence (Church of England Marriage Measure 2008, s 1(10); Marriage (Wales) Act 2010, s 2(10)).

125 There are two different possibilities here, depending on how the parishes are organised. The first is that two or more benefices are held by the same person, or "in plurality": Marriage Act 1949, s 23; Marriage (Wales) Act 1986, s 1. The second – which only applies in England – is that a number of parishes have been

In practice, the last of these provisions will trump other alternatives. The Faculty Office advise that directions by the bishop as to where the banns are to be called must be followed.[126]

2.76 Provision is made for the publication of banns in Scotland, Northern Ireland or Ireland if one of the parties is resident there.[127] However, each of those jurisdictions has now adopted universal civil preliminaries: while banns could in principle still be called for those intending to marry in England and Wales, in practice this no longer happens.[128] The Faculty Office now recommends that a common licence is used where one of the parties lives outside England and Wales.[129]

2.77 The cost of having the banns called depends on where the wedding is taking place. Within the Church of England, the fee is £31 for each set of banns. The cost can therefore range from £31 (for one set of banns to be called where the parties live in the same parish and are marrying there) to £121 (where the parties live in different parishes and are marrying in a third and each needs to produce a banns certificate from their home church at a cost of £14 each).[130] Within the Church in Wales, there is no separate fee for the publication of banns where the wedding is taking place in the same parish. Where the banns are called outside the parish where the wedding is taking place then there is a fee of £40, which covers both the publication and the certificate of banns.[131]

2.78 Once the three readings have been completed, and assuming no legal impediment has been identified or, if either is a minor, that no dissent has been expressed by a person whose consent is required,[132] the wedding can go ahead.

Common licence

2.79 An alternative to having the banns called is to obtain a common licence.[133] This option offers a speedier but more expensive route than banns, the cost being generally

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combined into the same benefice and now form a united benefice: Mission and Pastoral Measure 2011, sch 3 para 12(4). In either case, the bishop may direct that banns are to be called in one of the parish churches within the group and any person who could have had their banns called in any other church within the group on the basis of residence, being on the electoral roll, or a qualifying connection can have their banns called in the church directed by the bishop.

126 Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 7.4.

127 Marriage Act 1949, s 13.

128 For a full discussion of the issue see D Pocklington and F Cranmer, "Banns of Marriage: Their Development and (Possible) Future" (2017) 19 *Ecclesiastical Law Journal* 342.

129 Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 7.5.

130 Parochial Fees and Scheduled Matters Amending Order 2019 (SI 2019 No 752), art 5 and sch 1.

131 Church in Wales, *Marriage Fees: Table of Fees (From 1 January 2020)*, https://www.churchinwales.org.uk/en/life-events/weddings/marriage-fees/ (last visited 1 May 2020).

132 Marriage Act 1949, s 3(3) provides that the publication of banns will be void in the case of such publicly voiced dissent.

133 Marriage Act 1949, s 5(1)(c).

around £200.[134] Traditionally, the main reason for obtaining a licence was the greater privacy and speed that it offered. The guidance issued by the Faculty Office still recommends the use of a licence where the couple "wish to avoid local publicity".[135] It will be necessary to use this option if there is insufficient time for banns to be called. It will also be necessary if either of the couple lives outside England and Wales, although it is not available unless both parties are relevant nationals.[136]

2.80 The rules relating to licences are slightly simpler than those relating to banns in that only one licence is needed. It is issued for the place of the wedding. Obtaining a common licence does not, however, expand the range of places where a wedding may take place. Generally, a licence can only authorise a wedding in a parish where one of the couple is resident, on the electoral roll, or has a qualifying connection.[137] As with the calling of banns, however, provision is also made for licences to be granted to authorise a wedding in an alternative place when the church in which the couple could have married is unavailable for some reason.[138]

2.81 To obtain a licence, one of the couple must apply to the diocesan registrar (or to a surrogate appointed by the Chancellor of the Diocese). The grant of the licence will be at their discretion: there is no automatic right to such a licence. The applicant must swear that he or she believes that there is no impediment to the wedding going ahead, and, if either is under the age of 18, that the appropriate consents have been given or are not needed.[139] They must also swear that at least one of them has been resident in the parish where the wedding is to take place for at least 15 days immediately before the grant of the licence, or is on the electoral roll of its church or has a qualifying connection with it.[140]

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134 The fees for applying for a licence are not set nationally but by order of the Vicar-General of each diocese: Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 9.13.

135 Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 2.6.

136 Marriage Act 1949, s 5(3)(b), and see s 16(1C) for the requirement of proof.

137 Marriage Act 1949, s 15(1); Church of England Marriage Measure 2008, s 2(1); Marriage (Wales) Act 2010, s 3(1).

138 Marriage Act 1949, s 15(2) (cases where the place has no parish church, or none in which Sunday worship is regularly solemnized, or which is extra-parochial); Mission and Pastoral Mission 2011, s 43 (cases where there is a parish centre of worship). The Faculty Office also advise that a common licence may authorise a marriage in a neighbouring church where the original church is closed for repairs or where the bishop has directed that weddings may take place in a particular church where benefices are held in plurality or united (Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 9.2), but there is no reference to this in the Marriage Act 1949.

139 Marriage Act 1949, s 16(1)(a) and (c). Consent will not be needed if the person under 18 is a widow(er) (now a very unlikely contingency) or there is no person whose consent is required, or consent has been either dispensed with by the Master of the Faculties or granted by a court: s 3(2).

140 Marriage Act 1949, s 16(1)(b). However, it is not necessary to prove this period of residence in later proceedings challenging the validity of the marriage: s 24(2).

2.82 Unlike most other forms of notice, there is no waiting period for a common licence. Nor is any publicity involved. Once granted, it is valid for three months.[141]

Special licence

2.83 An Anglican wedding may also be solemnized on the authority of a special licence granted by the Archbishop of Canterbury under the Ecclesiastical Licences Act 1533.[142] The cost of such a licence is £325. In theory the Archbishop's discretion to grant a special licence is unbounded and such a licence could be used to authorise an Anglican wedding at any time and in any place.[143] In practice, the discretion is exercised by the Faculty Office according to clear criteria set by each successive Archbishop and in a way that minimises the differences between a special licence and other ecclesiastical preliminaries.

2.84 As the guidance provided by the Faculty Office explains, a special licence is a privilege and not a right.[144] Its primary use is to authorise weddings in places of worship where it would not be possible to marry after banns or licence, for example in a cathedral that is not also a parish church, a chapel or other place of worship that has not been licensed for weddings, the private chapel of a school, college, or university, or Royal Peculiars.[145]

2.85 A special licence may also be used to authorise a wedding in a church where the couple are not otherwise eligible to marry, but this is less common now that it is possible to marry in a parish with which the couple have a qualifying connection.[146] The Faculty Office told us that special licences had been used where the church in which the couple could have married was too small, or where it was being repaired but had not been formally closed.

2.86 Special licences may also be granted to authorise a wedding taking place other than in a place of worship, for example where there are medical grounds for the couple to marry in a hospital or hospice, or at home, or where a family member is ill or housebound. The Faculty Office told us that the fee is waived for the vast majority of deathbed marriages.

2.87 To obtain a special licence, one of the couple must apply to the Faculty Office. The guidance provided by the Faculty Office stipulates that the couple will usually need to "show a worshipping connection" with the church where they would like to marry. If they wish to marry in the private chapel of a school, college, or university, then they

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141 Marriage Act 1949, s 16(3).

142 Marriage Act 1949, s 5(1)(b).

143 The Ecclesiastical Licences Act 1533 merely conferred the power to grant such licences and did not lay down any criteria for their issue, and s 79(6) of the Marriage Act 1949 preserved this power.

144 Faculty Office, *Would I be eligible to get a Special Licence?*, http://www.facultyoffice.org.uk/special-licences/would-i-eligible-to-get-a-special-licence/ (last visited 1 May 2020).

145 Royal Peculiars not only fall outside the parish system but outside the system of dioceses and so it is not possible for a bishop to issue a common licence to marry there. Instead, Royal Peculiars belong directly to the monarch. Examples include Westminster Abbey and St George's Chapel, Windsor.

146 However, a special licence would be needed if a wedding had been arranged on the assumption that the couple had a qualifying connection with the parish and this assumption turned out to be mistaken.

must fulfil certain requirements.[147] The guidance also states that the couple's families should approve of the marriage, the incumbent of the parish or parishes where the couple reside should have been consulted, the minister in charge of the church where the service is to be held should have agreed, and the minister who is to conduct the wedding "must be fully in support of this couple's application for a Special Licence".[148]

2.88 If the Faculty Office approves the application, one of the couple must swear an affidavit that there is no impediment to the wedding taking place. This must be done in person before an Anglican minister in England and Wales, or at the Faculty Office. Once this is done the special licence can be issued.[149]

2.89 If either of the couple is a not a relevant national, then both must attend the Faculty Office for an interview. The Faculty Office will not grant a special licence simply to avoid the fact that those who are not relevant nationals cannot marry on the authority of banns or a common licence, but only where it would grant one to relevant nationals.

2.90 As with a common licence, there is no formal waiting period for a special licence. Couples are encouraged to apply no later than three months in advance of the wedding, but where necessary licences may be granted very quickly. The Faculty Office told us of one case where a special licence was granted on three hours' notice to enable a deathbed wedding to go ahead. In other cases special licences were granted where it was a family member, rather than one of the couple, who was ill or housebound.[150] More dramatically, it told us of a special licence being used to authorise a substitute church where a bomb scare had precluded the use of the intended church. In such cases a common licence would have provided an equally speedy solution, but could only have authorised a wedding in a church in which the couple were entitled to marry.

2.91 There is no statutory provision limiting the period for which a special licence can be valid. However, the Faculty Office will generally only grant one for a period of three months, in order to ensure consistency with banns and common licences.

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147 Faculty Office, *School, College and University Chapels: Information*, http://www.facultyoffice.org.uk/special-licences/schoolcollege-and-univiersity-chapelsinformation/ (last visited 1 May 2020). A special licence may be granted if one of the parties is a member of staff, or was a member of longstanding service, or is a child of a member of staff, or a former or current pupil. The guidance adds that licences "may also be granted if one of the parties has a strong family or other link with the institution that satisfies the Archbishop's overall criterion, but each application will be considered on its own merits".

148 Faculty Office, *Would I be eligible to get a Special Licence?*, http://www.facultyoffice.org.uk/special-licences/would-i-eligible-to-get-a-special-licence/ (last visited 1 May 2020).

149 Faculty Office, *Application process and request a form*, http://www.facultyoffice.org.uk/special-licences/application-process-and-request-a-form/ (last visited 1 May 2020).

150 In this respect the circumstances in which a special licence will be granted are wider than those in which a Registrar General's licence will be granted or a superintendent registrar's certificate granted: see paras 11.8 to 11.13 below.

Civil preliminaries

2.92 A couple may give notice at a register office instead of having banns called or obtaining a licence.[151] If either or both are not relevant nationals they must give notice at a register office unless they are marrying by special licence.[152]

Where can the ceremony take place?

2.93 This question involves two sets of rules, one relating to the buildings that are available for Anglican weddings, and the other determining in which buildings any given couple may marry. These will be considered in turn.

In which buildings can Anglican weddings take place?

2.94 Anglican weddings may take place in parish churches or in other places of worship that have been licensed for weddings by the bishop of the diocese.[153] The latter may include:

(1) a chapel within the parish;

(2) a church, chapel or cathedral in an extra-parochial place; and

(3) (in England alone) a parish centre for worship.[154]

In which buildings can any given couple marry?

2.95 Unless specifically excluded,[155] every person has the right to be married in:

(1) the parish church or licensed chapel of the parish or district where they are resident, or that is their usual place of worship, or with which they have a qualifying connection;[156]

(2) (in England) the parish centre for worship of the parish where they are resident, or that is their usual place of worship, or with which they have a qualifying connection;[157] and

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151 Marriage Act 1949, s 5(1)(d). However, clergy are not obliged to accept this form of preliminaries: s 17.

152 If one or both of the parties are not relevant nationals and are not exempt from immigration control, the couple will be required to give notice in a designated register office: see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s 19. See the Glossary for the meaning of "relevant national" and "exempt from immigration control".

153 Marriage Act 1949, ss 6, and 20 to 21.

154 Mission and Pastoral Measure 2011, s 43.

155 See para 2.68 above.

156 Marriage Act 1949, s 6; Church of England Marriage Measure 2008, s 1(1) and (10); Marriage (Wales) Act 2010, s 2(1) and (10).

157 Church of England Marriage Measure 2008, s 1(2).

(3) the licensed chapel, church or cathedral in the extra-parochial place in which one of them is resident.[158]

2.96 A qualifying connection may be established by any one of the following.[159]

(1) Being baptised in that parish, or being entered in the register book of confirmation for any church or chapel in that parish.

(2) Having lived in that parish for not less than six months, or having habitually attended public worship there for not less than six months.

(3) A parent having lived in that parish for not less than six months during that person's lifetime, or having habitually attended public worship there for not less than six months; or a parent or grandparent having married in that parish.

2.97 In addition, where the church in which the couple were entitled to marry is unavailable for some reason, they may have a right to marry in a different church.

(1) If the church is not being used for divine service because it is being repaired or rebuilt, the couple will have the right to marry in the building within the parish or district that has been licensed by the bishop for divine service, or (at the direction of the bishop) in any consecrated chapel in the parish or district, or (in the absence of such alternative arrangements being made, in an adjoining parish.[160]

(2) If a parish has no parish church or chapel or no regular Sunday service, or (in England) only has a parish centre of worship and the couple elect not to be married there, the couple can marry in an adjoining parish.[161]

(3) If one or both of the couple live in a parish that is part of a united benefice or a benefice held in plurality, the couple can marry wherever the bishop has directed that marriages can be solemnized.[162]

2.98 If the couple wish to marry in a place in which they are not entitled to marry, then they can seek a special licence.

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158 Marriage Act 1949, s 21.

159 Church of England Marriage Measure 2008, s 1(3); Marriage (Wales) Act 2010, s 2.

160 Marriage Act 1949, s 18(1)(a) to (b). In England it is specifically provided that this alternative is available where a person has a qualifying connection with the unavailable church or chapel: Church of England Marriage Measure 2008, s 1A(2). There is no specific provision for Wales, but the view of the Faculty Office is that s 18 applies to any case where a person could have married in the unavailable church or chapel: Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 4.7.

161 Marriage Act 1949, s 6(3); Mission and Pastoral Measure 2011, s 43(3). In England it is specifically provided that this alternative is available where a person has a qualifying connection with the unavailable church or chapel: Church of England Marriage Measure 2008, s 1A(2) to (3).

162 Marriage Act 1949, s 23; Mission and Pastoral Measure 2011, sch 3.

Who is required to be present and what form must the ceremony take?

2.99 An ordained member of the clergy is required to conduct the ceremony.[163] There must also be two witnesses.[164]

2.100 While there are no statutorily prescribed words, the Church of England and the Church in Wales both have authorised forms of service that are to be used.[165] Additional music and readings may be included at the discretion of the person conducting the service.[166]

2.101 The canons of the Church of England require weddings to take place between 8am and 6pm.[167] In principle a special licence could permit a wedding to go ahead outside these hours but in practice this is only done in cases of serious illness.[168]

2.102 There is no statutory requirement that the ceremony be conducted with open doors. The forms of service used by the Church of England and the Church in Wales assume that marriage will be a public event but do not require this specifically.[169]

Who is responsible for registering the marriage?

2.103 The person who conducted the wedding is responsible for registering it.[170]

When might an Anglican marriage be void or non-qualifying?

2.104 Unless a special licence has been obtained, an Anglican marriage will be void if the couple have "knowingly and wilfully" gone through a ceremony:[171]

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163 This may include a deacon: M Hill, *Ecclesiastical Law* (3rd ed 2018) p 148 notes that it is "canonically irregular" but nonetheless lawful for a deacon to conduct the service.

164 Marriage Act 1949, s 22. See also Canon of the Church of England B35.4.

165 For marriages in the Church of England, these are the service in the Book of Common Prayer 1662, "A Form of Solemnization of Matrimony (Alternative Services: Series One)", and the "Marriage Service" from *Common Worship* (2000). For marriages in the Church in Wales, the service is set out in the 1984 Prayer Book.

166 Canon of the Church of England B35.5.

167 Canon of the Church of England B35.3.

168 Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 10.1.

169 The preface to the forms of service in the Book of Common Prayer and "A Form of Solemnization of Matrimony (Alternative Services: Series One)", both state that "the persons to be married shall come into the body of the church with their friends and neighbours". That in *Common Worship* contains no such preface but both it and the 1984 Prayer Book service used in Wales make reference to the marriage being celebrated before a congregation.

170 Marriage Act 1949, s 53(a).

171 Marriage Act 1949, s 25(2).

(1) without banns having been duly published, a common licence obtained, or certificates issued by a superintendent registrar, or if the banns, licence or certificates are void;[172]

(2) in a place in which banns may not be published at all, or, if it was preceded by civil preliminaries, in a place other than that specified in the notice; or

(3) conducted by a person who is not in "Holy Orders".

2.105 In addition, a marriage will be void if "any persons of the same sex consent to or acquiesce in the solemnization of a Church of England marriage between them".[173]

2.106 The case of *Hudson v Leigh* suggests that it is possible for an Anglican wedding to be classified as non-qualifying if none of the required formalities have been observed.[174]

What offences may be committed?

2.107 It is an offence punishable by up to 14 years' imprisonment for any person "knowingly and wilfully" to solemnize a marriage according to Anglican rites:

(1) if neither Anglican or civil preliminaries have been observed;

(2) in any place other than a church or other building in which banns may be published, unless a special licence has been obtained; or

(3) "falsely pretending to be in Holy Orders".[175]

2.108 If the wedding was preceded by civil preliminaries, it will be an offence for any person "knowingly and wilfully" to solemnize it on the basis of a certificate that was issued too soon or which has expired.[176]

2.109 Anglican clergy are subject to the same penalties as registrars for any failures to register weddings or ensure the safe custody of the marriage register book.[177]

Jewish

2.110 Special provision is made for those "professing the Jewish religion" to marry according to Jewish usages after giving notice at the register office.[178] For same-sex couples,

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172 Ecclesiastical preliminaries are valid for three months (Marriage Act 1949, ss 12(2) and 16(3)) and civil preliminaries for 12 months (Marriage Act 1949, s 33(3)(b)). Banns will also be void if any person whose consent is required to the marriage has publicly indicated their dissent: Marriage Act 1949, s 3(3).

173 Marriage Act 1949, s 25(4).

174 [2009] EWHC 1306 (Fam), [2013] Fam 77.

175 Marriage Act 1949, s 75(1)(b) to (d). In addition, s 75(2)(a)(i) makes it an offence to solemnize a marriage – otherwise than by means of special licence – in any place other than "a church or other building in which marriages may be solemnized according to the rites of the Church of England". This carries the lesser penalty of five years.

176 Marriage Act 1949, s 75(2)(d) to (e).

177 Marriage Act 1949, s 76(1); see para 2.34 above.

178 Marriage Act 1949, s 26(1)(d).

there is the additional hurdle that the "relevant governing authority" must have given written consent to such weddings: the governing authorities for Reform and Liberal have consented but that for Orthodox Judaism has not.[179] In 2016, 626 weddings took place according to Jewish usages.[180]

What preliminaries are required?

2.111 The same preliminaries must be observed as for a civil wedding.[181]

Where can the ceremony take place?

2.112 There are no statutory restrictions on either the district or the building where the wedding can take place, or even on whether it must take place in a building at all. While many Jewish weddings do take place in synagogues, some are conducted in hotels or similar venues, at home, or outdoors. There is no requirement that the wedding be conducted with open doors.

Who is required to be present and what form must the ceremony take?

2.113 There are no statutory provisions requiring the presence of any specific person. Under Jewish law, two kosher witnesses are required, and a rabbi will usually be present. The person responsible for registering the marriage will also usually attend, but this is not a legal requirement.

2.114 There are no statutory restrictions on the form of the ceremony, in that there are no prescribed words, no limitations on what can be included, and no definition of what count as Jewish "usages". However, the person responsible for registering the marriage must be satisfied that the wedding was "conformable to the usages of … persons professing the Jewish religion".[182]

Who is responsible for registering the marriage?

2.115 The most complex provisions are those relating to registration. The basic rule is that the secretary of the synagogue to which the couple belong, or, where they belong to different synagogues, the secretary they have nominated, is responsible for registering the marriage.[183] The lack of regulation of where Jewish weddings may take place and who is required to attend means that the secretary of one synagogue may be registering a marriage that is taking place in another, or elsewhere, despite not having attended it.

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179 Marriage Act 1949, s 26B(4). The rules as to which body constitutes the relevant governing authority are determined by who authorises the person responsible for registering the marriage: see paras 2.115 to 2.119 below.

180 Office for National Statistics, *Religious marriages by denomination, England and Wales, 2016* (14 May 2019).

181 See paras 2.11 to 2.22 above.

182 Marriage Act 1949, s 55(1)(b).

183 Marriage Act 1949, s 53(c)(ii). The register books must be signed by the secretary, the couple, and two witnesses: s 55(2). It is not specified whether the witnesses must have been present at the wedding.

2.116 The real complexity lies in the fact that there are different routes by which a secretary may be appointed. The Marriage Act 1836 originally made provision for the President of the London Committee of Deputies of the British Jews to certify that a person was "the secretary of a synagogue … of persons professing the Jewish religion".[184] This gave the President the ability to control which synagogues could conduct weddings by deciding whether any given synagogue should be recognised as such. In practice the decision has always been made by the Chief Rabbi, who is now also explicitly identified as the relevant governing authority for the purpose of giving consent to same-sex weddings.[185]

2.117 Only a few years after the 1836 Act, a breakaway group with a different conception of Judaism emerged. The Committee refused to recognise the new West London Synagogue and its members had to go to the register office to have a legally recognised wedding. The Marriage Act 1856 then gave the West London Synagogue separate recognition and also allowed it to certify the secretaries of synagogues connected with it.[186]

2.118 In the 20th century a new strand emerged within Judaism. The Liberal Synagogue at St John's Wood began to operate in 1911, and its secretary was certified by the Board of Deputies in 1934. Subsequently, the Marriage (Secretaries of Synagogues) Act 1959 amended the Marriage Act 1949 to allow the Liberal Synagogue to certify their own secretaries and those of synagogues associated with them.[187]

2.119 As a result, the current system recognises three separate strands of Judaism: Orthodox (whose secretaries are certified by the Board of Deputies), Reform (whose secretaries are certified by the West London Synagogue) and Liberal (whose secretaries are certified by the synagogue in St John's Wood).[188] Without such certification, the Registrar General will not issue register books to the synagogue and the secretary will not be able to register any marriages.

When might a Jewish marriage be void or non-qualifying?

2.120 Given that there are fewer legal requirements for a Jewish wedding, the list of statutory factors that will render it void is correspondingly shorter. A wedding according to Jewish usages will be void if the parties have "knowingly and wilfully"

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184 Births and Deaths Registration Act 1836, s 30. See now Marriage Act 1949, s 67(a).

185 Marriage Act 1949, s 26B(5).

186 See now Marriage Act 1949, s 67(b) and (d). The "person or persons duly recognised" by the members of the West London Synagogue and their affiliated synagogues is the relevant governing authority for the purpose of giving consent to same-sex weddings: Marriage Act 1949, s 26B(5).

187 Marriage Act 1949, s 67(c) to (d). The "person or persons duly recognised" by the members of the St John's Wood Synagogue and their affiliated synagogues is the relevant governing authority for the purpose of giving consent to same-sex weddings: Marriage Act 1949, s 26B(5).

188 Marriage Act 1949, s 67. The provisions relating to the West London and St John's Wood Synagogues require 20 householders who are members of that synagogue to certify who is their secretary. That secretary may then certify who is the secretary of any associated synagogue as long as it consists of no less than 20 householders professing the Jewish religion and has been established for at least one year.

failed to comply with the requisite civil preliminaries or have married in a place other than that specified in the notice.[189]

2.121 It is unclear whether a wedding that is not conducted according to Jewish rites will be void. One academic text suggests unambiguously that a Jewish marriage "is void unless the Jewish law is complied with".[190] The only authority cited for this proposition is the late 18th century case of *Lindo v Belisario*.[191] At the time, Jewish weddings were exempted from the provisions of the legislation governing marriages, and Jewish law was the only possible touchstone for the validity of Jewish weddings. When Jewish weddings were brought within the ambit of the reformed legislative framework in 1836, they were subject to the same annulling provisions as all other marriages.[192] There is nothing in the Marriage Act 1949 to indicate that a marriage is void if it is not conducted according to Jewish usages, and the courts have long held that a marriage is not to be declared void for non-compliance with formalities unless explicitly constrained to do so by statute.[193]

2.122 The converse question also arises as to whether a wedding conducted according to Jewish usages will be valid if either of the parties innocently failed to comply with the statutory requirements.[194] The only case on point, *Nathan v Woolf*,[195] predates both the Marriage Act 1949 and the recent case law on non-qualifying ceremonies. As a matter of logic though, the fact that the ceremony is conducted according to Jewish usages would be sufficient to bring it within the framework of the Act and save it from being classified as non-qualifying.

What offences may be committed?

2.123 Weddings according to Jewish usages are specifically exempted from the provision making it an offence to solemnize a marriage in a place other than that specified in the notice.[196] However, it is an offence to solemnize a marriage on the basis of certificates that were issued prematurely or have since lapsed.[197]

2.124 It is also an offence for the secretary responsible for registering the marriage to refuse to do so, or to fail to do so without reasonable cause, or for any person to "carelessly"

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189 Marriage Act 1949, s 49(a), (b), (d) and (e).

190 J Jackson, *The Formation and Annulment of Marriage* (2nd ed 1969) p 201.

191 (1795) 1 Hag Con 216, 161 ER 530.

192 This was confirmed in *Nathan v Woolf* (1899) 15 TLR 250, but disputed by H S Q Henriques, *Jewish Marriages and the English Law* (1909).

193 See *Catterall v Sweetman* (1845) 1 Rob Eccl 304; *Greaves v Greaves* (1872) LR 2 P & D 423; *Attorney General v Akhter* [2020] EWCA Civ 122, [2020] 2 WLR 1183 .

194 As noted above, if both knowingly and wilfully failed to comply then the marriage is void.

195 (1899) 15 TLR 250.

196 Marriage Act 1949, s 75(2)(a).

197 A superintendent registrar would also be guilty of an offence in issuing such certificates: see para 2.33(1) above.

lose or injure a marriage register book that is in their keeping, or allow it to be injured.[198]

Quaker

2.125 Special provision is made for couples to marry "according to the usages of the Society of Friends".[199] This option is available to those who are members of the Society, "in profession with or of the persuasion of that Society", or who have been authorised by a registering officer of the Society. The Society campaigned for the right to conduct same-sex weddings and its relevant governing authority has given written consent to such weddings.[200] In 2016, 29 weddings took place according to Quaker usages.[201]

What preliminaries are required?

2.126 The same preliminaries must be observed as for a civil wedding, but the couple must establish that they are eligible to marry according to the usages of the Society. The Society also has its own detailed internal procedures.[202]

Where can the ceremony take place?

2.127 There are no statutory restrictions on either the district or the building where the wedding can take place, or even on whether it must take place in a building at all. Nor is there any requirement that the wedding be conducted with open doors. In practice, weddings usually take place in a meeting house, where Quakers meet for worship.

Who is required to be present and what form must the ceremony take?

2.128 There are no statutory provisions requiring the presence of any specific person at a Quaker wedding. In practice, weddings take place at a public meeting for worship, so other members of the Society will be present, and the person responsible for registering the marriage will usually be in attendance.

2.129 There are no statutory restrictions on the form of the ceremony, in that there are no prescribed words, no limitations on what can be included, and no definition of Quaker "usages". However, the Society of Friends has detailed guidelines setting out what is required, and the person responsible for registering the marriage must be satisfied that the wedding conformed to the usages of the Society.[203]

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198 Marriage Act 1949, s 76(1). For the penalty, see para 2.34 above.

199 Marriage Act 1949, s 26(1)(d).

200 Society of Friends, *Quaker same sex weddings: letter to superintendent registrars* (July 2015), https://quaker-prod.s3-eu-west-1.amazonaws.com/store/208204d083996fa7d55c29708ce07a1bde73e40f59d5965dfb90c75a64ff (last visited 1 May 2020).

201 Office for National Statistics, *Religious marriages by denomination, England and Wales, 2016* (14 May 2019).

202 Society of Friends, *Quaker faith & practice* (5th ed) ch 16.

203 Society of Friends, *Quaker faith & practice* (5th ed) ch 16; Marriage Act 1949, s 55(1)(b).

Who is responsible for registering the marriage?

2.130 The legal responsibility for registering a Quaker marriage lies with the registering officer appointed for the district in which the marriage is solemnized.[204] The usual requirement that registration take place "immediately" after the wedding is waived, but it must be done "as soon as conveniently may be".[205] The register must be signed by two witnesses in addition to the registering officer and the couple, but there is no specific requirement that they must have been present at the wedding itself.[206]

2.131 In addition to the legal marriage register, by tradition everyone who is present at a Quaker wedding signs a separate wedding certificate. As a result there are rarely any problems with proving that the wedding has taken place.

When might a Quaker marriage be void or non-qualifying?

2.132 Given that there are fewer legal requirements for a Quaker wedding, the list of statutory factors that will render it void is correspondingly shorter. A marriage according to the usages of the Society of Friends may be void if the parties "knowingly and wilfully" fail to comply with the civil preliminaries or marry in a place other than that specified in the notice.[207] The absence of the person responsible for registering the marriage has no impact on its validity.

2.133 There is however a specific provision that applies only to Quaker weddings. A marriage according to the usages of the Society of Friends "shall not be valid" unless the couple declare, when giving notice, that each is a member of or "in profession with or of the persuasion of that Society",[208] or produces a certificate confirming that they are authorised to be married according to its usages. The subsequent registration of the marriage is deemed to be "conclusive evidence" that such a certificate was produced,[209] reducing the scope for later challenges to the validity of the marriage.

2.134 There is nothing in the Act to explain the status of a marriage that purported to be conducted according to Quaker usages, but which the registering officer subsequently refuses to register on the basis that it did not in fact conform to such usages. In the absence of any specific provision stating that a marriage is void, and assuming that the other requirements of the Act have been observed, it is likely that such a marriage would be held to be valid. The only alternative would be to declare it to be non-qualifying, which would be a drastic step for a ceremony that had complied with the statutory provisions.

2.135 There are no recent cases in which the validity of a Quaker marriage has been questioned and the question as to whether a Quaker wedding could, in certain circumstances, be a non-qualifying ceremony has therefore not arisen. As a result, it

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204 Marriage Act 1949, s 53(b).

205 Marriage Act 1949, s 55(1).

206 Marriage Act 1949, s 55(2).

207 Marriage Act 1949, s 49(a), (b), (d) and (e).

208 Marriage Act 1949, s 47(2)(a).

209 Marriage Act 1949, s 47(3).

remains an open question as to whether engaging in a Quaker wedding without complying with any of the formalities laid down by statute would be sufficient to create at least a void marriage, and potentially a valid one, depending on the state of mind of the parties.

What offences may be committed?

2.136 Marriages according to the usages of the Society of Friends are specifically exempted from the provision making it an offence to solemnize a marriage in a place other than that specified in the notice.[210] In addition, it is doubtful whether the offences of solemnizing a marriage on the basis of certificates that were issued prematurely or have since lapsed could apply, given that there is technically no one who "solemnizes" a Quaker wedding.[211]

2.137 The registering officer responsible for registering the marriage will be guilty of an offence if he or she "refuses or without reasonable cause omits to register" it.[212]

Other religious groups

2.138 The ability of other religious groups to conduct weddings primarily depends on whether they have, or have access to, a certified place of worship that has been registered for weddings. Rather than stipulating which religious groups are recognised, or authorising particular persons to conduct weddings, the legal framework revolves around the building.

2.139 The decision to regulate the place rather than the denomination was influenced by the sheer diversity of Non-conformist denominations in 19th century England and Wales. Today the approximately 22,500 buildings that have been registered for opposite-sex weddings include 21,509 Christian, 298 Muslim, 199 Sikh, 100 Hindu, and 13 Buddhist places of worship, although each of these groupings include a variety of different sub-groups and denominations.[213]

2.140 As of February 2020, there were just over 7,000 certified places of worship that were not registered for opposite-sex weddings. Most places of worship that have not been registered belong to Christian denominations. However, in percentage terms it is the faith groups and denominations with smaller numbers of adherents in England and Wales whose buildings are least likely to be registered for weddings. Only 11% of certified Buddhist places of worship, and a similar percentage of Bahá'í places of worship, are registered for marriage. There are also a number of groups with fewer than 10 certified places of worship, none of which are registered for weddings.[214]

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210 Marriage Act 1949, s 75(2)(a).

211 A superintendent registrar could still be guilty of an offence for issuing such certificates: see Marriage Act 1949, s 75(3) and para 2.33(1) above.

212 Marriage Act 1949, s 76(1).

213 General Register Office, *Places of worship registered for marriage* (February 2020), https://www.gov.uk/government/publications/places-of-worship-registered-for-marriage (last visited 1 May 2020).

214 While commentators have tended to highlight the under-registration of mosques, the percentage of certified mosques that is registered for marriage is not the lowest at 21%.

2.141 Just 259 registered religious buildings were also registered for same-sex weddings. The Unitarians are the denomination with the greatest number of places of worship registered for same-sex weddings, followed by Spiritualists, and the United Reformed Church. There are also a small number of Baptist, Congregational and Lutheran churches in which same-sex weddings may be celebrated, one Buddhist temple, and the temple of the Goddess People of Avalon.

What preliminaries are required?

2.142 The same preliminaries must be observed as for a civil wedding.

Where can the ceremony take place?

2.143 This question involves two sets of rules, one relating to the buildings in which weddings can take place, and the other determining the district in which any given couple may marry. These will be considered in turn.

In which buildings can weddings take place?

2.144 Registering a building for weddings involves two stages. First, the building must be certified as a place of worship. Second, it must be specifically registered for weddings.

2.145 Any building that is used as a meeting place for religious worship[215] may be certified as such to the Registrar General.[216] Certification may be performed by a representative of the congregation.[217] The Registrar General must be satisfied that the place specified is in fact a place of meeting for religious worship.[218]

2.146 Once the building has been certified, application can be made for it to be registered by the Registrar General for opposite-sex weddings, same-sex weddings, or both.[219] The application must be made by the proprietor or trustee of the building with the support of 20 householders. The latter must confirm that they use the building as their usual place of public religious worship and wish it to be registered for weddings.[220] The application must also specify the religious denomination by which the building is used, and attach a copy of the wedding service that will be used for weddings there.[221] If the

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215 Other than a Church of England church or chapel.

216 Places of Worship Registration Act 1855.

217 A fee – set by regulation and currently £29 – is payable to the superintendent registrar of the registration district in which the place of worship is located: Places of Worship Registration Act 1855, s 5; Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1.

218 *R v Registrar General, ex parte Segerdal* [1970] 1 QB 430; *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 610.

219 Marriage Act 1949, ss 41 and 43A. The application may be made at the same time as the application for it to be certified as a place of worship, and must similarly be made to the superintendent registrar of the registration district in which the building is situated: General Register Office, *How to Certify a Building for Religious Worship and Register for the Solemnization of Marriages*, p 2.

220 Marriage Act 1949, ss 41(2) and 43A(7).

221 If the place of worship is shared by more than one group then the application can be made by a representative of just one group: Sharing of Church Buildings Act 1969, sch 1 para 2.

building is being registered for same-sex weddings, the relevant governing authority must have given written consent.[222]

2.147 A fee – again set by regulation, and currently £123, or £64 to extend an existing registration to same-sex or opposite-sex weddings – will be charged.[223]

In which registered buildings can couples marry?

2.148 The fact that a particular building has been certified as a place of worship and registered for weddings does not necessarily mean that a couple will be able to marry there.

2.149 First, there is no right to be married in a registered place of worship. Any religious group can set its own requirements as to whose weddings it will conduct. Such requirements may relate to factors such as marital status, adherence to the tenets of that particular faith, or membership of that particular church.

2.150 Second, the general rule is that at least one of the couple must have been resident in the registration district where the registered place of worship is situated for seven days prior to giving notice. If not, a certificate cannot be issued for the wedding to take place there.[224] There are two exceptions to this rule:

(1) if the registered building is the usual place of worship of one or both of them;[225] or

(2) if the couple declare that they wish to be married according to the rites of a particular religious group, to which at least one of them belongs, and that there is no registered building belonging to that group within their registration district(s). In this case the wedding may take place in the nearest registration district to have a registered building belonging to that religious group.[226]

Who is required to be present and what form must the ceremony take?

2.151 There are no legal requirements as to who should conduct the ceremony. Depending on the requirements of the religion in question, it may be a religious leader,[227] a lay preacher, or a friend or relative. Indeed, there is no legal requirement that any person should conduct the ceremony at all. However, the wedding must be solemnized with

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222 Marriage Act 1949, ss 26A(3) and 43A(3)(a). The fact that the governing body of a religious group has given its consent to the marriage of same-sex couples does not mean that all places of worship affiliated to that group will be available for same-sex weddings as the decision whether to apply for registration is made by the proprietor or trustee of the individual building.

223 Marriage Act 1949, s 71A(1)(c); Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1. The registration fee is always additional to the certification fee, even where the two processes happen at the same time.

224 Marriage Act 1949, s 34. The period of residence required is seven days prior to giving notice.

225 Marriage Act 1949, s 35(2). No specific evidence of this is required, and s 48(1)(d) provides that it shall not be necessary to prove that the building was the usual place of worship of either.

226 Marriage Act 1949, s 35(1).

227 See the Glossary for the meaning of "religious leader".

open doors in the presence of at least two witnesses and the person responsible for registering the marriage.[228]

2.152 It may be conducted "according to such form and ceremony" as the couple see fit to adopt as long as the prescribed words are included.[229] There is no legal requirement that it be conducted according to the religious rites of the people who worship there. In practice, of course, different religious groups will set their own requirements and may be more or less receptive to the possibility of inter-faith ceremonies or personalisation.

2.153 Practice varies as to whether the prescribed words are integrated into the religious service or said separately.

(1) For many Christian denominations, the prescribed words are either integrated into a set form of service or are the only formal requirement of the service. However, integrating the prescribed words is not always a straightforward matter, as, for example, where the marriage service is subject to external regulation. Within the Catholic Church, for example, permission had to be sought from Rome to include the prescribed words as they are slightly different from the question format that is approved centrally in the Catholic Church.

(2) For many non-Christian faiths, it is less easy to incorporate the prescribed words into the rituals that make up the marriage service and so the words are said separately.[230]

2.154 The common practice of repeating the prescribed words separately before a registrar, along with the fact that the same prescribed words are required for a civil wedding, has led to a tendency to describe a wedding in a registered religious building as a civil wedding. The Handbook issued to registration officers may have helped to foster this impression, as it states that:

> A purely civil marriage cannot be solemnized in a registered building. If the couple want to only exchange the statutory words of declaration and contract they should marry in a register office or on approved premises.

Who is responsible for registering the marriage?

2.155 For the first year after the building has been registered for weddings, a civil registrar must attend and register any weddings celebrated there in the register book for the registration district.[231]

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228 Marriage Act 1949, ss 44(2) and 49.

229 Marriage Act 1949, s 44(1) and (3). The prescribed words may be integrated into the service or said separately.

230 For examples, see para 6.21 below.

231 Marriage Act 1949, s 43(1A) to (1D).

2.156 After that first year, the trustees or governing body of the building may authorise a person to register weddings in that building.[232] An authorised person does not necessarily play any role in the ceremony and may be a member of the congregation. The trustees or governing body must notify the Registrar General and the local superintendent registrar of the appointment.[233] Following this the Registrar General must provide the authorised person with a marriage register book.[234] The authorised person will then be able to register weddings taking place in that building, and will be responsible for registering any weddings that they attend. If they are unable to be at a particular wedding then a registrar may attend.

When might a marriage in a registered building be void or non-qualifying?

2.157 Virtually the same conditions apply to a wedding in a registered building as to one in a register office.[235] The only difference is that the presence of a superintendent registrar is not required and that an authorised person may take the place of the registrar.[236]

2.158 It is not necessary to prove that the registered building in which the wedding took place had previously been certified as a place of worship.[237] Nor is the fact that the building had not been registered for weddings a ground for nullity. Nonetheless, if the wedding takes place in a registered building, this will be enough to save it from being categorised as non-qualifying, even if no other formalities have been observed.[238]

What offences may be committed?

2.159 In relation to the registration of the marriage, either the registrar who attends it, or the authorised person who is responsible for registering the marriage, will be guilty of an offence if they either refuse to register the marriage or fail to do so "without reasonable cause".[239] Unless the person who conducts the ceremony is also an authorised person, they have no duty to register the marriage and so will not be guilty of an offence for failing to do so.

2.160 Any authorised person who refuses or fails to comply with any of the provisions of the Marriage Act 1949 is guilty of an offence. Any person who has been appointed to such a role is therefore committing an offence if they conduct a wedding without valid

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232 Marriage Act 1949, ss 43(1) and 43B(1). Where two different groups share the same place of worship each can appoint an authorised person, but each authorised person can register marriages taking place in that building: Sharing of Church Buildings Act 1969, sch 1 para 4.

233 Marriage Act 1949, ss 43(1) and 43B(2); Marriage (Authorised Persons) Regulations 1952 (SI 1952 No 1869), reg 4(1); General Register Office, *Certificate of Appointment of Authorised Person by Trustee or Governing Body of a Registered Building – Guidance Notes for Applicant*.

234 Marriage Act 1949, s 54(1).

235 See para 2.30 above.

236 Marriage Act 1949, s 49(f).

237 Marriage Act 1949, s 48(1)(c).

238 See eg *MA v JA* [2012] EWHC 2219 (Fam), [2013] Fam 51, in which the marriage was upheld despite the fact that the couple had not given notice, as they had not been aware that this was necessary.

239 Marriage Act 1949, s 76(1).

certificates[240] or in a place that is not a registered building. Again, however, anyone who is not an authorised person will not be guilty of an offence for conducting a ceremony that is altogether outside the legal framework.

2.161 In 2018 The Independent Review into the Application of Sharia Law in England and Wales suggested that

> legislative changes would be required to the offence sections 75 to 77 of the Marriage Act 1949 so that the celebrant of specified marriages, including Islamic marriages, would face penalties should they fail to ensure the marriage is also civilly registered.[241]

The effect of this would be to impose penalties on someone who conducted a ceremony outside the legal framework unless the couple had already gone through a legally binding ceremony of marriage. Despite the focus of The Independent Review on Islamic marriages, it should be noted that its proposals would result in a change for all weddings except Anglican ones. Anglican clergy alone have the dual responsibility of conducting and registering marriages, and the law otherwise imposes no obligations on any celebrant, whether Christian, Jewish, Muslim or other, in relation to the registration of a marriage.

LEGAL FRAMEWORK FOR SPECIAL CIRCUMSTANCES

Those who are terminally ill

2.162 If one of the couple is terminally ill and cannot be moved to a place where a wedding can take place, then application may be made for a Registrar General's licence. Such a licence allows the wedding to take place without the usual waiting period and at the location of the person in question.

2.163 A Registrar General's licence can be used to authorise any type of wedding except an Anglican one.[242] If the couple wish to be married according to Anglican rites they can apply for a special licence.[243] Subject to this, and to the different rules outlined below, the same rules apply to civil and religious weddings.

What preliminaries are required?

2.164 One of the couple must give notice to the superintendent registrar of the district in which the wedding is intended to take place.[244] They must provide evidence that the other has capacity to marry but is seriously ill and not expected to recover and cannot be moved to a place where weddings can take place.[245] The superintendent registrar will then refer the matter to the Registrar General, who, if satisfied by the evidence

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240 See para 2.22 above for the circumstances in which certificates will be valid.

241 The Independent Review into the Application of Sharia Law in England and Wales (2018) Cm 9560, p 17.

242 Marriage (Registrar General's Licence) Act 1970, ss 1(1) and 10(1)(a).

243 See paras 2.83 to 2.91 above.

244 Marriage (Registrar General's Licence) Act 1970, s 2.

245 Marriage (Registrar General's Licence) Act 1970, s 3(d). A certificate from a registered medical practitioner will be conclusive proof, and we understand that in practice it will be required.

provided, will issue the licence.[246] The licence will specify the place in which the wedding is to take place and will be valid for one month.[247]

Who is required to be present and what form must the ceremony take?

2.165 The ceremony may be civil or religious. If it is a civil wedding, a superintendent registrar and registrar must attend. If it is a religious wedding (other than a Quaker or Jewish one), a registrar must attend.[248] In either case two witnesses must also be present and the ceremony must (unless it is a Quaker or Jewish wedding) include the prescribed words.[249]

Who is responsible for registering the marriage?

2.166 The registrar in attendance will be responsible for registering the marriage. Quaker and Jewish marriages will be registered in the same way as any other marriage conducted according to such usages.[250]

When might a marriage by Registrar General's licence be void or non-qualifying?

2.167 A marriage will be void if the couple "knowingly and wilfully" married:[251]

(1) without due notice having been given, a licence issued, or on the authority of a licence that has expired;

(2) in any place other than that specified in the notice of marriage and the Registrar General's licence; or

(3) in the absence of a registrar, unless the wedding was according to Quaker or Jewish usages, or of a superintendent registrar, if it was by a civil ceremony.

2.168 A same-sex wedding will additionally be void if the couple "knowingly and wilfully" married according to religious rites without the consent of that religion's relevant governing authority to marriages of same-sex couples.[252]

2.169 It is sadly all too possible to think of circumstances in which a deathbed ceremony might be non-qualifying, for example where the suddenness of a person's illness means that no formalities are observed. At the same time, the need for some form of proof is particularly important where the claim that a wedding took place is made after the death of the other person.

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246 Marriage (Registrar General's Licence) Act 1970, s 7.

247 Marriage (Registrar General's Licence) Act 1970, ss 8(1) and 9.

248 Marriage (Registrar General's Licence) Act 1970, s 10(2).

249 Marriage (Registrar General's Licence) Act 1970, s 10(3).

250 Marriage (Registrar General's Licence) Act 1970, s 15.

251 Marriage (Registrar General's Licence) Act 1970, s 13.

252 Marriage (Registrar General's Licence) Act 1970, ss 1(3) and 13A.

What offences may be committed?

2.170 If done "knowingly and wilfully," it is an offence for:[253]

(1) any person to give false information in order to obtain a licence;

(2) any person to issue a false certificate;

(3) any person to solemnize a marriage by Registrar General's licence in any place other than that specified in the licence, in the absence of a registrar (unless the marriage was according to Quaker or Jewish usages), or more than one month after the notice of marriage was entered in the marriage notice book; or

(4) a superintendent registrar to solemnize, or a registrar to register, a marriage that would be void for non-compliance with the required formalities.

Marriages of the housebound or detained

2.171 Separate provision is made for the weddings of those who are either housebound as a result of illness or disability, or detained either in prison or a mental health hospital. These are referred to as "qualifying residential marriages".[254] Such weddings may be civil or religious. However, Jewish or Quaker usages are excluded as such weddings can already take place anywhere without special authorisation.[255] In addition, where the wedding is of a same-sex couple, it cannot be celebrated according to Anglican rites and can be celebrated according to the rites only of religious groups who have given written consent to such weddings.[256]

What preliminaries are required?

2.172 Each party must give notice in person but the superintendent registrar may go to the place of residence of the person who is either housebound or detained.[257]

2.173 Each notice must be accompanied by evidence confirming that one party is either housebound or detained.

(1) In the case of a person who is housebound, the evidence must be a statement by a registered medical practitioner, made in a prescribed form no more than 14 days before notice is given.[258] This statement must confirm that the person in question ought not to move or be moved from their current place of residence

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253 Marriage (Registrar General's Licence) Act 1970, s 16.

254 Marriage Act 1949, ss 26(1)(dd) and 26B(6).

255 Marriage Act 1949, s 26(2)(a).

256 Marriage Act 1949, ss 26(2)(b) and 26B(1) and (6).

257 A higher fee is payable for giving notice in such cases: £47 where the person is housebound and £68 where they are detained: Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), reg 3 and sch 1.

258 Marriage Act 1949, s 27A(2).

as a result of illness or disability and that this is likely to be the case for at least the following three months.[259]

(2) In the case of a person who is detained, the evidence must be a statement by either the managers of the hospital or the governor or other official in charge of the prison, made in a prescribed form no more than 21 days before notice is given.[260] This must identify the establishment where the person is detained and confirm that they have no objection to the wedding taking place there.[261]

2.174 Two superintendent registrar's certificates will then be issued in the usual way, specifying that the marriage will take place in the usual place of residence of the person who is housebound or detained. Such certificates are only valid for three months, rather than the usual twelve.[262]

Who is required to be present and what form must the ceremony take?

2.175 If it is a civil wedding, then both a superintendent registrar and registrar must be present and the couple must say the prescribed words in the presence of two witnesses.[263] No religious service can be used.[264]

2.176 If it is an Anglican wedding, it must be solemnized by an ordained member of the clergy according to Anglican rites.[265]

2.177 A couple may also choose to marry "according to a relevant form, rite or ceremony".[266] In this case the couple must also say the prescribed words in the presence of two witnesses and a registrar. For same-sex couples, there is the additional requirement that the "relevant governing authority" of the religious organisation according to whose rites or usages the marriage is to be solemnized must have given written consent to the marriages of same-sex couples.[267]

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259 Marriage Act 1949, s 27A(7). The drafting of this provision means that it cannot apply to those who are expected to die within three months, for whom a Registrar General's licence will be needed.

260 Marriage Act 1949, s 27A(3) and (7).

261 Marriage Act 1949, s 27A(3).

262 Marriage Act 1949, s 33(3)(a).

263 Marriage Act 1949, s 45A(3). For marriages of the housebound, the fees of the superintendent registrar and registrar are £82 and £79 respectively. For marriages of the detained, the fees are £93 and £86: Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), reg 3 and sch 1.

264 Marriage Act 1949, s 45A(4).

265 Marriage Act 1949, s 17.

266 Marriage Act 1949, s 45A(2). This is defined as "a form, rite or ceremony of a body of persons who meet for religious worship in any registered building being a form rite or ceremony in accordance with which members of that body are married in any such registered building" (s 45A(5)) and would therefore seem to exclude any groups who do not have places of worship registered for weddings.

267 Marriage Act 1949, s 26B(6)(d).

Who is responsible for registering the marriage?

2.178 The registrar in attendance is responsible for registering the marriage in the usual way.[268] If the wedding is solemnized according to Anglican rites, then it is the responsibility of the member of the clergy conducting the wedding to register it.[269]

When might a residential marriage be void or non-qualifying?

2.179 All the conditions that apply to a wedding in a register office apply equally to that of a person who is housebound or detained. The only differences are that the period for which a certificate is valid is shorter (three months rather than 12) and specific provision is made for the invalidity of the marriage if the parties knowingly and wilfully marry in the absence of a superintendent registrar or registrar.[270]

What offences may be committed?

2.180 All the offences that may be committed in relation to a wedding in a register office apply equally to the weddings of the housebound or detained.

Marriages in naval, military and air force chapels

2.181 The Marriage Act 1949 makes separate provision for weddings in naval, military, and air force chapels. To marry in such a chapel, at least one of the couple must be a "qualified person".[271] This is defined as someone who:

(1) is serving, or has served,[272] in any of the regular armed forces of the Crown;

(2) is "as a member of a reserve of officers, a reserve force, the Army reserve or the Auxiliary Air Force, called out on actual or permanent service or embodied"; or

(3) is a child or step-child of any of the above.

2.182 There are also separate provisions for Anglican and non-Anglican ceremonies. For Anglican weddings, the chapel must have been licensed by the bishop of the diocese in which the chapel is located.[273] For other religious weddings, the chapel must have been registered by the Registrar General.[274] While the legislation does not place any limits on the types of weddings that may be celebrated in armed forces chapels, Ministry of Defence policy is that such chapels are "dedicated and set aside as places

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268 Marriage Act 1949, s 53(d).

269 Marriage Act 1949, s 53(a).

270 Marriage Act 1949, s 49(h).

271 Marriage Act 1949, s 68(2). The fact that a person is so qualified is a precondition for a wedding to take place in these chapels but does not give them a right to marry there: s 68(6).

272 "Otherwise than with a commission granted or under an engagement entered into only for the purpose of a war or other national emergency": Marriage Act 1949, s 68(2)(b).

273 Marriage Act 1949, s 69(1).

274 Marriage Act 1949, s 70(1). The application for registration is to be made by the Secretary of State, and references in the Marriage Act 1949 to the Admiralty are to be read as references to the Secretary of State: Defence (Transfer of Functions) Act 1964, s 3(2).

for Christian worship only. They cannot be used as venues for weddings conducted according to the practice of other faiths".[275] As of 2015, 190 military chapels were licensed or registered for weddings.[276]

2.183 A chapel that is not consecrated according to Anglican rites[277] may be registered for both opposite-sex and same-sex weddings.[278] However, the process for a chapel to be licensed for same-sex weddings is significantly more demanding than the usual procedure. Before any application for registration is made, the Secretary of State "must consult with the relevant governing authority of any relevant religious organisation which in his opinion makes significant regular use of the chapel".[279] In considering whether to make an application, he or she must have due regard to the following:

(1) "any agreement or objection" by such governing authorities;

(2) "any changes or proposed changes in the use of the chapel";

(3) "the interests of a same-sex couple who wish to have their marriage solemnized at that chapel"; and

(4) whether anyone is willing to be authorised to register such a wedding and whether the Secretary of State would authorise that person.[280]

2.184 As far as we are aware, only one chapel has been registered for same-sex weddings. However, we understand that further chapels are in the process of being registered.

What preliminaries are required?

2.185 The preliminaries that are required will depend on the form of the wedding. If the wedding is to be conducted according to Anglican rites, then Anglican preliminaries may be used. A chapel that is licensed for the solemnization of marriages will also be

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275 BRd2: Queen's Regulations for the Royal Navy (April 2017) para J6102(16); Queen's Regulations for the Army 1975 (amendment 37, May 2019) ch 7 annex C(J) para J17.

276 Ministry of Defence: Military Bases: Religious Buildings: Written Answer (HC) 18992 (14 December 2015) (Penny Mordaunt).

277 The Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2014 (SI 2014 No 815), reg 5 requires the Secretary of State to certify "that the chapel in respect of which application is made is not consecrated according to the rites of the Church of England".

278 Marriage Act 1949, s 70A(1).

279 The Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2014 (SI 2014 No 815), reg 3.

280 The Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2014 (SI 2014 No 815), reg 4. Additional guidance on authorising a person to be present at a same-sex marriage is set out in BRd2: Queen's Regulations for the Royal Navy (April 2017) annex 61A; Queen's Regulations for the Army 1975 (amendment 37, May 2019) ch 7 annex C(J) appendix 1(J).

licensed for the calling of banns, and is treated as a parish church for these purposes.[281] All other weddings must be preceded by civil preliminaries.[282]

Who is required to be present and what form must the ceremony take?

2.186 The form that the ceremony must take depend on whether the wedding is being celebrated according to Anglican or other rites.

2.187 There are also further limitations on the form that the ceremony can take that are specific to weddings in armed forces chapels. The policy of the Ministry of Defence is that "a marriage in an armed forces chapel should be solemnised by a chaplain who is authorised for that chapel".[283] Any exceptions – for example where a couple wish to be married by a particular minister, or according to the rites of a denomination different from that of the authorised chaplain, or where the authorised chaplain is unavailable or unwilling to conduct the wedding – must be agreed by the Head of Chaplaincy of the relevant Service. Only ministers of Christian denominations that provide chaplains to the Armed Forces will be permitted to solemnize marriages in armed forces chapels.[284] These denominations are termed "sending churches".[285] In addition, the Head of Chaplaincy has complete discretion to refuse any minister nominated by the couple.

2.188 Additional restrictions apply to the weddings of same-sex couples. First, same-sex couples are precluded from marrying according to Anglican rites.[286] Second, marrying according to the rites of any other denomination first requires the chapel to be registered for same-sex weddings as set out above. For the couple to be able to marry according to the rites of a particular denomination, the relevant religious organisation must also have opted in. The only sending churches to have opted in are the United Reformed Church and the Baptist Union of Great Britain.[287] In addition, the individual minister must also consent to conduct the wedding.

Who is responsible for registering the marriage?

2.189 Anglican weddings must be registered by the member of the clergy appointed to register the marriage.[288] For these purposes the clergy are treated in the same way as

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281 Marriage Act 1949, s 69(1)(b). No explicit mention is made of the possibility of marrying by licence (or special licence) but there is nothing that would preclude these options.

282 See paras 2.11 to 2.22 above.

283 BRd2: Queen's Regulations for the Royal Navy (April 2017) para J6102(8); Queen's Regulations for the Army 1975 (amendment 37, May 2019) ch 7 annex C(J) para J9.

284 BRd2: Queen's Regulations for the Royal Navy (April 2017) paras J6102(8) and J6102(11); Queen's Regulations for the Army 1975 (amendment 37, May 2019) ch 7 annex C(J) paras J9 and J12.

285 The sending churches comprise Anglican, Roman Catholic, Presbyterian, and Methodist churches, along with the United Board (Baptist, United Reformed Church and Congregational) and Churches in the Community (Elim Pentecostal, Assemblies of God, Salvation Army).

286 Marriage Act 1949, s 68(1A).

287 BRd2: Queen's Regulations for the Royal Navy (April 2017) annex 61A para 4.

288 Marriage Act 1949, s 69(5).

authorised persons. All other weddings must be registered by the authorised person appointed for the chapel.

When might a marriage in a military, naval or air force chapel be void or non-qualifying?

2.190 If the wedding is celebrated according to Anglican rites, it will be governed by the same rules as those that apply to Anglican weddings generally.[289] If the wedding is celebrated according to other religious rites, then it will be governed by the same rules as if it were in a registered building.[290] Therefore, a wedding in a military, naval or air force chapel will be void or non-qualifying in the same circumstances as other Anglican weddings, or, if it is conducted according to other religious rites, weddings in registered buildings.

What offences may be committed?

2.191 The provisions relating to the offences that may be committed where a wedding is conducted according to Anglican rites apply equally to weddings in military, naval or air force chapels.[291]

2.192 The provisions relating to the offences that may be committed where a wedding is conducted in a registered building apply equally to non-Anglican weddings in military, naval or air force chapels.[292]

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289 Marriage Act 1949, s 69(1)(b), subject to the minor differences set out in sch 4 pt 1. See paras 2.104 to 2.106 above for the circumstances in which such a marriage will be void or non-qualifying.

290 Marriage Act 1949, s 70(1)(b), subject to the minor differences set out in sch 4 pt 3. See paras 2.157 to 2.158 above for the circumstances in which such a marriage will be void or non-qualifying.

291 See para 2.107 above.

292 Marriage Act 1949, s 75(5), and see paras 2.159 to 2.160 above.

Chapter 3: Overview of our proposed scheme

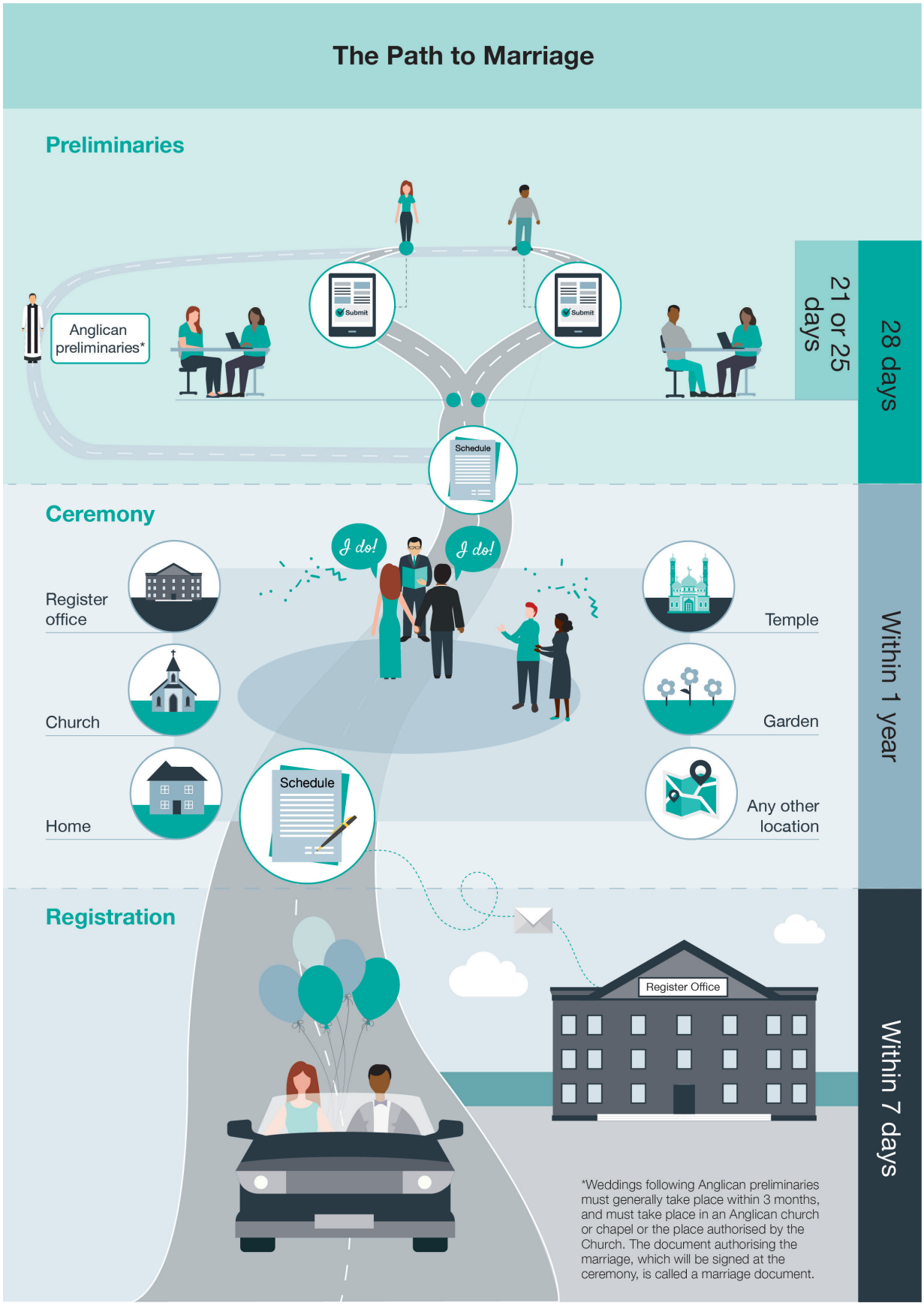
INTRODUCTION

3.1 Under the Terms of Reference that we have agreed with Government, in this project we will make recommendations for a reformed law of weddings. Our recommendations will cover every step in the process, from giving notice to registration. They will also consider the consequences of not complying with the required formalities, and the criminal offences that may be committed by those upon whom the law confers responsibilities in relation to weddings.

3.2 This Consultation Paper therefore contains provisional proposals, and questions, that collectively provide a complete scheme of weddings law. Our proposed scheme is only provisional, showing our initial thinking. Our final recommendations for reform will be developed in light of consultees' responses to the provisional views that we put forward in this paper, and the questions that we ask. We therefore encourage you to respond to our consultation.

3.3 In this chapter, we summarise our proposed scheme. We hope that seeing the overall scheme will help consultees as they read the detail of the provisional proposals in each of the following chapters.

3.4 As we explain in this chapter, the scheme we provisionally propose is based on regulation of the officiant. That would mark a significant shift in focus from the current law, under which regulation is generally based around the building in which the wedding takes place. With very few exceptions, under our proposed scheme, the same rules would apply to all weddings. Again, that is different to the current law (illustrated at Appendix 2), under which different rules often apply to Anglican weddings, Jewish and Quaker weddings, other religious weddings, to civil weddings that take place in a register office, and to civil weddings that take place on approved premises.


The Path to Marriage
Preliminaries
Anglican preliminaries*
Submit
Submit
21 or 25 days
28 days
Schedule
Ceremony
I do!
I do!
Register office
Church
Home
Temple
Garden
Any other location
Schedule
Within 1 year
Registration
Register Office
Within 7 days
*Weddings following Anglican preliminaries must generally take place within 3 months, and must take place in an Anglican church or chapel or the place authorised by the Church. The document authorising the marriage, which will be signed at the ceremony, is called a marriage document.

3.5 We have provisionally proposed this scheme because we think it would make the law simple, fair and certain. In our initial view, it would ensure that the state's legitimate interest in weddings law, as well as individuals' interests, were protected, mainly through a robust system of preliminaries to identify legal impediments to marriage and to detect and prevent forced and sham marriages. At the same time, our scheme seeks to remove regulation which goes beyond what is necessary to protect the state's interest and the interests of individuals. By ensuring that the law does not regulate weddings unnecessarily and unjustifiably, our proposed scheme seeks to allow all couples more freedom of choice in getting married. It would therefore enable all couples to have a wedding ceremony that is meaningful to them, protecting their freedom of expression and belief. In short, we propose this scheme because we think it would pursue the principles underpinning our review: certainty and simplicity, fairness and equality, respecting individuals' wishes and beliefs, and, by removing unnecessary regulation, increasing the choice and lowering the cost of wedding venues for couples.[1]

3.6 In Chapter 11, we build on our provisionally proposed scheme to consider special provisions which could be brought into force to enable weddings to take place during a future national emergency, such as a pandemic. Because our provisional proposal for an emergency scheme is a distinct, and unique proposal, we do not summarise it in this chapter.[2]

PRELIMINARIES

3.7 Under our proposed scheme, before getting married couples would be required to give notice of their intention to marry. The purpose of preliminaries is to allow any impediments to a marriage – for example, age, capacity, prior marriage, or the couple being too closely related[3] – to be discovered, and to allow investigations to take place to identify forced and sham marriages. Our proposed scheme directs much of the focus of regulation onto the preliminaries stage: our initial thinking has been that, with robust preliminaries to protect the interest of the state, the law could give couples more choice about the wedding ceremony itself.

3.8 Because of the importance of preliminaries to assessing whether a wedding should go ahead, and in protecting the state's interest, a wedding would not result in a valid marriage if the parties had not given notice.

3.9 Currently, most couples must give notice to the registration service. However, couples having an Anglican wedding can also give notice to ecclesiastical authorities, through Anglican preliminaries, most usually by having banns called.[4] Our proposed scheme

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1 The full Terms of Reference for our project are included in Appendix 1.

2 See para 11.45 and following below.

3 We explain the impediments to marriage at para 2.2 above and the Glossary.

4 For banns to be called (except on Her Majesty's ships), or a common licence granted, both of the couple must be relevant nationals: Marriage Act 1949, s 5(3). See the Glossary for the meaning of "relevant national".

could retain the existing dual systems of preliminaries, or could instead be a system of universal civil preliminaries.

Civil preliminaries

3.10 In order to give notice of an intention to marry, an individual would not need to satisfy any residency requirements. Civil preliminaries would no longer be tied to rules about registration districts.

3.11 Each member of the couple would be required to give at least 28 days' notice of the intended marriage.[5] There would continue to be an exception for persons who are not exempt persons, who may be subject to an extended 70-day waiting period.[6] There would also continue to be discretion for the waiting period to be shortened for compelling reasons,[7] and a right for the waiting period to be shortened for people who are terminally ill.[8]

3.12 The notice process would be split into two steps:

(1) the initial giving of notice, which might take place remotely (for example, by post or online); and

(2) an in-person meeting with a registration officer.

3.13 Both steps would be able to take place at the same time, as they do now, with an individual giving notice in person. However, the steps would also be able to be taken separately, with the first, giving notice, starting the 28-day waiting period.[9] Dividing the process into two steps will have the significant advantage of facilitating British or overseas couples who are not resident in England and Wales to marry here, by

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5 People with a terminal illness would also be required to give notice, unlike the current rules for a Registrar General's licence: see Marriage (Registrar General's Licence) Act 1970, s 2(1).

6 Marriage Act 1949, s 78(1). As we explain in para 2.14 above, when notice is given by a couple either of whom is not an exempt person – meaning that they are not a relevant national, do not have the appropriate immigration status, and do not hold a relevant visa – the proposed wedding will be referred to the Secretary to State to determine whether it should be investigated as a potential sham, in which case the waiting period will be extended to 70 days. See the Glossary for the meaning of "relevant national", "appropriate immigration status", and "relevant visa".

7 Marriage Act 1949, s 31(5A). The discretion might be exercised if, for example, one of the couple, or one of their parents, is seriously ill, or an officiant failed to advise the couple about the need to give notice. See para 2.17 above.

8 Marriage (Registrar General's Licence) Act 1970, s 8.

9 There will need to be separate consideration for couples either of whom are not exempt persons – meaning they are not relevant nationals, do not have the appropriate immigration status, and do not hold a relevant visa. These individuals are required to give notice at a designated register office and are subject to their notice period being extended to 70 days by the Secretary of State to investigate whether the marriage is a sham: Marriage Act 1949, sch 3A para 3; Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s 19; Immigration Act 2014, s 48. See the Glossary for the meaning of "relevant national", "appropriate immigration status" and "relevant visa".

eliminating the requirement that they travel to England and Wales twice or for a minimum of five weeks.[10]

3.14 To give notice, each party would be required to submit an application, providing information and evidence of their identity, including their nationality.[11] The parties would be required to identify their chosen officiant, to allow the registration service to ensure that the person was authorised to act as an officiant. Each party would also identify the register office where the in-person meeting will take place, so that they could choose the one most convenient for them, whether near to their work, their home, or where they were getting married.[12] Someone who was terminally ill, housebound or detained would be able to indicate that they required a registration officer to travel to them in order to complete the notice process.

3.15 To give notice, the application would have to be accompanied by payment of the nationally prescribed fee. There could be a different fee for persons who are not relevant nationals[13] as there is under the current law, to reflect the additional checks the state might undertake to investigate potential sham marriages. There could also be different fees for someone who is housebound or detained, and for someone with a terminal illness. Each fee would be calculated based on an England and Wales-wide assessment of the average cost to local authorities for providing the service. However, we consider whether the fee for a person who is terminally ill should be set below the cost-recovery level, on compassionate grounds.

3.16 Once notice was given, the registration service would publicise the intended marriage on a national online database of notices, with individual register offices providing access to the online list to members of the public who requested it. The entry would note the names of each party. Someone who saw the notice and knew of an impediment to the marriage could contact the registration service to file an objection.

3.17 The second stage, the in-person meeting, would be required to take place before the registration service could authorise the wedding to take place. We have asked whether the meeting should be required to be three, seven, or another number of days in advance of authority being given. This meeting would give the registration officer an opportunity to check that the original documents matched the copies given in the

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10 Under the current scheme, the seven-day residence requirement and 28-day notice period mean that couples travelling from overseas to marry in England and Wales must visit twice, or for a minimum period of five weeks.

11 Someone who is terminally ill will continue to have to provide evidence that they are seriously ill and not expected to recover: see Marriage (Registrar General's Licence) Act 1970, ss 1(2) and 3(d). Someone who is not a relevant national but is an exempt person, meaning that they have the appropriate immigration status or hold a relevant visa in relation to the marriage, would be required to provide evidence of their immigration status or visa. See the Glossary for the meaning of "relevant national", "exempt person", "appropriate immigration status" and "relevant visa".

12 If one or both of the couple is not a relevant national and is not exempt from immigration control, the couple would be required to have their in-person meetings at a designated register office: Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s 19. See the Glossary for the meaning of "relevant national" and "exempt from immigration control". Seeing both of the couple can assist registration officers to discharge their duty to report suspicions of sham marriages to the Home Secretary: see the Immigration and Asylum Act 1999, s 24.

13 See paras 3.11 above and 12.13 below.

notice application, ensuring that the person giving notice was the same person identified in the application. By ensuring that each party was seen alone, it would also be an opportunity for the registration officer to offer support (or for the local authority to apply for a forced marriage protection order) if there were concerns that one of the parties was being forced into the marriage.

3.18 For most people, this meeting would take place in a register office. However, the registration officer would continue to travel to persons who are housebound, detained or terminally ill in order to have the in-person meeting.

3.19 We consider the possibility that this meeting should be able to take place remotely, using technology, for example, by video conference. Before remote interviews could be introduced, however, the process would need to be carefully scrutinised to ensure that safeguards were in place to enable people who might be at risk of forced marriage to seek advice or support from the registration officer during the interview.

3.20 Provided no impediments were discovered, at the end of the 28-day waiting period, the couple would be issued a schedule, the document authorising the wedding to take place.[14] The schedule would be valid for 12 months.

3.21 A wedding ceremony conducted after the schedule had lapsed would be void.

3.22 The schedule would name the officiant attending the wedding. However, couples would be able to request that the name of the officiant be amended in advance of the wedding; moreover, if an officiant needed to be replaced on very short notice, for example, due to illness, another officiant would be able to act in their place.

Anglican preliminaries

3.23 We ask consultees whether there should be universal civil preliminaries; therefore, our scheme could include a proposal to abolish the legal effect of Anglican preliminaries. Of course, even if Anglican preliminaries ceased to have legal effect, the Church of England and Church in Wales could continue to require that they precede all Anglican weddings and so could, for example, still require banns to be called.

3.24 However, if Anglican preliminaries were retained within the civil law under our provisional scheme, they would remain an option for couples getting married in the Church of England or Church in Wales.

3.25 If retained, Anglican preliminaries would continue in much the same form that they exist now.[15] We invite views on some limited reforms to simplify banns and common licences. Under the schedule system envisioned in legislation recently passed by Parliament, couples would be issued with a marriage document, similar to a schedule,

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[14] "Schedule" is a term of art, referring to a document issued by the registration service as part of civil preliminaries, which authorises the couple's wedding, and is used to register their marriage. The term is used in Scotland and Northern Ireland. A schedule system is anticipated to be introduced in England and Wales by regulations to be made under the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019. See the Glossary.

[15] We explain the detail of banns, common licences and special licences at paras 2.69 to 2.91 above.

which the couple, person conducting the ceremony and witnesses would sign following the ceremony and be returned for registration of the marriage.[16]

3.26 The fees for Anglican preliminaries would continue to be set by the Anglican churches.

OFFICIANTS

3.27 Under our proposed scheme, weddings would be officiated at by someone authorised to play that role. Our scheme could be described as an officiant system: the focus of the regulation would be on the officiant, with the law prescribing their role and responsibilities and the categories of person who could act as officiants.

3.28 Currently, the law is complex and inconsistent. How the person recognised under the law as having a role to play is described, what their responsibilities are, and how they are appointed vary, depending on whether it is an Anglican wedding, a Jewish wedding, a Quaker wedding, a wedding by another religious group, or a civil wedding.[17] Rationalising these roles accords with our principle of providing for certainty and simplicity.

The requirement for an authorised officiant

3.29 All weddings would be required to take place in the presence of one authorised officiant. This rule would apply equally to civil weddings, so (in contrast to the current law) only one registration officer would be required to attend.

3.30 Because of the importance of the officiant's role, a wedding that was not officiated by a person authorised to play that role would not bring about a valid marriage, if the parties were aware that their officiant was not authorised or that an officiant was not in attendance. It would also be an offence for someone who was not authorised to purport to be an officiant and to deliberately mislead the couple, or either of the couple, about the effect of a ceremony.

The role and responsibilities of an officiant

3.31 The officiant would not necessarily conduct or lead the wedding ceremony under our proposed scheme. Rather, their role would be to ensure that the legal requirements of the ceremony were met. They would have a duty to ensure that –

(1) the parties freely expressed consent to marry each other;

(2) the other requirements of the ceremony were met (such as the requirement for two witnesses); and

(3) the schedule was signed.

3.32 As a part of their role, officiants would also be responsible for upholding the dignity and solemnity of marriage. Guidance to give advice to officiants on how to fulfil their

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16 Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, s 1(2)(b); see also Explanatory notes to the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, paras 3 to 7.

17 See Chs 2 and 5.

duties would be issued by the General Register Office, for example, in relation to forced and sham marriages.

3.33 Under our proposed scheme, a failure of an officiant to comply with the three duties in officiating at a wedding, or a failure in their responsibilities to uphold the dignity of marriage, would not affect the validity of the marriage (except for a situation in which the parties had not expressed consent to the marriage[18]). Nor would it, on its own, amount to a criminal offence. However, as we discuss at paragraphs 3.57 and 3.58 below, a failure could have consequences for the officiant's continuing authorisation.

3.34 But an officiant would be committing an offence if they deliberately or recklessly misled either or both of the parties about the legal effect of the ceremony. For example, it would be an offence for an authorised officiant to lead a couple to believe that their wedding would result in a valid marriage even though they had not given notice.

The categories of officiant

3.35 In addition to identifying a single role, that of an officiant, we are also seeking to rationalise the rules governing who can be authorised to be an officiant at a religious or a civil wedding. Our Terms of Reference also require us to consider how the law could be reformed to incorporate two new categories of officiants, if Government decides to enable either or both groups to solemnize marriages: officiants appointed by non-religious belief organisations and independent officiants.[19]

3.36 Depending on what Government decided, officiants would fall into four, or possibly five, categories under our proposed scheme:

(1) registration officers;

(2) Anglican clergy;

(3) nominated officiants;

(4) (if authorised by Government) independent officiants; and

(5) maritime officiants.

Registration officers

3.37 Registration officers would officiate at civil weddings. They would continue to be appointed by local authorities, with the terms of their appointment set by the local authority which employed them.

Anglican clergy

3.38 Anglican clergy would officiate at Anglican weddings. They would be authorised by virtue of their ordination, by being in Holy Orders.

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[18] See Ch 10 for the legal consequences of a wedding to which a party did not consent, or whose consent was invalid.

[19] See Appendix 1, para 1.3(3).

Nominated officiants

3.39 Under our proposed scheme, religious organisations would be able to nominate officiants to conduct weddings in accordance with their rites, beliefs or rules.

3.40 If Government determined that non-religious groups should be able to solemnize weddings, non-religious belief organisations would be able to nominate officiants in the same way as religious groups.

Nominating bodies

3.41 Nominations would be made by the organisation's relevant governing authority to the General Register Office. To make a nomination, the nominating body would have to pay a prescribed fee. The General Register Office would be responsible for keeping a publicly available list of all nominated officiants.

3.42 In order to nominate officiants, a religious organisation would have to fall within the description of a religious body given by the Supreme Court in *Hodkin*:

> a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system… .[20]

3.43 If authorised by Government to conduct weddings, non-religious belief organisations would be required to meet the following definition in order to nominate officiants (a definition based on the description of a religious body given in *Hodkin*):

> An organisation that professes a secular belief system that claims to explain humanity's nature and relationship to the universe, and to teach its adherents how they are to live their lives in conformity with the understanding associated with the belief system.

We consider whether the definition of a non-religious belief organisation should be limited further, by a list of exclusions of the types of group that would not qualify to nominate officiants, such as political parties, trade unions, or sporting organisations.

3.44 In addition to having either a sincerely held religious or non-religious belief, to nominate officiants, religious and non-religious belief organisations would further be required to have –

(1) at least 20 members who meet regularly for worship or in furtherance of their beliefs, and

(2) a wedding service or a sincerely held belief about marriage.

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[20] *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 610 at [57], by Lord Toulson.

We also consider whether there should be an express exclusion preventing organisations from nominating officiants if the organisation promotes purposes that are unlawful or contrary to public policy or morality.

3.45 The special provisions in the current law, under which religious organisations can only conduct same-sex marriages if they opt into doing so would continue under our proposed scheme, in keeping with the Terms of Reference of this review.[21] The relevant governing authority of the religious organisation would be required to give its written consent before its nominated officiants would be able to officiate same-sex weddings; to officiate at same-sex weddings, individual officiants would also be required to opt in, allowing the General Register Office to maintain a list of those religious officiants who had opted in.[22] A marriage would be void if a same-sex couple had their wedding knowing that nominating body for the officiant had not opted in.[23]

Officiants

3.46 Nominating bodies would nominate individuals to act as officiants. We also consider whether the nominating bodies should be able to nominate persons by the office that they hold within the organisation, which we call "office holders".

3.47 To be nominated as an officiant, an individual (or office holder) would have to be a "fit and proper" person to officiate at weddings. Meeting this test would include having undertaken relevant training, which could be established for nominated officiants in a number of ways: for example, by a person (or office holder) training as, or having performed the role of, a minister, priest, rabbi, imam or other religious official; having legal responsibility to register marriages under the current law; or having specifically trained as a wedding officiant.

3.48 Nominated officiants would be required to undertake ongoing training, which could be satisfied by engaging with guidance updates by the General Register Office or by completing training internal to their nominating body.

3.49 Nominated officiants would not be permitted to make a business of officiating at weddings. Under this rule, nominated officiants would not be precluded from charging a fee to officiate at a wedding, or even from making a profit in the course of doing so, but it would prevent them from acting in a way that elevated the making of profits above the expression of their beliefs.

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21 In accordance with our Terms of Reference, our review does not include consideration of the question of whether or not religious groups should be obliged to solemnize marriages of same-sex couples, which was decided by Parliament following wide public debate. For more detail, see Ch 9 below.

22 As under the current law, the Church of England and Church in Wales could not opt in under the scheme that would apply to other religious groups. An amendment to the legislation would instead be necessary. See Ch 9 below.

23 In accordance with our Terms of Reference, the special provisions would not apply to non-religious belief organisations, who, if authorised by Government to officiate at weddings, would not be permitted to discriminate between opposite- and same-sex couples.

Independent officiants

3.50 If Government decided to enable independent celebrants to solemnize weddings, individuals would apply to the General Register Office for authorisation. The General Register Office would be responsible for keeping a list of all independent officiants.

3.51 To be authorised, independent officiants would have to demonstrate that they were a "fit and proper" person to officiate at weddings. For independent officiants, the meaning of a "fit and proper" person would be prescribed: it would include requirements that they were at least 18 years of age, understood the legal requirements of being an officiant, and had undertaken prescribed training, which would be either provided by the General Register Office or approved by the Registrar General.

3.52 To retain their authorisation, independent officiants would have to undertake ongoing training as prescribed by the Registrar General. If an independent officiant failed to demonstrate compliance with the prescribed training, they would lose their authorisation as an authorised officiant.

3.53 Independent officiants would not be permitted to act in a conflict of interest with their role as an officiant, by commercialisation of that role as a means of making money from additional services. For example, this rule would prevent independent officiants from requiring a couple to purchase other services from them, or from receiving a commission for referring a couple to other service providers.

Maritime officiants

3.54 Under our proposed scheme, maritime officiants would conduct civil weddings in international waters, on board cruise ships (or, possibly other passenger vessels) that were registered in the United Kingdom with a port of choice in England or Wales.[24]

3.55 Only deck officers[25] of relevant vessels would qualify. On application to the General Register Office, the individual would have to meet the same requirements as those imposed on independent officiants: that they were a "fit and proper" person, meaning that they were at least 18 years of age, understood the legal requirements of being an officiant, and had undertaken the prescribed training.

3.56 Maritime officiants would be required to complete the ongoing training prescribed by the Registrar General. They would not be permitted to act in way that conflicted with their role as an officiant.

Withdrawal of authorisation

3.57 If a nominated officiant, independent officiant, or maritime officiant failed in their duties and responsibilities, or ceased to satisfy the fit and proper person standard, then they

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[24] See Ch 11 n 92 below for the meaning of "port of choice".

[25] Deck officers are the captain, chief mate, and other officers who take charge of a navigational watch on board a ship: International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1978) (as amended), reg I/1(1.5) and ch II.

would be subject to having their authorisation withdrawn by the General Register Office.

3.58 Although the General Register Office would not have any authority to withdraw authorisation of registration officers or Anglican clergy, those officiants would nevertheless be expected to comply with their duties and responsibilities under the law. We anticipate that local authorities, which employ registration officers, and the Church of England and the Church in Wales would act appropriately to provide support to or sanction officiants who did not.

CEREMONY

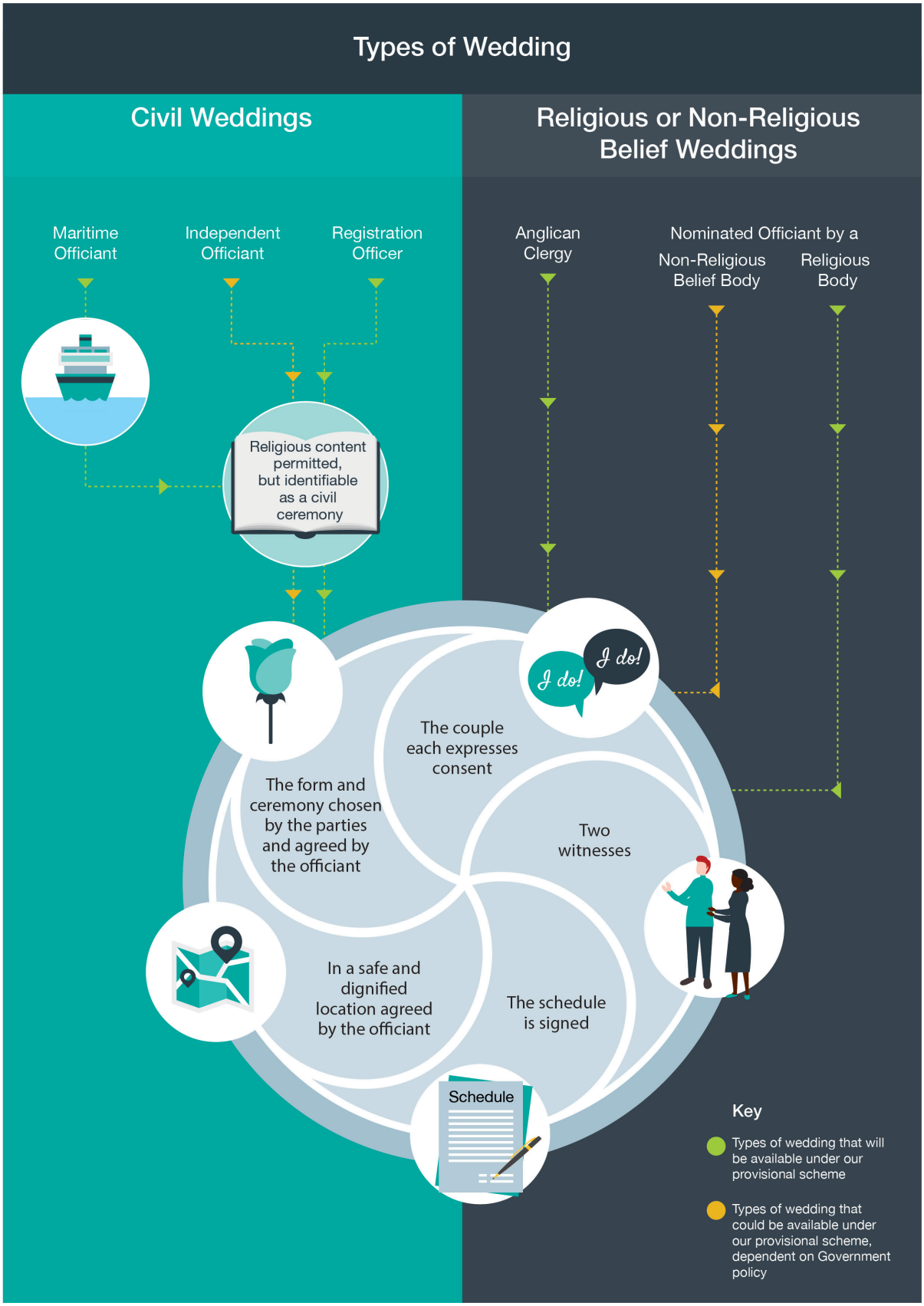
3.59 Because the focus of our proposed scheme is on regulating officiants, there is less regulation of other aspects of the law. Therefore, our proposed scheme gives couples much greater flexibility and choice about the wedding ceremony itself than they have under the current law.

3.60 The requirements for all wedding ceremonies would be the same: there would no longer be special rules governing the form of Anglican, Jewish or Quaker wedding ceremonies. Instead, all ceremonies would be conducted according to the form and ceremony chosen by the couple and agreed to by the officiant. The one exception that we provisionally propose is that although religious content would be permitted during civil ceremonies, the ceremony would be required to be identifiable as a civil ceremony rather than a religious service.

3.61 Of course, religious and (if enabled by Government to conduct weddings) non-religious belief bodies would be entitled to insist on their own requirements, in relation to whose weddings they would conduct, and the content of the weddings that they conducted.

3.62 The main requirement of any wedding ceremony would be that the parties consent to the marriage; without an expression of consent by each of the couple, no marriage would be formed at all.[26] During the ceremony, therefore, each party would be required to express their consent to be married to the other, whether orally or otherwise. This expression of consent could be according to religious rites or other beliefs: for example, in a Jewish wedding, a bride could express her consent by accepting the groom's ring on her finger. The marriage would be formed when the parties had expressed their consent. The schedule itself would contain a declaration that the parties had consented, or did consent, to the marriage, so that signing the schedule would constitute consent if the content of the ceremony did not contain an expression of consent. Every ceremony would also be required to be witnessed by two people.

[26] We discuss the consequences if consent is invalid due to incapacity, duress or mistake, in Ch 10.


Types of Wedding
Civil Weddings
Religious or Non-Religious Belief Weddings
Maritime Officiant
Independent Officiant
Registration Officer
Anglican Clergy
Nominated Officiant by a Non-Religious Belief Body
Religious Body
Religious content permitted, but identifiable as a civil ceremony
I do!
I do!
The couple each expresses consent
The form and ceremony chosen by the parties and agreed by the officiant
Two witnesses
In a safe and dignified location agreed by the officiant
The schedule is signed
Schedule
Key
Types of wedding that will be available under our provisional scheme
Types of wedding that could be available under our provisional scheme, dependent on Government policy

3.63 The fee for a registration officer to officiate at a civil wedding would be prescribed nationally. The fee would depend on where the wedding took place. There would be one fee set for a simple "statutory" wedding in the register office, a type of ceremony under the current law. For weddings officiated by registration officers that take place anywhere other than the register office, there would be an additional fee, charged at a prescribed hourly rate, to account for the time the registration officer took in travelling to and from the ceremony. We consider whether the fee for a registration officer to officiate at a wedding involving a person who is terminally ill should be set below a cost-recovery level, or whether there should be no fee at all. Local authorities could also charge additional fees, set by each local authority on a cost-recovery basis, for discretionary services, such as the registration officer conducting the ceremony or helping the couple personalise their vows.

3.64 Other officiants would determine their own fees. However, as we explain above, they would be subject to general rules in relation to the setting of fees: nominated officiants would be prevented from operating on a commercial basis; and maritime officiants and independent officiants could operate for profit, but would not be permitted to act in a conflict of interest with their role as authorised officiants.

LOCATION

3.65 The focus of our proposed scheme on regulating the officiant enables weddings to take place at a much greater variety of venues than is currently permitted. Indeed, under our proposed scheme, and in line with the approach taken in many other jurisdictions, a wedding would be legally permitted to take place anywhere, including outdoors, in a private venue such as a home or on a military site, and on inland, coastal and territorial waters. There would be no requirement for public accessibility or open doors. The form and validity of the marriage would not depend on where the wedding ceremony was held.

3.66 There would also be no requirement for the location of a wedding to be pre-approved by Government, eliminating the unnecessary regulation in the current law. The location of a wedding would be subject to the officiant's consent. To give consent, the officiant would be responsible for considering safety and dignity, with guidance on how to do so from the General Register Office. Additionally, we consider whether there should be an optional scheme for pre-approval; if there were, some venues would already have been determined to be safe and dignified, removing any need for an officiant to make their own assessment of safety and dignity.

3.67 Any fee charged by a local authority for a registration officer to agree to conduct a wedding in a particular location would be set by the individual local authority on a cost-recovery basis.

3.68 Of course, religious and (if enabled by Government to conduct weddings) non-religious organisations would be entitled to insist on their own requirements about where a wedding could take place, such as requiring that a wedding take place in a church, chapel, meeting house, or gurdwara. Nominated officiants would therefore only consent to officiate at a wedding in a place that met the religious or non-religious belief organisation's own requirements.

3.69 We also consider whether civil weddings should be prevented from taking place in religious venues. If non-religious belief weddings are enabled by Government, we also ask whether the law should prevent civil weddings from taking place in non-religious belief venues, non-religious belief weddings from taking place in religious venues, and religious weddings from taking place in non-religious belief venues (bearing in mind that non-religious belief organisations may not have designated meeting places in the same way that many religions do).

3.70 Our provisional scheme could also allow civil weddings to take place at sea, in international waters on cruise ships registered in the United Kingdom with a port of choice in England or Wales.[27] We additionally consider whether weddings should also be permitted on other vessels. Weddings in international waters would be conducted by maritime officiants, or, if enabled by Government, independent officiants who were employed on board the vessel. We also ask whether there is any demand for religious weddings or non-religious belief weddings to take place in international waters, in the presence of a nominated officiant.

REGISTRATION

3.71 The final stage of the legal process of a wedding would be registration of the marriage. Under our proposed scheme, although a marriage's validity would not depend on registration (as a marriage would have already had been formed during the ceremony), registration would continue to have evidential value in establishing that a valid wedding had taken place. Moreover, registration serves an interest of the state: because marriage affects the status of an individual and gives rise to legal rights and obligations, the state has an interest in maintaining a record of marriages.[28]

3.72 The couple, witnesses and officiant would be required to sign the schedule at the end of the ceremony. The couple could note on the schedule the location where the wedding took place, and their parents' names and occupations.

3.73 Couples would have the option of their schedule being in Welsh only.

3.74 Our scheme takes as its starting point how Parliament has envisioned a schedule system would operate under the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019. Accordingly, the couple would be legally responsible to return the signed schedule to the registration service, within one week of the ceremony.[29] We provisionally propose that a couple who married on a cruise ship in international waters would not be subject to the fixed deadline, but would instead have to return the schedule as soon as was reasonably possible.

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27 See Ch 11 n 92 below for the meaning of "port of choice".

28 An electronic record of marriages could also be useful source to assess whether a person who had given notice of an intended marriage was already married (or in a civil partnership).

29 See Explanatory notes to the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, paras 3 to 7; *Hansard* (HL), 26 January 2018, vol 788, col 1248; and Registration of Marriages Regulations (draft statutory instrument), reg 16, deposited in the House of Lords Library on 17 April 2018 by Baroness Williams of Trafford.

3.75 In the future, it might be possible for the schedule to be returned electronically, or for the schedule itself to be in electronic form.

3.76 There would be no separate fee for registration. Fees would continue to be charged for making corrections to, and obtaining copies of, marriage records.

Chapter 4: Preliminaries

INTRODUCTION

4.1 In this chapter we consider the preliminary steps that that a couple must complete before they are legally authorised to get married. Such preliminaries play an important role in the process of getting married. Before a couple gets married, there is a public interest in establishing that they are eligible to do so – that they are not under 16, not already married or in a civil partnership, and not closely related.[1] There is also a public interest in establishing that neither is being forced into the marriage and that it is not a sham that is being entered into for immigration purposes.

4.2 These are important issues for both the state and for the individuals involved. The information that has to be given, at least in the civil context, enables the state to scrutinise the proposed marriage to ensure that the couple are eligible to marry and that their proposed wedding will be conducted within the legal framework. Such checks also reassure the individuals involved that their marriage is unlikely to be open to challenge. The waiting periods that are built into the preliminaries process enable each individual to reflect on whether they wish to make a legally binding commitment. The process of giving notice also provides an opportunity for a person at risk of being forced into a marriage to raise their concerns with registration officers or members of the clergy. The publicity given to an intended wedding may also alert third parties to a potentially forced marriage and give them the opportunity to instigate measures to protect the person at risk. All of these issues are best dealt with before the wedding, rather than during the ceremony or after it has taken place.

4.3 Our starting point is therefore that there needs to be a robust system of preliminaries in order to protect the interests of both the state and the individuals involved. While civil preliminaries have been strengthened over the last two decades, the way in which intended weddings are publicised has not changed since the mid-19th century. Our provisional proposal that notices of marriage should be published online is intended to make it easier to discover who is planning to marry, and thereby ensure that those who might know of some reason why the wedding should not go ahead have a realistic opportunity to object. We think that this will offer greater protection to those who are at risk of forced marriages, as well as preventing weddings from taking place where the couple are prohibited from marrying each other.

4.4 Our principle of fairness and equality also suggests that the same requirements should apply to everyone. We therefore think that there is a very strong case for requiring all weddings to be preceded by civil preliminaries rather than, as at present, allowing Anglican weddings to be authorised by Anglican preliminaries. At the very least, if Anglican preliminaries are to be retained, we think that reforms are needed to try to eliminate some of the discrepancies between them and civil preliminaries. For example, we do not think it should be possible for one person unilaterally to instigate the process of having banns called, or to obtain a common licence. It would

[1] Matrimonial Causes Act 1973, s 11.

undermine the state's interest in marriage if Anglican preliminaries were to be significantly less demanding than civil ones.

4.5 At the same time, we think that the law should be as simple as possible for couples to comply with. Regulations that are irrelevant to the purpose of establishing eligibility or consent should be removed. We are therefore provisionally proposing that in the context of civil preliminaries the requirement that each of the couple should have been resident in England and Wales for seven days prior to giving notice should be abolished. This change would also make it easier for couples who live outside England and Wales to marry here, enabling England and Wales to benefit from the existing global market for destination weddings.

4.6 We are also provisionally proposing that it should be possible to give notice remotely, while retaining the requirement for a meeting with a registration officer at some point. If couples choose to give notice in person, or alternatively when they have their in-person interview after giving notice, they should be able to do so in whichever register office is most convenient for them. These changes would give couples more choice about how to give notice, in line with our principle of respecting individuals' wishes.

4.7 In this chapter we look first at the system of civil preliminaries and set out our provisional proposals for the various stages of giving notice. We then consider the separate system of Anglican preliminaries and whether there is any scope for them to be reformed. While we identify some minor improvements that could be made, these do not reduce the case for more wide-ranging reform, and we close by setting out the advantages in moving to a system of universal civil preliminaries. This approach is the only way to ensure fairness and equality and, in particular, to ensure that preliminaries for all weddings are equally robust. The special procedures that exist for those who are housebound or detained, or who are terminally ill, are considered separately in Chapter 11.

4.8 In considering what preliminaries should be required, we have been mindful of the provisions of the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019. The Act makes provision for a schedule system to be introduced by way of regulations. Government has indicated that the General Register Office is working on these regulations but has not set out a timetable for their implementation.[2] As the regulations are not yet publicly available we do not know what the precise requirements of the new scheme will be.

4.9 Nonetheless, we welcome the move to introduce a schedule system, having previously suggested this as a potential reform that we would want to consider.[3] Our provisional proposals assume that a schedule scheme will be introduced, and so we do not ask any consultation questions about this. We do however set out what

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2 Home Office: Registration of Births, Deaths, Marriages and Civil Partnerships: Written Answer (HC) 21404 (6 March 2020) (Kevin Foster).

3 Scoping Paper, para 4.17.

changes would be needed to reflect our provisional proposal that the law should focus on who officiates at the wedding rather than where the wedding takes place.[4]

CIVIL PRELIMINARIES

4.10 Civil preliminaries now precede the vast majority of weddings, being required for civil weddings and all non-Anglican religious weddings.[5] Civil preliminaries may also be used to authorise an Anglican wedding, and must be used instead of banns or a common licence where one of the couple is not a relevant national.[6] See Appendix 3 for an illustration of the forms of preliminaries that may be used to authorise the different types of wedding under the current law.

4.11 There are certain special cases where provision is made for notice to be given outside England and Wales. If one of the couple is resident in England and Wales, the other may give notice in Scotland,[7] or in a specified Commonwealth country or territory,[8] or, if they are in the Naval Service, at sea.[9] These options are only available if both are relevant nationals.

4.12 These special cases apart, each of the couple is required to:[10]

(1) have been resident in England and Wales for the seven days prior to giving notice;

(2) give notice in person at a specific register office: this will either be a designated register office (if either person is not a relevant national and not exempt from immigration control[11]), or the register office in the district where that person has lived for the previous seven days;

(3) wait for a period of 28 days while this notice is displayed in the register office (or, if either or both of the couple is not a relevant national and does not have the appropriate immigration status or a relevant visa and the marriage is being investigated as a potential sham, up to 70 days[12]). During this period anyone who is aware of a legal impediment may make a formal objection to the

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4 See further Chs 5 and 7.

5 See paras 2.11 to 2.22 above for a full description of civil preliminaries. Civil and non-Anglican religious weddings now account for over 82% of all weddings: Office for National Statistics, *Marriages in England and Wales, 2016* (28 March 2019) and *Religious marriages by denomination, 2016* (14 May 2019).

6 Marriage Act 1949, s 5(3). A "relevant national" is a British citizen, European Economic Area national or Swiss national: Marriage Act 1949, s 78(1). Those who fall outside these categories may still marry by special licence: see further at para 2.89 above.

7 Marriage Act 1949, s 37.

8 Marriage of British Subjects (Facilities) Act 1915. For the list of specified countries, see Ch 2 n 24.

9 Marriage Act 1949, s 39.

10 Marriage Act 1949, ss 27 to 33; Asylum and Immigration (Treatment of Claimants etc) Act 2004, s 19.

11 See para 2.14 above. See the Glossary for the meaning of "relevant national" and "exempt from immigration control".

12 See the Glossary for the meaning of "relevant national", "appropriate immigration status" and "relevant visa".

wedding going ahead. In addition, if one of the couple is under the age of 18, the person whose consent is required (usually a parent or guardian) may forbid the issue of the certificate.[13]

Assuming no objections have been made, that person may then request the issue of a superintendent registrar's certificate authorising the wedding to go ahead.

Issues

The law restricts couples from choosing to marry in England and Wales

4.13 The requirement that each person should have been resident in England and Wales for seven days before giving notice makes it more difficult for some couples to marry in England and Wales, and prevents others from doing so altogether.

4.14 Both the National Panel for Registration and the Faculty Office noted that the residency requirement can cause problems for couples who live abroad.[14] One participant at the 2019 Warwickshire County Council Registration Service Annual Conference told us that she had wanted to conduct the wedding of a relative who lived in Texas. As the couple could not afford to be in the United Kingdom for the period necessary to meet the residency requirements and give notice, she was only able to do a non-legally binding ceremony for them.

4.15 Some couples who live outside England and Wales but want to marry here may be British nationals, for example, those who are temporarily resident abroad for work or study, or who have emigrated but who have family or roots here. In his 13th programme consultation response,[15] Robin Mair, a local authority staff member, specifically identified the restriction on couples who work abroad marrying here as being "out of line with modern social conditions".

4.16 Other couples who have no prior connections to England and Wales may be attracted by its rich heritage and would like to marry in a castle, stately home or other historic venue. Heritage locations attract a substantial number of international visits each year, accounting for an estimated 17.5 million visits in England alone in 2018.[16] Unless a couple can afford to take sufficient time off work to stay in England and Wales for a prolonged period, or to visit twice, the scope for them to marry here is limited.[17]

4.17 Even where the couple are resident in England and Wales, demonstrating residence in a specific district for a continuous seven-day period may be more difficult for those with fluid living arrangements. Those living on houseboats or in caravans may

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13 Although if, as proposed by the Marriage and Civil Partnership (Minimum Age) Bill 2019-2020, the minimum age of marriage is raised to 18, there will be no need for parental consent.

14 See the Glossary for the meaning of "Faculty Office".

15 See para 1.85 above on the 13th programme consultation responses.

16 Historic England, *Heritage and the Economy 2019* (November 2019) p 36, https://historicengland.org.uk/content/heritage-counts/pub/2019/heritage-and-the-economy-2019/ (last visited 1 May 2020).

17 As we explain at paras 2.83 to 2.91 above, a special licence may be available if they are marrying according to Anglican rites.

regularly cross the boundaries of registration districts. Others may simply not have documentary evidence of their residence. In responding to the 13th programme consultation, the National Panel for Registration said that the residency requirements should be reviewed "to reflect a modern and mobile society".

4.18 It should be noted that the seven-day residency requirement has nothing to do with establishing a person's immigration status. It dates from the Marriage Act 1836 and seems to have been intended to ensure that civil preliminaries could not be any speedier than their Anglican equivalents.[18] Even if this were a valid policy objective, the subsequent divergence between civil and Anglican preliminaries means that civil preliminaries now inevitably take longer than Anglican ones even without the seven-day requirement.[19]

4.19 As well as being inconvenient, the residency requirement is not necessarily effective in ensuring that couples give notice where they are resident. Relatively little is needed to satisfy the requirement. One participant at the 2019 Warwickshire County Council Registration Service Annual Conference told us that a letter from a third party confirming residence would suffice. Nor can the validity of a marriage be challenged on the basis that the couple were not living where they claimed.[20]

The law restricts the options for giving notice

4.20 At present each of the couple must give notice in person in a specific register office. This will entail each person booking an appointment with a registration officer, travelling to the register office, providing documentary evidence about themselves and the proposed wedding, and making a formal declaration that they are free to marry the other person.[21]

4.21 The requirement to give notice in person may be inconvenient and time-consuming. Register offices are generally only open during normal working hours, and not at weekends.[22] In addition, the need to make an appointment to give notice in person may well mean that it is some time before notice can be given and the 28-day notice period that follows can start. While most couples now plan their weddings well in advance, some might want to get married more swiftly, and the current requirements impede that.

4.22 In many cases the inconvenience will be compounded by the requirement that notice must be given in each person's district of residence. In a more mobile society where many people work at some distance from where they live, giving notice will usually necessitate people booking time off work. One participant at the 2019 Warwickshire

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18 Under the 1836 Act, notices were to be read out at three meetings of the Poor Law Guardians, matching the calling of banns on three Sundays. The seven-day residence requirement may have been intended to match the provision that Anglican clergy are not obliged to publish banns unless they have had seven days' notice (see para 4.104 below), but (unlike the requirement of advance notice for banns) cannot be waived.

19 On the requirements for banns, see Ch 2.

20 Marriage Act 1949, s 48(1)(a).

21 See paras 2.12 to 2.13 above. If either or both of the couple are not relevant nationals and not exempt from immigration control, they must give notice at a designated register office: see para 2.14 above.

22 Some register offices are open at weekends for weddings, but not for taking notice.

County Council Registration Service Annual Conference also noted if a person was living close to the border between districts it might be easier for them to give notice in the adjoining district, depending on where the register office was located. And, as the National Panel for Registration pointed out, couples who live in different districts are precluded from giving notice together.

4.23 Nor is the requirement for notice to be given in person a particularly efficient use of registration officers' time. Much of the meeting will be spent by registration officers in purely clerical work, entering the details of each person into an online database.

4.24 As well as being restrictive and time-consuming, the requirement to give notice in one's district of residence is out of step with other changes in the law. Since 1995, couples have been able to choose to have a civil wedding in any register office or at any approved premises in England and Wales, rather than, as previously, being limited to marrying in a register office in their district of registration.[23] In addition, since 2014, the link between the district of residence and the district in which notice is given has also been broken for those who are not relevant nationals and not exempt from immigration control as the designated register office at which they have to give notice is not necessarily in their district of residence.[24] The 2014 changes illustrate that specialist expertise is regarded as more important than local knowledge in such cases.

The law is ineffective in publishing notices of marriage

4.25 The purpose of publishing the notices of marriage is to allow those who are aware of an impediment to object to the wedding going ahead. Yet displaying notices in the register office – even in the "conspicuous place" envisaged by the legislation[25] – has long been recognised as an ineffective way of publicising an intended wedding. Reservations were expressed when this method was first suggested in 1856 and when the law was reviewed by the Royal Commission in 1867.[26] It hardly needs to be said that a system based on the idea of local community where everyone knows their neighbours is even less likely to work in the modern world.

4.26 No one who we have spoken to has suggested that this method of publishing notices serves any useful purpose. In its 13th programme consultation response, the National Panel for Registration said that the publication of notices "does not reflect modern society… . Few people view these notice boards/publications". Participants at the 2019 Local Registration Services Year Ahead Conference also expressed the view that the publication of notices does not serve any useful purpose.

4.27 Participants at the 2019 Warwickshire County Council Registration Service Annual Conference commented on the practical issues with publishing notices in the register

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23 Weddings in registered religious buildings are still required to take place in the district in which one or both of the couple live, unless their usual place of worship is in another district or there is no registered place of worship of their particular denomination or religion: Marriage Act 1949, ss 34 and 35(1) to (2).

24 Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s 19. See the Glossary for the meaning of "relevant national" and "exempt from immigration control".

25 Marriage Act 1949, s 31(1).

26 *Hansard* (HC), 4 June 1856, vol 142, col 939; Report of the Royal Commission on the Laws of Marriage (1868) [4059], Appendix 1, pp 8, 15, 35, 38, and 53.

office. One noted that the notices were not readily accessible, as they were published on a little screen in the local register office that could only be viewed during hours when the office was open. Another commented that those looking for information on a particular marriage would have to wait for the information to scroll past.

4.28 The National Panel for Registration commented that it was very rare for objections to an intended wedding to be voiced at all, and even rarer for those objections to be sparked by someone seeing the notice. It also explained that often the objections that were made were not valid ones. The rarity of objections being made meant that some local authorities had very little experience of dealing with them, and so had to take advice about what to do when an objection was made.

4.29 One participant at the 2019 Warwickshire County Council Registration Service Annual Conference did tell us of a case in which it was possible that the notice in the register office had played a role in an objection being made. In this case the person who had given notice lacked capacity to marry. Even in this case, however, the notice of marriage was just one of the ways in which the person who objected had found out about the intended marriage.

4.30 Some stakeholders also expressed concern about the information that is made public under the current system. A participant at the 2019 Local Registration Services Year Ahead Conference noted that there are concerns with the amount of information that is made publicly available when intended marriages are published at local register offices. He noted that the requirement to make such personal information public, including each party's address and date of birth, poses real risks for someone who is a victim of domestic violence, and has prevented some couples from getting legally married. While another pointed out that information about victims was not routinely protected from violent ex-partners in other contexts, it is reasonable to fear that news of a wedding to a new partner might be the kind of event that would attract a reaction from a violent ex-partner. We have also heard about concerns about publicity in the context of persons at risk of honour-based violence.

4.31 The National Panel for Registration also noted that notices were primarily used by the press wanting information about celebrity weddings or by businesses soliciting for custom. In an era when the use of personal information is subject to a number of constraints, it seems anomalous that the addresses of those intending to marry should be publicly displayed.

Options for reform

Abolishing the seven-day residency requirement

4.32 Our provisional proposal is simply to abolish the requirement that each of the couple need to have been resident in an English or Welsh registration district for seven days prior to giving notice. As we explain in Chapter 13, abolishing the residency requirement is likely to bring economic benefits in opening up weddings in England and Wales to couples who are resident overseas.

4.33 In dispensing with a residency requirement we would be bringing the law of England and Wales into line with that in Scotland, Northern Ireland, the Isle of Man, and

Jersey, and with proposed reforms in Guernsey.[27] None of these jurisdictions have reported any problems arising from the lack of a residency requirement. Nor do the lack of residency requirements appear to cause problems in Ireland, Australia, New Zealand, or Canada.

4.34 None of our stakeholders identified any useful purpose that is served by the residency requirement today. The National Panel for Registration thought that the requirement was unnecessary, as did participants at the 2019 Local Registration Services Year Ahead Conference. The Forced Marriage Unit confirmed that removing the requirement would have no negative impact in relation to forced marriage and the Home Office confirmed the same in relation to sham marriage.

Being able to give notice remotely

4.35 We think that it is important for a registration officer to see each member of the couple. Equally, we think that it should be possible to give notice remotely if couples so wish. Our provisional proposal is therefore that it should be possible for these two elements to be split and for couples to provide information and start the 28-day notice period by giving notice remotely, whether online or by post, in advance of their in-person interview with a registration officer.

4.36 Giving notice remotely would be easier for most couples, and particularly for those resident outside England and Wales. It would reduce the time that registration officers need to spend on purely clerical work and enable them to focus on those cases that need more support or investigation. It would also reduce the need for the special provisions that currently apply where one of the couple is resident in Scotland or in a specified Commonwealth country or territory, or is at sea.[28]

4.37 Other jurisdictions already offer the opportunity for couples to give notice remotely. Notice can be given by post in Scotland, while in Northern Ireland couples generally have the option of giving notice either by post or online.[29] In Jersey, part of the process can be completed online, and part by post,[30] while Guernsey is developing an online application process. Notice of an intended marriage can also be given online in New Zealand.[31]

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27 See respectively Marriage (Scotland) Act 1977, ss 3 to 3B; Marriage (Northern Ireland) Order 2003 (SI 2003 No 413) art 3; Marriage Act 1984 (Isle of Man), s 20(3)(c); Marriage and Civil Status (Jersey) Law 2001, art 10(1); States of Deliberation Policy and Resources Committee, *Policy Letter: Reform of the Marriage Law* (12 November 2018); States of Deliberation Policy and Resources Committee, *Policy Letter: The Marriage (Bailiwick of Guernsey) Law, 2020* (30 March 2020). In the Isle of Man and Jersey, the parties must give their place of residence for at least seven days, but that place need not be the Isle of Man or Jersey.

28 See para 4.11 above. Although we discuss whether it should still be possible to give notice outside of England and Wales at paras 4.70 to 4.71 below.

29 In prescribed cases the parties must give notice in person: Marriage (Northern Ireland) Order 2003 (SI 2003 No 413), art 3.

30 The provision of a wet signature must be done by post.

31 New Zealand Government, *Apply for a marriage licence*, https://marriages.services.govt.nz/ (last visited on 1 May 2020).

4.38 Among those favouring the expansion of the range of options for giving notice were the Board of Deputies. In its 13th programme consultation response it suggested that, subject to IT measures and safeguards, notice could be given online, as is the case for driving licences and passport applications. It noted that care would need to be taken where either of the couple was under 18, and in relation to concerns about forced marriages. The National Secular Society was also positive about the possibility of couples giving notice remotely, again subject to sufficient safeguards being built into the system.

4.39 We think that there are particular benefits to be gained from giving notice online. A well-designed system would reduce the likelihood of couples providing the wrong information or supporting documents.[32] This would save time for both couples and registration officers. Parallels can be drawn with the introduction of an online system for applying for a divorce. Reporting on the pilot scheme, HM Courts and Tribunals Service noted that the online system had cut the number of applications being returned because of errors by 90%.[33] The online system could also be designed to flag up potential sham and forced marriages by asking a range of searching questions. It could include declarations by the couple that they are free to marry, with links to information about who can and cannot marry, potentially translated into a range of different languages to facilitate understanding.

4.40 Giving notice online could also reduce the time that registration officers spend on purely clerical work. The National Panel for Registration was enthusiastic about the idea of initial notice being given online as it thought that this would have the potential to reduce the workload involved in administrative tasks. Rather than taking down the details of each couple and entering them into the existing online database at the meeting, registration officers could focus on those who need more help and support and on carrying out checks in relation to the relatively small number of cases that might raise concerns. Having information about the couple in advance of the in-person interview would also enable registration officers to use such interviews to best effect. The Forced Marriage Unit thought that this would be useful in helping to address forced marriages.

4.41 The National Panel for Registration also noted that in Lancashire, over 90% of appointments to give notice are made online; as couples already provide a small amount of information as part of this process, it would not be much of a leap for all of the documentary information to be provided online. The example of Lancashire suggests that processes for giving notice online could be developed at a local level, depending on what facilities already exist. However, given that registration officers already operate a national-level online database of notices, and in the light of our provisional proposal below that all notices of marriage should be published on a single online list,[34] there would be a benefit in developing a single online system for giving

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32 One participant at the 2019 Warwickshire County Council Registration Service Annual Conference also suggested that some of the information currently required of couples could also be taken from national databases.

33 HM Courts and Tribunals Service, *HM Courts and Tribunals Service tests fully digital divorce application* (30 January 2018), https://www.gov.uk/government/news/hm-courts-and-tribunals-service-tests-fully-digital-divorce-application (last visited 1 May 2020).

34 See paras 4.72 to 4.84 below.

notice. It would be a matter for registration services to determine who would be best placed to scrutinise the notices.

4.42 However, while we think that giving notice online would bring certain benefits, we are not suggesting that it should be the only way of giving notice. Not every person has access to the internet. Some of the benefits of giving notice online – for example the advantage to registration officers of having information in advance – would also be achieved if it was possible to give notice by post. We think that it would be useful to have this as an alternative to giving notice online. Such notice could either be sent to the local register office or to a central hub.

4.43 We recognise that the possibility of giving notice remotely raises the risk that someone may be forced to give notice, or that another person may fraudulently give notice on behalf of a person who is being forced into a marriage, whether because of coercion or because they do not have capacity to consent. This raises the question of whether there should be sanctions for doing so, as well as the implications for the person being forced.

4.44 We think that the criminal law already has sanctions that could deal with such forced or fraudulent notices. A person who makes a false declaration for the purpose of procuring a marriage is committing perjury.[35] There have been a number of convictions in recent years, most involving sham marriages. It is already an offence for a person to use any form of coercion for the purpose of causing another to enter into a marriage, or to do anything to cause a person who lacks capacity to enter into a marriage.[36] Forcing another to give notice remotely, or giving notice on behalf of a person who lacked capacity, would clearly be covered by this offence. Giving notice on behalf of another with the intention of forcing them into a marriage could also be seen as a form of coercion.

4.45 For the person being forced into the marriage, the danger of notice being given remotely is that they may not even know that this has been done. However, as we emphasised above, each person would still be required to meet with a registration officer. Since registration officers will always interview members of the couple separately, the person being forced into the marriage would, in principle, be able to inform the registration officer that they were not the one who gave notice.[37] In this case the registration officer would be required to cancel the notice that had been given and the wedding would not be able to proceed.

4.46 We also think that it should continue to be possible for individuals to give notice in person. Some couples might regard giving notice as part of the ceremonial aspect of getting married and want to do so in person. For others, combining the giving of notice with the in-person interview might be the most convenient option. However well-

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35 Perjury Act 1911, s 3.

36 Anti-social Behaviour, Crime and Policing Act 2014, s 121. However, it is relatively rare for such offences to involve marriages taking place in England and Wales: see para 4.59 below.

37 We say "in principle", because we are conscious that individuals may fear what will happen to them if it is apparent that they have told the registration officer that they were not the one who gave notice and so not disclose this. However, the same difficulty occurs under the current system, where notice is given in person. We discuss further below at paras 4.57 to 4.58 below what actions a registration officer might take if they had concerns that an individual was being forced into a marriage.

designed the forms for giving notice remotely might be, there will always be couples who will struggle to complete them and would prefer to do so with the assistance of a registration officer. As we note above, the National Panel for Registration thought that a system of online notice would enable them to give more assistance to those who need it.

4.47 In some cases it may be necessary to retain the requirement that individuals give notice in person, for example if one or both of the couple are not relevant nationals and not exempt. However, as this is a matter of immigration policy we are not making any provisional proposals on this.[38]

Being able to give notice anywhere

4.48 The possibility of being able to give notice online does of course depend on the necessary IT infrastructure being in place, either locally or nationally. Since time will be needed to develop this infrastructure, and since we envisage couples still being able to give notice in person even if it is possible to give notice remotely, we provisionally propose that people should be able to choose where to give notice. This would enable couples to choose whichever register office is most convenient to them, and to give notice together if they so wish. However, there would be no requirement that both members of the couple should be required to give notice together or in the same registration district.

4.49 Allowing people to choose where to give notice might result in some shifting of work between register offices but it is unlikely that this would be problematic. The National Panel for Registration expressed the view that there was no reason not to be able to give notice in any district. The change allowing couples to marry in any register office in England and Wales does not seem to have caused difficulties.[39] Notice can also be given in any district in Ireland, and we have not learned that this has caused any problems there either.

The requirement for in-person interviews

4.50 As we note above, we think each party should continue to be required to have an in-person interview with a registration officer. This is not a requirement in all other jurisdictions. In Scotland and Northern Ireland, notice can be given remotely and only one person needs to attend to pick up the marriage schedule.[40] One participant at the 2019 Local Registration Services Year Ahead Conference suggested adopting the Scottish model. However, the prevailing view among stakeholders was that a face-to-face meeting with the couple is valuable in assessing whether the marriage is a sham or forced one. The Forced Marriage Unit emphasised the importance of such interviews as a preventative measure against forced marriages. The face-to-face meeting is also an important part of the process of checking the identity and capacity of the persons who are planning to marry.

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38 See the Glossary for the meaning of "exempt person". See para 4.56 below.

39 This change was effected by the Marriage Act 1994.

40 Marriage (Scotland) Act 1977, ss 3 and 6; Marriage (Northern Ireland) Order 2003 (SI 2003 No 413), art 7(2)(c).

4.51 Our provisional proposal that it should be possible to give notice remotely would allow the parties to attend their in-person interviews at a later date. We therefore need to consider where, and at what stage those interviews would take place.

4.52 We are not reviewing the requirement that those who are not relevant nationals and not exempt from immigration control must attend a designated register office together, as this is a matter of immigration policy for the Home Office.[41] However, we envisage that in other cases each person giving notice remotely would generally be able to nominate the register office where they would like the in-person interview to take place. This would ensure that they could choose the one most convenient for them. As is currently the case where a couple live in different registration districts, each could attend a different register office.

4.53 Because the purpose of the interviews would be to check that the parties were eligible and freely consented to get married, they would have to take place before the schedule was issued, from which date the parties would be authorised to get married. If the interviews did not both happen before the 28-day notice period had elapsed, the issuing of the schedule would be delayed.

4.54 The more difficult question is what the minimum period between the in-person interviews and the schedule being issued should be. A short period would be easier for couples who do not live in England and Wales. In Jersey, for example, couples must attend the register office to sign a "signature verification form" and have their photographs taken no later than three days before their wedding day.[42] Jersey's Superintendent Registrar told us that the law in Jersey makes it easier for couples resident outside of Jersey to get married there, and that the island is popular for "destination weddings".

4.55 Many of the advantages of removing the seven-day residence period would be lost if couples had to attend in-person meetings more than a few days before their wedding could take place. And in most cases, a short period between the interviews and the schedule being issued would not be a problem. The in-person interviews would usually be simply a matter of verifying the identity of each individual and confirming that they want the wedding to proceed.

4.56 However, it is possible that the in-person interviews will raise concerns that were not evident from the information previously submitted. Suspicions that the marriage will be a sham would continue to be reported to the Secretary of State.[43] Moreover, any new legislation will need to ensure that the Secretary of State's power in relation to persons who are not exempt persons[44] to extend the notice period to 70 days and

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41 See the Glossary for the meaning of "relevant national" and "exempt from immigration control". Seeing both of the couple can assist registration officers to discharge their duty to report suspicions of sham marriages to the Home Secretary: see the Immigration and Asylum Act 1999, s 24.

42 Marriage and Civil Status (Jersey) Law 2001, art 15.

43 Immigration and Asylum Act 1999, s 24.

44 See the Glossary. See also para 2.14 above.

investigate suspected sham weddings remains effective in a system that allows remote notice, and so separate provision may be necessary in those cases.

4.57 There are more difficult questions about what action might be needed if concerns about potential coercion arise at interview. There may be some straightforward cases where the individual is willing to state that they do not want the wedding to go ahead. A refusal to consent to the marriage can halt the process at any time, even after the authority to marry has been issued. If the individual is willing for preventative measures to be taken, then they or the local authority could also apply for a forced marriage protection order.[45] Such orders can be made very speedily where necessary, but time would still be needed for an application to be made.[46] In cases where the individual wanted to ensure that a forced marriage protection order was in place before the end of the notice period, the time window would be critical.[47]

4.58 The problem is that most cases of forced marriage are not straightforward. Individuals who are being forced into a marriage are likely to fear what will happen to them if they are seen to refuse to consent to the marriage. The Forced Marriage Unit told us that the individual being coerced may be living with the person who is coercing them, and be at risk of further abuse. Registration officers are advised to look out for various signs that a person may be under duress, but where an individual denies that they are being forced into a marriage, all that can be done is to make them aware of the support available.[48] In those cases, even 28 days may not be long enough to take any effective action.

4.59 It is impossible to ascertain how many marriages entered into in England and Wales are forced. However, it is worth noting that only a very small proportion of the cases dealt with by the Forced Marriage Unit involve weddings taking place in the United Kingdom. In 2018 the Unit gave advice or support in 1,507 cases, of which only 102 (under 7%) involved an actual or potential forced marriage taking place in the United Kingdom.[49] Any given registration district may only be dealing with one or two cases of forced marriage each year. We say this not to minimise the difficult issues that such cases raise, but rather to help assess the feasibility of registration officers taking action in the period between the interview and the authority to marry being issued. If there are only a few cases then it is more feasible for these to be dealt with swiftly without adding unduly to the workload of registration officers.

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45 A local authority is able to apply for a forced marriage protection order as a "relevant third party": Family Law Act 1996, s 63C(2)(b); Family Law Act (Forced Marriage) (Relevant Third Party) Order 2009 (SI 2009 No 2023), art 3. Other third parties (for example the police) may only apply for such an order with the leave of the court.

46 An order can be made immediately, without notice being given to the person against whom it is being made: Family Law Act 1996, s 63D.

47 If the facts were sufficient to justify the grant of a forced marriage protection order then the superintendent registrar would have sufficient grounds to refuse to grant the certificate, but such refusal might itself place the coerced individual in danger.

48 Registration officers are advised to look out for various signs that a person may be under duress and to refer them to the Forced Marriage Unit for advice and support if they have suspicions.

49 Home Office and Foreign and Commonwealth Office, *Forced Marriage Unit Statistics 2018* (April 2020) p 4, https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2018 (last visited 1 May 2020).

4.60 Equally difficult questions arise in cases where there are concerns about a person's mental capacity. Registration officers are already given clear guidance on how to ascertain whether a person has the mental capacity to marry. A lack of mental capacity is an impediment to marriage, and so if the registration officer believes that a person lacks capacity, they would not issue the schedule authorising the marriage. The timing of the interviews would not alter the outcome in those cases. But in cases where the registration officer is unsure whether or not a person has mental capacity, a referral to the local authority safeguarding team may be necessary. In such cases the team might need some time to investigate and ascertain whether the person has capacity.

4.61 The review of what practical steps need to be taken, when, and by whom, all bear on the question of what the minimum period between the in-person interviews and the issue of the authority to marry should be. As the above discussion makes clear, in many cases the necessary decisions will be taken during the in-person interviews and there will be no question of the authority to marry being issued. The only cases where the time between the in-person interviews and the issue of the authority to marry will be relevant are where an application is being made for a forced marriage protection order or a reference is being made to the local authority safeguarding team. These are likely to account for only a very small number of cases.

4.62 We note that superintendent registrars can already refuse to issue the authority to marry if they are not satisfied that there is no lawful impediment, but they need to have reasonable grounds for this decision.[50] We have considered whether they should have a general power to extend the 28-day waiting period whenever they want more time to investigate suspicions of coercion or lack of capacity. The risk of allowing the power to extend where there are not reasonable grounds, but only suspicions, is that registration officers would understandably tend to err on the side of caution and extend the notice period. In some cases this might result in weddings having to be postponed. If the concerns about coercion or capacity were groundless, such postponements would be a source of embarrassment, expense and distress to those involved. We are therefore not proposing that registration officers should have any additional powers to extend the period beyond those that already exist.

4.63 We also note that under the current system registration officers may have much less than 28 days to determine whether a wedding should be permitted to go ahead. Concerns may be flagged up at any point during the 28-day notice period, or even after it has ended. In addition, registration officers are currently advised to conduct a further interview with each of the couple on the day of the wedding itself and given guidance about what to do if it appears that one of the couple is being coerced or does not have capacity.

4.64 Deciding what the minimum period between the in-person interview and the wedding should be therefore involves balancing a range of different risks and benefits. A shorter period would be convenient for many and in particular would enable more overseas residents to marry in England and Wales. But the period still needs to be long enough to carry out investigations and take preventative action in the small number of cases of forced marriages. In the light of these competing factors we are

[50] Marriage Act 1949, s 31(2)(a).

not at this stage proposing what the minimum period between the in-person interviews and the wedding should be. We are instead considering a range of possibilities. We are interested in consultees' views as to whether a period of three days, or seven days, or some other period, would be appropriate.

The scope for in-person interviews to be carried out remotely

4.65 We have also considered whether it should be possible for the in-person interviews to be carried out remotely, to facilitate the process for those who are resident overseas and only planning to travel to England and Wales for their wedding, or indeed for any couples who would find video-conferencing more convenient than attending a meeting at the register office.

4.66 While our 2015 Scoping Paper indicated that there was no appetite to move away from requiring a registration officer to see each member of the couple in person, technology has developed since then.[51] Across the court system, changes are being implemented to allow evidence to be given remotely. Allowing for remote interviews would not preclude registration officers from requiring one or both of the couple to attend in person if anything in the notice, or the interview itself, gave cause for concern.

4.67 On the other hand, there is a risk that a remote interview may be less effective than an in-person interview in detecting and dealing with forced marriages. In a register office, registration officers can ensure that they see both members of the couple separately and privately. Where the interview is conducted by video conference, it may be difficult to ensure that the person being interviewed is alone and cannot be overheard. It is understood that it can be more difficult for a judge or assessor to form a view about the veracity of a witness over a link, because their demeanour is more difficult to gauge. Recent research also suggests that professionals are less able to identify impairments where meetings are conducted by videolink.[52] The Forced Marriage Unit expressed concerns about the risk of an interviewee being subject to coercion and said they could not envisage any technology that would be as good as an in-person interview.

4.68 There would also need to be consideration of how evidence, for example, of the person's name and nationality, could be assessed remotely, and whether certified copies would be sufficient for the whole of the preliminaries process. Alternatively, provision would need to be made for evidence to be sent securely to be assessed.

4.69 Our initial view is that it would not be appropriate to suggest that interviews could be conducted by video conference at this stage. Nonetheless, in order to future-proof any new weddings law, we think it might be useful for there at least to be a power for interviews to be conducted remotely, to be activated when technology can satisfy concerns about safeguarding. We make no provisional proposal in this respect, but are interested in consultees' views.

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51 Scoping Paper, para 4.9.

52 Equality and Human Rights Commission, *Inclusive justice: a system designed for all: Interim evidence report: Video hearings and their impact on effective participation* (April 2020) p 8. While the focus of the report was on criminal hearings, this finding has relevance to the issue of how capacity is assessed.

Whether it should continue to be possible to give notice outside England and Wales

4.70 In the absence of an option for interviews to be conducted remotely, it might be necessary to retain the current options for notice to be given outside England and Wales where one of the couple is resident in Scotland, or in a specified Commonwealth country or territory, or on a naval ship at sea. Abolishing these exceptions would create new obstacles for such persons if they were then required to attend an in-person interview in England or Wales. On the other hand, it might be thought desirable that all persons marrying in England and Wales should attend an in-person interview, to ensure that the same procedures apply to all.

4.71 We are interested in consultees' views as to whether these exceptions should continue for those who are relevant nationals or exempt from immigration control, or whether all persons marrying in England and Wales should be required to give notice in England and Wales (even if remotely) and attend an in-person interview.

Requiring notices to be publicly displayed online

4.72 In our view, it is important to provide a process for anyone who knows of any legal reason why the wedding should not go ahead to make that known. Other than updating the language used, we are not envisaging any change to these powers to object to a wedding going ahead.[53]

4.73 Nor are we are proposing any change to the requirement that 28 days must elapse between notice being given and the authority to marry being issued, or to the power to extend this to 70 days if the marriage is being investigated by the Secretary of State as a potential sham.[54] As currently,[55] there would be a discretion to shorten that period of 28 or 70 days if there were compelling reasons because of the exceptional circumstances of the case.[56]

4.74 What we are considering in this section is whether and how notices are made public. Our provisional proposal is that notices of marriage should be published online. We think that this is the most effective way of bringing intended marriages to the attention of the public and ensuring that those who may wish to make an objection have a realistic opportunity to do so.

4.75 Some stakeholders have argued that notices should not be published at all. The National Secular Society expressed the view that the current law on publicity was both ineffective and unnecessary. We therefore think it is important to explain why we think publicity is important before setting out the advantages of notices being published online.

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53 The terminology of "caveats" used in the legislation is rather old-fashioned and its meaning may not be clear to modern audiences.

54 Marriage Act 1949, ss 27E and 28H, and sch 3A para 3.

55 Marriage Act 1949, s 31(5A).

56 The discretion might be exercised if, for example, one of the couple, or one of their parents, is seriously ill, or an officiant failed to advise the couple about the need to give notice. At paras 11.27 to 11.30 below, we address the situation where one of the parties is terminally ill.

4.76 In assessing the need for publicity, we note that the potential grounds for objection are much narrower than when the requirement for notices to be published was initially designed. In the 19th century marriages between those related by an earlier marriage were prohibited, the parent of a person under the age of 21 could refuse consent to their marriage, and bigamy was far more common.[57] Today, none of the prohibitions on marriages to in-laws survive, and even the prohibition on a marriage between a step-parent and step-child is limited to cases where the latter has been a child of the family.[58] The age at which it is possible to marry has increased, and the age at which it is possible to marry without parental consent has decreased, with the result that parental consent is now only required for those aged 16 or 17.[59] Very few individuals do now marry under the age of 18,[60] and the procedures for evidencing parental consent have reduced the need for parents to object to such marriages.[61] Bigamy is also much less of an issue given the acceptability of cohabitation and the availability of divorce.[62]

4.77 The checks carried out by registration officers are also much more thorough now than when the system of publishing notices was devised. The requirement to produce documentary evidence has considerably reduced the scope for people to lie about their name, age, and marital status. Of course, it is still possible for documents to be forged, but this takes considerably more effort than simply not telling the truth. Other countries have similarly strengthened the process for giving notice and dispensed with the practice of publishing notices of marriage. In Ireland, for example, a three-month period of notification is required and the couple must produce various documents, but notices of marriage are not made public.[63]

4.78 There is however a powerful argument that the requirement of publicity underlines the idea of marriage as a public, rather than private, matter. The rarity of objections under the current system does not mean that the requirement of publicity does not play a valuable role. The very fact that publicity is required may be acting as a deterrent to those who are not eligible to marry and who fear that an objection would be made.

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57 S Cretney, *Family Law in the Twentieth Century: A history* (2003).

58 Marriage Act 1949, s 1(3) and sch 1 pt 2.

59 The minimum age of marriage was raised to 16 in 1929, and the age at which it is possible to marry without parental consent was reduced to 18 in 1969.

60 In 2016 just 179 marriages in England and Wales involved a person under the age of 18: Office for National Statistics, *Marriages in England and Wales, 2016* (28 March 2019), tables 3 and 4. By contrast, when the Latey Committee was reviewing the issue of parental consent in the 1960s, it noted that in 1965 151,896 brides, and 56,408 grooms, were under the age of 21: Report of the Committee on the Age of Majority (1967) Cmnd 3342, para 139.

61 Those giving notice must now provide proof of their age, reducing the possibility for claiming to be of age. Those under the age of 18 must provide a form signed by the person whose consent is needed in the presence of a witness. Registration officers are advised not to issue a certificate until such evidence of consent is provided.

62 R Probert, *Double trouble: the rise and fall of the crime of bigamy* (2015).

63 Although the Civil Registration Act 2004, s 46(8) enables the tArd-Chláraitheoir (equivalent to the Registrar General) to publish notice of notifications of intended marriages on the authorisation of the Minister.

4.79 In addition, while the range of potential objections to an intended marriage has narrowed, certain issues of capacity and consent now attract more concern than when the legislation was originally devised. There is a greater awareness of forced marriages, and a more sensitive approach to the question of when a person will be regarded as being forced into a marriage. There is also growing awareness of the problem of so-called "predatory marriages", where an individual with limited capacity (or who lacks capacity altogether) is persuaded to marry by someone seeking to gain access to, and potentially control of, their finances.[64] All of these factors justify retaining, and indeed strengthening, the requirement that notices of marriage be made public.

4.80 Publishing such notices online, as is already done in Jersey,[65] would ensure that an intended marriage is easily discoverable by anyone who is looking for it. Those who do not have access to the internet would still be able to check the database at the register office, and would not be in any worse position than under the current law. Given that all notices of marriage are already entered into a national-level electronic system, developing a centralised system would not be dependent on notices being given online.

4.81 The idea of notices being published online was also one that was suggested by a number of stakeholders. In particular, the Forced Marriage Unit suggested that an online database would be useful in helping to prevent forced marriages. Having an online database of notices would increase the possibility of a concerned friend or relative being able to check whether notice had been given and to take appropriate action. At present 19% of calls to the Forced Marriage Unit come from colleagues, family or friends of the victim.[66] The existence of an online database might also reduce the risk of the person being forced into the marriage being blamed for alerting outsiders: it is more plausible that a person will have found details online than that they happened to spot the notice at the register office.

4.82 The potential downside of publishing notices online is that they might attract the wrong sort of attention. A balance needs to be struck between providing sufficient information to identify the couple, while protecting them from having their address given to the press or those marketing wedding-related items and services, violent former partners or potential perpetrators of honour-based violence. As we have noted above, a number of registration officers expressed concern about the details of victims of violence being published as part of the existing process for giving notice. The National Secular Society also noted that there might be a concern about publicising personal details online.

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64 In this context it should be noted that as long as a person has capacity to marry, they cannot be prevented from entering into a marriage that others may regard as unwise: *Sheffield City Council v E* [2004] EWHC 2808 (Fam), [2005] Fam 326. Our project is not considering the issue of capacity to marry. The issue here is whether family and friends are aware of the intended marriage and have the opportunity to raise concerns.

65 Notices are also published online in Quebec: Directeur de l'état civil du Québec, *Publication of notices of marriage or civil union*, https://services.etatcivil.gouv.qc.ca/Publications/PublicationsMariage.aspx (last visited 1 May 2020).

66 Home Office and Foreign and Commonwealth Office, *Forced Marriage Unit Statistics 2018* (April 2020), https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2018 (last visited 1 May 2020).

4.83 In our initial view, we think that there are benefits to publishing notices of marriage online, but that careful consideration needs to be given to what information is made public. We do not think that an online database should include information about where the couple live. As we explain further at paragraph 4.87 below, we would not be requiring couples to give information about where their wedding is to take place when giving notice and so such information would not be displayed as part of the notice. This would reduce the scope for unwanted intrusions at the ceremony itself.

4.84 In cases where the publication of any information would expose the couple to a risk of harm, we think it should be possible for a registration officer to waive the requirement of publicity altogether. In this context, David Hodson noted that there were situations in which a court can order that parties' personal information be withheld from publication; a similar process could be used in relation to publicity of intended marriages. In the light of the vulnerability of those involved, any such process would need to be simple to access and straightforward to apply.

The authority to marry

4.85 As we note in the introduction, we welcome reforms to implement a schedule system.[67] All of our provisional proposals in this chapter are entirely compatible with a single schedule replacing the existing requirement for two certificates to be issued by the superintendent registrar.

4.86 We note that at present a superintendent registrar's certificate is valid for 12 months, and we are not aware of any intention that a schedule should be valid for a shorter period. Since couples usually plan their weddings well in advance, and may wish to have the reassurance of knowing that all the necessary preliminaries have been completed, we see no reason to change this. If it remains possible for one of the couple to give notice outside England and Wales, we think that the schedule should be valid for 12 months in these cases too.[68]

4.87 However, depending on what decisions are made about what information is to be included in the schedule, other changes might be needed under our provisionally proposed scheme. For example, it is likely that schedules will, when introduced, state where the wedding is to take place. As we explain in Chapters 5 and 7, our provisional proposal is that the focus should shift from the location to the officiant. In this case it would be logical for the schedule to identify the officiant rather than the location. We therefore provisionally propose that the schedule authorising the marriage would specify the name of the officiant who would be responsible for officiating the wedding.

4.88 Since many couples give notice well in advance of their wedding, there is always a risk that circumstances may arise between the issue of the schedule and the date of the wedding that will prevent a person from officiating. Provision would therefore need to be made for a schedule to be amended should a particular officiant prove to be unavailable after the schedule had been issued. We do not think that this should

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67 See para 4.8 above.

68 See para 2.15 above for the circumstances in which one of the couple may give notice outside England and Wales, and Marriage Act 1949, s 33(3)(a) for the shorter time limit that applies where notice is given in Scotland.

require new notices to be given.[69] We therefore provisionally propose that the couple should be able to request the registration service to issue an amended schedule with a substitute officiant.

4.89 Providing a mechanism for the schedule to be amended may be useful in reassuring couples that everything is in order for the wedding to proceed. However, in a few cases there may not be time for an amended schedule to be issued, for example if the officiant is unexpectedly ill (or even dies) on the day of the wedding. There may also be circumstances in which the officiant is unavoidably delayed, for example where a train is cancelled or more than usually late. Our provisional proposal is that in such cases it should be possible for the couple to request another officiant to act and that the officiant should be able to officiate at the wedding without the schedule being amended.

4.90 There may be other circumstances in which an officiant might not be able to act and a substitute has to be found at short notice. We are interested in consultees' views as to whether the range of circumstances in which a substitute officiant should be able to act should be expanded beyond death, sudden illness or unavoidable delay.

4.91 We are also mindful of the risk that one of the couple may lie to the other about the availability of the original officiant in order to substitute someone else. For this reason we do not think that a marriage should be invalid simply because an officiant other than the one named in the schedule officiated the wedding. However, if a person who was not in fact an officiant purported to act as one, then this would invalidate the marriage if both of the couple were aware that they were not authorised to act. We discuss this further in Chapter 10.

Consultation questions

Consultation Question 4.

4.92 We provisionally propose that the requirement that couples are resident in an English or Welsh registration district for seven days prior to giving notice of their intention to marry to the superintendent registrar should be abolished.

Do consultees agree?

[69] We note that fresh notice is currently required where a couple decide to marry at a different venue from that named in the notice. This is because a marriage is void if the couple knowingly and wilfully marry in a place other than that specified in the notice: Marriage Act 1949, s 49(e). However, we are not proposing that a marriage would be void if the couple knowingly and wilfully marry in the presence of an officiant other than the one specified in the notice, and therefore the substitution would not have the same legal significance.

Consultation Question 5.

4.93 We provisionally propose that it should be possible to start the notice period by giving notice online, by post or in person at any registration district, and that any person giving notice online or by post would be required to attend a separate in-person interview at a later date.

Do consultees agree?

Consultation Question 6.

4.94 We invite consultees' views as to whether the minimum period between the in-person interviews and the date from which the couple can get married should be:

(1) three days;

(2) seven days; or

(3) another period of time.

Consultation Question 7.

4.95 We invite consultees' views as to whether it should be possible for interviews to take place remotely, in the future, with the possibility of an in-person interview being required where concerns arise about sham or forced marriages or the capacity of either party to consent.

Consultation Question 8.

4.96 We invite consultees' views as to whether it should continue to be possible for notice to be given outside England and Wales where one of the couple who is resident in Scotland, or in a specified Commonwealth country or territory, or on a naval ship at sea, and both are relevant nationals or exempt from immigration control.

Consultation Question 9.

4.97 We provisionally propose that notices of marriage should be publicly displayed online, save where this would expose either of the couple to a risk of harm.

Do consultees agree?

Consultation Question 10.

4.98 We provisionally propose that the schedule should be valid for 12 months from the date of issue.

Do consultees agree?

Consultation Question 11.

4.99 We provisionally propose that:

(1) the schedule should identify the officiant who will officiate at the wedding; and

(2) at the parties' request, the registration service should issue an amended schedule with a substitute officiant.

Do consultees agree?

Consultation Question 12.

4.100 We provisionally propose that a substitute officiant should be able to officiate at the wedding if the officiant named in the schedule is unexpectedly unable to act because of death, sudden illness or unavoidable delay.

Do consultees agree?

4.101 We invite consultees' views as to whether a substitute officiant should be able to act in other circumstances.

ANGLICAN PRELIMINARIES

4.102 In our view, the robust system of civil preliminaries, particularly with the changes that we have provisionally proposed, best protects the state's interest in marriage. There is therefore a strong argument that it should apply to all weddings taking place in

England and Wales. In our Scoping Paper we highlighted some of the advantages of universal civil preliminaries, and we expand on those advantages below. However, before setting out the merits of universal civil preliminaries, we need to consider the alternative options that exist for those getting married in an Anglican ceremony.

4.103 Couples who choose an Anglican wedding do not need to go to the register office to give notice. Instead, Anglican weddings can take place on the basis of ecclesiastical preliminaries – banns, common licence, or special licence.[70] See Appendix 3 for an illustration of when the different forms of Anglican preliminaries are available.

4.104 Banns are the most common form of Anglican preliminaries, but can no longer be used if one of the couple is not a relevant national. The publication of the banns involves the intended marriage being announced in church on three Sundays prior to the solemnization of the marriage. The banns must be published in the parish(es) of residence of each of the couple as well as where the wedding is taking place. No specific period of prior residence is required, but no member of the clergy is obliged to publish banns unless they have had seven days' notice.[71] If this seven-day notice period is waived, the minimum period between the first calling of the banns and the wedding is 16 days.

4.105 Alternatively, a couple may apply for a common licence. A common licence can authorise a wedding taking place in any location where the couple are entitled to marry. It can be obtained without any waiting period or any publicity, and only one of the couple is required to be resident in England and Wales, although both must be relevant nationals. It can be obtained on the application of just one of the couple. While it is possible for objections to the grant of a licence to be made by third parties, the timescale offers little opportunity for such objections, and we understand that it is extremely rare for any objections to be made.[72]

4.106 If a couple wish to marry in a place in which they would not usually be entitled to marry, then they must apply for a special licence to authorise the wedding. The most common use of a special licence is to enable a wedding to go ahead in a place of worship that is not licensed for weddings. This might be a private chapel (such as one within a school, college or large private dwelling), a chapel of ease within the parish (a public chapel built as a more convenient place of worship for parishioners in large or populous parishes), or a cathedral that is not also a parish church. If necessary, a special licence can also be granted to allow a couple to marry in a parish church that they would otherwise have no right to marry in.[73] In exceptional cases, a special licence can be granted to permit a wedding to go ahead other than in a place of worship, for example if one of the couple is seriously ill and cannot be moved. Unlike banns and common licences, a special licence can be granted to those who are not relevant nationals. However, the Faculty Office will not grant a special licence simply to enable a couple to avoid the requirements imposed by immigration law. Like a

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70 Marriage Act 1949, s 5. See further paras 2.69 to 2.91 above.

71 Marriage Act 1949, ss 5, 6 to 14, and 18 to 21.

72 Marriage Act 1949, ss 5, and 15 to 16.

73 For example, if it is discovered shortly before the wedding that the couple are not entitled to marry in the church in which they were planning to marry and where the banns have been called.

common licence, a special licence can be obtained without any waiting period or any publicity.

4.107 The planned introduction of a schedule system is likely to result in some minor changes to Anglican preliminaries. The explanatory notes to the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 explains that the calling of banns, or the grant of a common or special licence, would still be the authority for the wedding to proceed.[74] However, it is envisaged that members of the clergy would be responsible for issuing a "marriage document".[75] This document will perform essentially the same function as a schedule in that it will be taken to the wedding and signed by the couple, their witnesses, and the member of the clergy officiating at the wedding. It will then be returned to the register office, for registration of the marriage. We consider the implications of this further in Chapter 8, but it is worth noting that the schedule system will entail this additional requirement.

Issues with the current law

Inequality of treatment

4.108 The very fact that there is a separate system of Anglican preliminaries raises issues of inequality of treatment, especially now that only a minority of weddings now take place according to Anglican rites. The 15,000-plus persons marrying according to other religious rites may well resent the fact that they have to comply with civil preliminaries when those marrying according to Anglican rites do not. There is also a risk that allowing one religious group to marry without going through the civil preliminaries will lead couples who belong to other religious groups to believe that they can do so too.

4.109 In addition, all of those who have to go through the more demanding civil preliminaries may envy the relative speed of Anglican preliminaries. Now that those giving notice at a register office must wait at least 29 days before they can marry,[76] it is anomalous that couples marrying in the Anglican church have an option that allows a wedding to go ahead with no notice period at all.

4.110 Moreover, given the rigorous checks of documentary evidence that are carried out as part of the civil preliminaries, it also seems anomalous that the Churches have no power to call for such evidence. Civil preliminaries are already more effective in protecting the state's interest in marriage and this will only increase as Government digitises more of its records and more information is available to registration officers.

4.111 Moreover, since 2014 the option of marrying by banns or common licence has been limited to couples who are both relevant nationals.[77] The difference in treatment of those who are relevant nationals and those who are not is therefore considerably starker in the context of Anglican preliminaries than in the context of civil preliminaries. The Church in Wales told us that some clergy resented having to check the nationality

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74 Explanatory notes to the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, para 6.

75 Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, s 1(2)(b).

76 The 28-day notice period only begins the day after notice has been given. The civil equivalent of the common licence – the superintendent registrar's certificate by licence – was abolished in 1999.

77 Marriage Act 1949, s 5(1)(3). There remains an exception for banns published on naval ships at sea.

of those wishing to marry as they felt that they were being asked to be immigration officers.

4.112 Inequality of treatment is also an issue as between the Church of England and the Church in Wales as different options as to where banns can be called have been added over time. Some options have been added by means of primary legislation that applies to both the Church of England and the Church in Wales. Other options have been added by Measures that apply only to the Church of England. Some of these Measures have amended the Marriage Act 1949 (with the result that some provisions of the Act do not apply to the Church in Wales, unless further primary legislation has been passed extending such provisions).[78] Other Measures exist as an independent source of law for the Church of England. The result is that the law does not always apply equally to the Church of England and the Church in Wales, although the extent of that inequality is not always apparent on the face of the Marriage Act 1949.

Lack of clarity

4.113 This leads on to a further issue, the lack of clarity in the current law. The passage of Measures that exist as an independent source of law for the Church of England means that the Marriage Act 1949 no longer fulfils its original purpose of codifying the law of marriage.

4.114 In addition, different options have been added at different times depending on the rules as to where couples could marry and the organisational needs of the church. The way in which parishes are organised has changed over the centuries. In the 18th century most parishes had their own church with at least a weekly service and their own incumbent and so the need for alternative provision to be made for where banns could be called was relatively limited, although a number of places lay outside the parish system. In the 19th century population growth led to additional Anglican chapels being constructed within populous parishes to ease pressure on the parish church. In the 20th century declining church attendance led to the reorganisation of parishes and the increasing likelihood of a single member of the clergy being responsible for more than one benefice. In the 21st century the closure of churches and the declining number of clergy has led to the need for other measures to be put in place. Each of these changes has left its mark on the provisions as to where banns may be called, but these cumulative changes have been piecemeal rather than systematic. The tendency has been to add rather than to rationalise and the gradual accretion of different alternatives means that some of the alternatives overlap and potentially contradict each other.

4.115 In some cases it is difficult to work out exactly what the law requires or allows. Separate provision is made for parishes that have no church, for parishes whose church is being repaired or rebuilt, and for parishes within a single benefice. It is not clear where banns are to be called if a parish that has no church (which is deemed to belong to the adjoining parish) is also within a united benefice (in which case the bishop is to direct where banns are to be called): what if the adjoining parish is not

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78 For example, the provision in s 7(1) of the Marriage Act 1949 that banns must be published at the "principal" service only applies to the Church of England, as a result of amendments made by the Church of England Marriage (Amendment) Measure 2012.

part of the united benefice? Nor is it clear that it is possible for a common licence to authorise a wedding to take place in an alternative church where the church in which the couple could marry is being repaired or rebuilt.[79]

Lack of effective publicity

4.116 The Church of England expressed the view that the calling of banns is a key part of marriage being a public act, with the Church in Wales agreeing that many share that view and suggesting that, if there were to be any change, new procedures should retain that public aspect. However, while banns are "public" in the sense of being called in a place that is open to the public, we would question the extent to which they achieve publicity for the intended wedding. According to the Church of England's own figures, in 2018 the median attendance on a usual Sunday was just 27. In the smallest 5% of churches this fell to just 7.[80] Nor it is likely that those attending will have any personal knowledge of those planning to marry. Just 3% of those aged 25 to 34 – the age group most likely to marry – identify as Anglican, compared to a third of those aged over 75.[81]

4.117 Nor is there any evidence that banns enable any potential impediments to the wedding to be identified. This is not a new criticism. It was made by many of those giving evidence to the 1868 Royal Commission, including a number of bishops.[82] It has, however, acquired even greater force with the steep decline in church attendance in recent years. In our meetings with the Church in Wales and the Church of England there was no evidence that the calling of the banns had resulted in impediments to the marriage being discovered in recent years.

4.118 In any case, the possibility of obtaining a common or special licence means that an Anglican wedding can go ahead with no real publicity at all. Indeed, the desirability of avoiding publicity in certain cases is given as one of the advantages of a licence. The Church in Wales told us that licences are sometimes used for celebrity weddings, or where there are public security concerns, including issues surrounding domestic violence. These of course are not issues that are exclusive to Anglican weddings, and it seems unfair that such protection might depend on the nature of the ceremony.

Lack of any obligation to see both of the couple or check documents

4.119 There is no legal obligation on clergy to see both members of the couple before the publication of banns, although the Church of England told us that it is normal practice to do so. Similarly, a common licence can be granted on the application of just one of the couple. The Church of England told us that the person responsible for granting the licence might want to meet with both of the couple if there were particular concerns,

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79 Marriage Act 1949, s 15, makes no mention of this possibility. The Marriage Act 1824 dealt with this lacuna in the equivalent provisions in the Marriage Act 1823, but both Acts were repealed in 1949.

80 Church of England, *Statistics for Mission 2018* (2018) Table 1.

81 J Curtice, E Clery, J Perry, M Phillips and N Rahim (eds), *British Social Attitudes: the 36th Report* (2019). There are more marriages among those aged 25 to 29 and 30 to 34 than within any other age group: Office for National Statistics, *Marriages in England and Wales, 2016* (28 March 2019).

82 Report of the Royal Commission on the Laws of Marriage (1868) [4059], Appendix 1, pp 1 to 2, 7 to 8, 51, and 53.

and the Church in Wales told us that meeting with both of the couple was encouraged. Neither, however, required such a meeting.

4.120 Nor do clergy have any statutory power to call for documentary evidence of the details couples provide, save for those relating to nationality.

4.121 There is a canonical requirement for the officiating member of the clergy to see both parties in advance of the wedding in order to "explain … the Church's doctrine of marriage… and the need of God's grace in order that they may discharge aright their obligations as married persons".[83] However, there is no practice of interviewing the couple separately to guard against forced marriage.

4.122 The absence of any requirement to see both parties, or to check documents, appears increasingly anomalous when viewed alongside the rigour of the civil preliminaries.

Undue complexity resulting in mistakes being made

4.123 The rules governing banns account for more sections of the Marriage Act 1949 than any other issue. The basic rules – that the banns be called in the parish of residence and the parish where the wedding is to take place – are simple enough. It is the numerous provisions setting out options and alternatives that make the law so complex and confusing.

4.124 The General Synod debated whether to retain Anglican preliminaries in 2017, and the complexity of the law was a key theme among those pressing for their abolition.[84] The Reverend Stephen Trott commented on the length of the guidance issued to clergy and told the Synod that he struggled to understand the "arcane" language despite having a post-graduate degree in law.[85] The Reverend Prebendary Stephen Lynas agreed that "a lot of clergy and lay parish administrators … struggle with the system as we have it".[86] He told the Synod that in his role as a bishop's chaplain he received "a lot of phone calls from parish clergy who are struggling to deal with the marriage regulations we have".[87]

4.125 The Church in Wales identified laypeople wrongly publishing banns during services at which a member of the clergy was present as the most common type of error with banns. The law only permits banns to be published by a layperson if no ordained person is officiating at the service at which banns are called.[88] It is understandable that there should be scope for error about when exactly a retired or visiting priest is officiating at the service, particularly if the majority of the service is performed by a layperson.

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83 Canon of the Church of England B30(3).

84 The General Synod is the national assembly of the Church of England.

85 *General Synod Report of Proceedings 2017: February group of sessions* (vol 48(1)) p 109.

86 *General Synod Report of Proceedings 2017: February group of sessions* (vol 48(1)) p 118.

87 *General Synod Report of Proceedings 2017: February group of sessions* (vol 48(1)) p 118.

88 Marriage Act 1949, s 9(2)(b).

4.126 The rules on where banns should be called are particularly confusing and it would be understandable if mistakes are sometimes made in this context as well. The Church of England acknowledged that there were occasional mix-ups regarding where banns had to be published. During the General Synod debates in 2017 the Reverend Tiffer Robinson suggested that "the clergy are still getting it wrong continually",[89] giving examples of clergy publishing banns in the wrong parish or failing to publish banns altogether.

4.127 In practice, where mistakes arise, application will be made for either a common licence or special licence to authorise the wedding. Even if the mistake is not rectified the validity of the marriage is unlikely to be affected. But the fact the mistake can be put right is not a reason for ruling out reform.

4.128 Of course, at one level this complexity – and the resulting likelihood of making mistakes – is unlikely to matter to the couple themselves. A marriage will only be void if the couple "knowingly and wilfully" marry "without banns having been duly published".[90] What counts as "due" publication is not defined in the statute and the now somewhat dated case law focusses on the names in which the banns were called rather than where they were called. It is also expressly provided that the validity of a marriage cannot be challenged on the basis that the couple were not living where they claimed to be, or were not on the electoral roll of the church where they married, or did not have a qualifying connection with the parish in which the wedding took place.[91] As long as the banns have been called somewhere, it is unlikely that a couple would be regarded as knowingly and wilfully failing to comply with the law. It is even possible that the marriage would still be valid without banns having been called at all if one or both of the couple did not realise that this was a requirement.

4.129 Yet the very fact that mistakes are unlikely to have any adverse consequences raises the question as to whether much of the current detail is really needed. The level of regulation seems out of proportion to the legal significance attached to where and how banns are called. If, as a matter of law, the validity of a marriage is unaffected by where, how and by whom the banns are called, it might be regarded as unnecessary to have so much detailed regulation on the topic.

The administrative burden of the current law

4.130 The complexity of the current law imposes a heavy administrative burden on the clergy and those who support them. The Church in Wales highlighted the difficulty of keeping its over 1,000 clergy up to date about the law, especially as many were retired or rarely solemnized a marriage. The administrative burden of publishing banns was also a key theme in the 2017 General Synod debate on whether Anglican preliminaries should be retained.

4.131 In particular, the requirement that the banns be called in the parish church of the parish in which each of the couple is resident, as well as the church in which they

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89 *General Synod Report of Proceedings 2017: February group of sessions* (vol 48(1)) p 124.

90 Marriage Act 1949, s 25(2)(b).

91 Marriage Act 1949, ss 24(1) and 72(3); Church of England Marriage Measure 2008, s 4(2); Marriage (Wales) Act, s 5(2).

intend to marry, leads to duplication of work if the couple live in different parishes and are planning to marry in a third. The Church in Wales expressed the view that this was unnecessary duplication of work for clergy in all three churches to carry out the required nationality checks.

Redundant provisions

4.132 Finally, some of the provisions relating to banns are now clearly redundant. The most obvious is that relating to churches injured by war damage.[92] A second is that permitting the banns to be called in Scotland, Northern Ireland or Ireland if one of the couple lives there,[93] given that each of those jurisdictions has now adopted a schedule system and clergy there no longer call banns for their own residents. While this does not mean that they would be unable to call them for weddings taking place in England and Wales, our understanding is that they no longer do so.

Options for reform

4.133 If Anglican preliminaries are to continue to have legal effect, there are a number of reforms that would be beneficial. One beneficial reform will be the introduction of a schedule system, under the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, a move which we welcome. Our provisional proposals assume that the schedule system will apply, in an adapted form, to Anglican preliminaries, with marriage documents issued to couples and returned for registration. Beyond that, however, redundant provisions could be removed, duplication of work avoided wherever possible, and provisions on where the banns can be called (and by whom) rationalised. At the same time, it would also be desirable for some of the existing procedures to be strengthened in line with those that apply to the giving of notice.

Removing redundant provisions

4.134 At the very least, the provisions dealing with the calling of banns in Scotland, Northern Ireland or Ireland should be removed now that it is no longer a realistic option for banns to be called there. The Church of England told us that it already advises clergy against solemnizing marriages on the authority of banns published in those places. We therefore provisionally propose that banns called in Scotland, Northern Ireland or Ireland should no longer authorise a wedding in England or Wales.

4.135 We also provisionally propose that the provision for banns to be called in an alternative church when the church where they should have been called was injured by war damage should also be repealed.

Avoiding duplication of work where possible

4.136 The Church in Wales suggested that the law should clarify that only one member of the clergy need perform the nationality check. It thought that it should be the responsibility of the one conducting the wedding to do that check. However, this alone would not necessarily solve the problem and might risk creating new ones. For example, if the check was not carried out in the parish where each person lives, and the banns were published before it was discovered that one or both were not relevant

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92 Marriage Act 1949, s 19. This provision does not extend to Wales: Marriage Act 1949, s 80 and sch 6.

93 Marriage Act 1949, s 13.

nationals, the work involved in calling the banns would have been wasted and the couple might not have sufficient time to comply with the civil preliminaries before the wedding was intended to take place.

Rationalising the rules on where banns can be published

4.137 The point raised by the Church in Wales about the duplication of work does however raise the question as to whether banns need to be called in multiple parishes at all. The solution it suggested would be achieved if banns only had to be called in the church where the marriage was to take place. This change would remove the need for clergy in the couple's parish(es) of residence to have to call banns and certify that they had done so.[94] It would also remove the need to make provision for those living in places which either have no parish church or where the existing church is being repaired, since the wedding would by definition not be taking place there.[95]

4.138 We recognise that this idea is unlikely to find favour with those who see the calling of the banns as an important part of the pastoral role of the church. There is also the risk that the opportunity for the local community to raise any impediments to the marriage would be lost if banns no longer had to be called in a person's parish of residence. Both the Church of England and the Church in Wales took the view that, if banns are to remain, they should continue to be called in the parish(es) where the couple live. The Church of England did raise the possibility of removing the requirement for banns to be published in the church where the wedding was to take place, but concluded that this would only add greater complication.

4.139 We note however that the link between an individual and their parish of residence has already been broken, at least in England, by the church's own rules on where banns are to be called where a number of different parishes have been brought together as one benefice.[96] As was noted during the debates in the General Synod in 2017, the fact that couples may need to arrange for their banns to be called in multiple parishes also undermines the idea of the church providing a "one-stop-shop". We also wonder if there is any real benefit to either the couple or the church in publishing banns for local residents who do not attend their parish church and are not planning to marry there. We understand that this is more of an issue in England than in Wales,[97] and for urban rather than rural clergy. While we are not making any provisional proposal that banns should only be called in the church where the wedding is to take place, we would be interested in consultees' views on this.

4.140 In the absence of any such change, we think that there is a strong argument for the current rules to be rationalised. Provisions that were introduced in earlier centuries need to be carefully scrutinised to consider whether they are still necessary and appropriate to the changed context in which the church operates. We also think that it

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94 Marriage Act 1949, s 6(1) and 11.

95 Marriage Act 1949, s 6(3) and 18. The ability to marry in one's usual place of worship, or a parish with which one has a qualifying connection, would resolve the need to make alternative provision as to where the wedding could take place where the church in the parish of residence was unavailable.

96 Marriage Act 1949, s 23; Mission and Pastoral Measure 2011, sch 3 para 12(4).

97 The Church in Wales noted that there were fewer complaints from Welsh clergy as they retain the fee for publishing banns, unlike their English counterparts.

would be useful for any future legislation to set out a clear hierarchy where there are overlapping possibilities. Any such rationalisation would, however, need to be carried out with an understanding of the current needs and operation of the church. It would therefore be better for the Church of England and the Church in Wales to undertake such work themselves.

Clarifying when banns may be published and by whom

4.141 Given the confusion over when exactly a layperson may call banns, the Church in Wales suggested that one solution would be to allow banns to be published by anyone licensed by the bishop to lead a service, regardless or the presence or involvement of a member of the clergy. This would offer greater flexibility.

4.142 The question of whether churchwardens are able to call banns should also be clarified. While the Faculty Office reassured us that churchwardens could do so,[98] the absence of any express authority in the canons setting out their role might lead the more cautious to abstain from doing so. Such clarity could be achieved by a change to the canons rather than to the legislation.

Requiring clergy to check documents

4.143 As we note at paragraph 4.120 above, there is no power for members of the clergy to call for documentary evidence in support of the information given by the couple. The view of the Church of England was that clergy would not want such powers in any case. It noted that clergy are advised to ask to see the decree absolute if one of the couple tells them that he or she is divorced, but that they would not ask to see a death certificate in the case of a person who has been widowed. It also doubted whether clergy would be able to scrutinise the veracity of any document they are supplied with.

4.144 The inability of the clergy to verify documents was also a point made during the debates in the General Synod in 2017. The Reverend Stephen Trott pointed out that clergy

> have no way to verify any of the documents with which they are presented, unlike civil registrars who have access to the entire Government database against which they can check applicants.[99]

4.145 We are therefore not making any provisional proposal that clergy should have the power to call for, and the requirement to scrutinise, any additional documentary evidence, but we are interested in consultees' views on whether there should be such a power and/or requirement.

Requiring clergy to meet with each of the couple

4.146 As we note at paragraph 4.121 above, the member of the clergy conducting the wedding has a duty to meet with the couple to explain the Church's conception of marriage. The Faculty Office emphasised that clergy will generally meet with the couple on a number of occasions prior to the wedding. The Church in Wales similarly

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98 Marriage Act 1949, s 9(2) refers to a layman being able to publish the banns under certain conditions.

99 *General Synod Report of Proceedings 2017: February group of sessions* (vol 48(1)) p 110.

noted that it insists on marriage preparation, so clergy meet with couples as a matter of course.

4.147 There is however no requirement that those responsible for calling the banns or granting a common or special licence should meet with both members of the couple, let alone that they should see each person separately. With the concerns that have been raised about forced and predatory marriages this might appear something of a loophole. When asked if it would be a problem in practice if the law required clergy to meet each of the couple separately, the Church in Wales thought that this would depend on who would be required to meet them. It told us that it would be more difficult to require this of the clergy in the couple's parish(es) of residence than of the person officiating at the wedding, presumably because the latter will usually be undertaking the marriage preparation and meeting with the couple as part of this.

4.148 Again, we are not making any provisional proposal but we are interested in consultees' views on whether there should be a specific requirement to meet with each of the couple separately before banns are published or a common licence granted.

Consultation questions

Consultation Question 13.

4.149 We provisionally propose that banns published in Scotland, Northern Ireland or Ireland should no longer authorise an Anglican wedding in England or Wales.

Do consultees agree?

Consultation Question 14.

4.150 We provisionally propose that the rules about where banns can be published to authorise an Anglican wedding if a church is injured by war damage should be repealed.

Do consultees agree?

Consultation Question 15.

4.151 We invite consultees' views as to whether banns to authorise an Anglican wedding should be required to be published only in the church where the wedding is to take place.

Consultation Question 16.

4.152 We invite consultees' views as to whether to authorise an Anglican wedding clergy should:

(1) have the power to call for documentary evidence and be required to check such evidence; and

(2) be required to meet with each of the couple separately, before banns are published.

Consultation Question 17.

4.153 We invite consultees' views as to whether both of the couple should be required to attend and make separate declarations that there is no impediment to their marriage in order for a common licence to be granted to authorise an Anglican wedding.

The difficulty of rationalising the requirements

4.154 The fact that our provisional proposals for reform of the law relating to Anglican preliminaries are relatively minor ones is not because we think that the law is satisfactory. Rather, it reflects the difficulty of making any proposals for reform that would be effective while retaining the purpose of banns or licences.

4.155 For example, as long as the Church of England and the Church in Wales regard banns as an important pastoral opportunity, it is likely that both would object to any change in the requirement that banns be called in the parish(es) where each member of the couple lives. The Church of England told us that couples increasingly like to attend the publication of their banns, and during the debates in the General Synod examples were given of individuals who had started coming to church as a result of hearing their banns read. Now that couples increasingly marry outside their parish of residence, requiring banns to be called there and encouraging the couple to attend is perhaps the only opportunity for the local church to show what it has to offer. While some couples may worship – or start to worship – in the church where they marry, if they are going to begin coming to church it is most likely to be in their parish of residence.

4.156 Whether this is sufficient reason for banns to have legal effect is open to question. In our view it is not clear that the church's pastoral role is necessarily linked to the calling of banns. The guidance issued by the Faculty Office does make it clear that pastoral opportunities may arise regardless of the type of preliminaries that are used.[100] In addition, some stakeholders suggested that relieving clergy of the need to call banns would enable them to concentrate on their pastoral role. It is even less clear that the

[100] Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 2.8.

pastoral role of the Church is linked to the calling of banns having legal recognition. Nonetheless, the Church of England took the view that clergy would not wish to, and the Church of England could not compel clergy to, publish banns if they had no legal function. The Church in Wales similarly predicted that those clergy who already feel that banns are not a good idea would say that calling banns for non-legal purposes would be an "administrative waste of time". Both noted that the fee for publishing banns would be lost, and the Church in Wales suggested that banns might have to be called in a different and less administratively burdensome way.

4.157 Similarly, while the lack of any waiting period for a common licence appears as an anomaly, we have been told that it is important, given that common licences are most commonly used where there has been a problem with the banns. The Church of England and the Church in Wales both gave the example of it only being discovered shortly before a wedding is due to take place that the banns had not been properly published. We accept that the current complexity of banns is such that it is likely that mistakes will be made. However, if the key reason for retaining one form of preliminaries is the likelihood of mistakes being made in relation to another, this would seem to be a reason for abolishing both, rather than retaining both.

4.158 Nor is it easy to make any recommendations for reform in relation to special licences without undermining the purpose they serve, or without other wide-ranging reforms. As long as there continue to be limitations on the churches and chapels within which banns can be called and weddings can take place as a matter of course, there needs to be some form of authority to permit weddings in other places. As long as banns are required to be called on three Sundays, there needs to be some way of enabling a wedding to take place more speedily, for example if one of the couple (or a family member) is ill and not expected to recover.

4.159 However, the difficulty of making proposals for reforming banns or licences is not necessarily a reason for retaining Anglican preliminaries. Rather, it may be a reason for proposing that Anglican preliminaries should cease to have any legal role.

4.160 This is an argument that has been made within the Anglican community. In 2017, the Motion that Anglican preliminaries should be replaced by universal civil preliminaries was defeated by only a narrow majority. The overall vote was 184 to 163, with seven abstaining.[101] The majority was narrowest in the House of Laity, with 79 in favour of universal civil preliminaries and 81 against, with seven abstaining. In the House of Clergy 74 voted in favour and 87 against, and in the House of Bishops 10 voted in favour and 16 against. At all levels, then, those favouring universal civil preliminaries are almost equal to those arguing for the retention of Anglican preliminaries. The Church of England and the Church in Wales both acknowledged that there were divisions among clergy regarding the calling of banns, with the Church in Wales noting that its clergy appear "split right down the middle" on the merits of publishing banns.

4.161 We think that the problems that we identify above would better be solved by moving to universal civil preliminaries. This would remove the uncertainty and complexity of the current law and the administrative burden that it imposes on the clergy and others. With our provisional proposals for notices of marriage to be published online and for

[101] *General Synod Report of Proceedings 2017: February group of sessions* (vol 48(1)) p 127.

in-person interviews it would ensure more effective publicity and checks, and better protect the state's interest in marriage.

4.162 Moving to universal civil preliminaries would not prevent banns from being called as a precondition of marrying in the Anglican church: both the Church of England and the Church in Wales could require this, in the same way that any other religious group could require certain formalities to be completed. The issue is solely whether they should have legal effect. As we discuss below, there are also intrinsic benefits to adopting universal civil preliminaries that would support such a system regardless of how Anglican preliminaries currently operate.

UNIVERSAL CIVIL PRELIMINARIES

4.163 It has long been argued that England and Wales should adopt a system of universal civil preliminaries. The suggestion was made at the time of the Marriage Act 1836,[102] by the Law Commission in 1973,[103] and in a Government White Paper in 2002.[104] In the Scoping Paper we identified universal civil preliminaries as an option that would need to be considered in a reform of weddings law.

4.164 Universal civil preliminaries would offer the advantage of simplicity as there would be one single set of rules for giving notice for all weddings. Civil preliminaries are relatively straightforward, and the provisional proposals that we set out above would make it easier for couples to give notice.

4.165 The process of giving notice in the register office also offers greater certainty in terms of whether the required preliminaries have been completed. There are certainly cases in which couples have gone through a religious ceremony of marriage without giving notice. However, we have not heard of mistakes being made in the process of giving notice or the issue of a superintendent registrar's certificate, whereas we have heard numerous examples of mistakes being made in the calling of banns.

4.166 Requiring all couples to give notice in the same way would ensure equality of treatment of all beliefs and cultures. The fact that couples marrying according to Anglican rites do not need to attend the register office is likely to create a sense that the law is unfair and foster misunderstandings. The issue of equality was emphasised by the National Secular Society in championing universal civil preliminaries.

4.167 Universal civil preliminaries would also better reflect the interest of the state in ensuring that a wedding will only take place if the couple are free to marry each other. As we explain above, we see the preliminaries as the key opportunity for the state to carry out the checks that are needed. Civil preliminaries are more rigorous than Anglican preliminaries and requiring all couples to comply with the civil preliminaries removes the scope for some to evade the usual checks by marrying in the Anglican church.

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102 *Hansard* (HC) 12 February 1836, vol 31, col 375.

103 Family Law: Report on Solemnisation of Marriage in England and Wales (1973) Law Com No 53.

104 Civil Registration: Vital Change. Birth, marriage and death registration in the 21st century (2002) Cm 5355.

4.168 In this context, we note that registration officers receive extensive training in how to check whether the couple are free to marry each other and will require documentary evidence to establish whether a previous marriage was terminated by death or divorce. A participant at the Warwickshire County Council Registration Service Annual Conference emphasised the importance of expertise at the stage of giving notice. A number of participants at the 2019 Local Registration Services Year Ahead conference similarly told us that they favoured everyone being subject to the same legal checks regarding their capacity and intention to marry.

4.169 In particular, with the possibility of publishing notices online, civil preliminaries would potentially be much effective than they are at present, strengthening the argument for these being the sole form of preliminaries. Online notice is arguably truer to the original purpose of banns in bringing the intended marriage to the attention of the community in the most effective and public way possible. Moreover, the potential for checks to be carried out against other records as the process of digitisation continues means that it will be possible for registration officers to check whether a couple are eligible to marry.

4.170 In the Scoping Paper we noted that universal civil preliminaries would offer many of the same benefits as universal civil marriage, without taking choices away from couples as to how their wedding is celebrated. The Marriage Foundation, which favoured universal civil marriage, acknowledged that universal civil preliminaries would also bring significant benefits. Many jurisdictions offer couples the option of a religious wedding but require them to comply with civil preliminaries. This is the case in Scotland, Northern Ireland, and Ireland, all of which have adopted a schedule system.

4.171 We also noted that we would need to consider whether there were any reasons for retention that could outweigh the advantages of universal civil preliminaries. While the Church of England and the Church in Wales are generally accepted as having a duty to marry their parishioners, subject to certain exceptions, this does not require them to have control over the preliminaries. No member of the clergy could be required to conduct a wedding that they are exempted from conducting as a result of notice being given. Nor do we think that the arguments put forward in relation to the pastoral role of the church is a reason for Anglican preliminaries to have legal force.

4.172 In short, we do not think that the arguments for retaining Anglican preliminaries are sufficiently compelling to outweigh the considerable advantages of universal civil preliminaries. Many of the stakeholders that we have spoken to so far during this project were strongly in favour of moving to a system of universal civil preliminaries. Even the Church of England and the Church in Wales are divided on the issue. However, given the significance of the change, we are not making a provisional proposal at this stage but instead invite consultees' views.

Consultation Question 18.

4.173 We invite consultees' views as to whether:

(1) Anglican preliminaries should continue to be recognised as legal preliminaries to weddings officiated by the Church of England and the Church in Wales; or

(2) all weddings should be preceded by civil preliminaries.

Chapter 5: Officiants

INTRODUCTION

5.1 In this chapter we set out our provisional proposals for a revised law of marriage that is based on regulating who officiates at a wedding rather than where the wedding takes place.

5.2 We use the terms “officiate” and “officiant” to underline the fact that our focus is on the person who is responsible for ensuring that the legal requirements of the ceremony are met, rather than on the person who conducts the ceremony. The person who conducts the ceremony is sometimes described as a “celebrant” but as that is not a term used in either the current law or our provisionally proposed scheme, we confine its use to those who conduct non-religious (and non-legally binding) ceremonies.

5.3 The two roles of officiating at the wedding and conducting the ceremony are not mutually exclusive. They may be performed by the same person at a wedding, or by different people. Separating out the roles helps to make it clear what is a matter for the law and what is a matter for religion, custom, practice, or personal choice.

5.4 This distinction between ensuring that the legal requirements are met and conducting the ceremony builds on the current structure of the law. While there is always someone tasked with ensuring that the wedding is registered, the legislation is generally silent on who should conduct the ceremony. There are good reasons for this silence, given that different religious traditions have different views about whether a particular person, or indeed any third party, is needed to conduct the wedding. Our view is that the law should continue to provide a framework that respects and accommodates different beliefs, traditions, practices, and choices, and that this is best achieved by authorising an officiant rather than the person conducting the ceremony.

5.5 However, while we think that it is right that the law should not regulate who should conduct the ceremony, in many other respects the current law is highly problematic. The rules on who is responsible for registering marriages, and how they are appointed, are both complex and inconsistent. Only specific persons have the power to register marriages, these being:

(1) registrars;

(2) Anglican clergy;

(3) Jewish secretaries of synagogues;

(4) Quaker registering officers; and

(5) authorised persons appointed for places of worship of other faiths and denominations.

Each is authorised in a different way, and has slightly different responsibilities. For authorised persons, there is the additional problem that their authorisation is

dependent on the regulation of a particular building. Religious groups that do not worship in specific buildings, or do not wish to register those buildings for weddings, cannot appoint authorised persons. Couples are therefore deprived of the possibility of marrying according to the rites of this particular faith or denomination, or, if they do go through a ceremony of marriage, risk it being denied legal recognition.[1] In addition, there is currently no option for independent celebrants, or those affiliated to non-religious belief organisations, to be authorised to register weddings.

5.6 Under our provisionally proposed scheme, by contrast, there would be a single concept of an officiant with a common set of responsibilities, reflecting our principles of certainty and simplicity, and fairness and equality. At the same time, the state's interest in marriage would be protected by making it clear that every ceremony should be attended by an officiant who had specific duties to ensure that the legal requirements were met, along with the responsibility to uphold the dignity and solemnity of marriage. We also provisionally propose that authorisation of an officiant should not be dependent on a group having a place of worship that is registered for weddings.[2] We think that this change is necessary to satisfy our principles of fairness and equality, and of respecting individuals' wishes and beliefs.

5.7 These provisional proposals would address the inequalities that exist within those groups who are able to conduct marriages under the current law. We are aware that other groups would also like to officiate legally binding marriages and are already conducting significant numbers of non-legally binding ceremonies. Humanists UK told us that it has 257 celebrants performing wedding ceremonies in England and Wales, who have performed over 1,000 such ceremonies in each of the past four years. As the All-Party Parliamentary Humanist Group noted in 2018, the number of Humanist wedding ceremonies in England and Wales had increased by 110% since 2012 and by 240% since 2004.[3] A recent large-scale study of independent celebrants has estimated that there are at least 1,000 independent wedding celebrants in England and Wales performing over 10,000 wedding ceremonies each year. The study also suggests that the number of such ceremonies has more than doubled since 2015.[4]

5.8 Our Terms of Reference provide that we "will not make recommendations as to whether the groups who can solemnize marriages should be expanded". The question whether Humanists and other non-religious belief organisations should be able to solemnize weddings is therefore a matter we will not be considering as part of our project, as is the question whether independent celebrants should be able to do so. As this issue lies outside our Terms of Reference we do not consider the policy and

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1 A lack of registration does not invalidate a marriage, but it is a prerequisite for registration that the wedding be conducted according to the requirements of the Marriage Act 1949. The term "unregistered marriages" is sometimes used as a shorthand to refer to ceremonies that would not be capable of registration, ie those that fall outside the statutory scheme.

2 Whether there should continue to be restrictions on where weddings can take place is considered in Ch 7.

3 All-Party Parliamentary Humanist Group, *"Any Lawful Impediment?" A report of the All-Party Parliamentary Humanist Group's inquiry into the legal recognition of humanist marriage in England and Wales* (2018) p 9.

4 S Pywell, "The day of their dreams: celebrant-led wedding celebration ceremonies" [2020] *Child and Family Law Quarterly* 177, 181.

legal arguments – including the human rights arguments – for and against expanding the class of groups that can conduct legally binding weddings.[5]

5.9 Our Terms of Reference do, however, require us to consider how a new system *could* include weddings conducted by non-religious belief organisations and independent celebrants if it were decided that the law should allow these groups to perform legally binding weddings. In devising a new scheme based on officiants, it is necessary to ensure that the scheme is compatible with human rights law in its application to those groups who are permitted to conduct weddings – including any new groups to which it may apply.

5.10 In this chapter we begin by setting out the problems with the current law in more detail. We then go on to set out how we think a new scheme could work, looking at what the role of the officiant would be, how officiants could be authorised, the criteria that they should have to meet, and what the process for withdrawal of authorisation should be.

THE CURRENT LAW

5.11 The current law is complex and lacking in clarity. It can be perceived as unfair in the way that civil and religious weddings, and different types of religious weddings, are subject to differing requirements, resulting in inequality of treatment. The result is that some couples have more limited options than others in how and where they can have their wedding celebrated. These problems are a legacy of the way in which the law has evolved. They reflect choices and compromises made in the early 19th century that are no longer appropriate in today's very different social and religious context.

5.12 The one thing that unites all weddings under the current law is that someone is tasked with ensuring that it is registered.[6] Beyond this, there is no consistency in how that person is described, what their other responsibilities are, or how they are appointed.

5.13 Civil weddings – whether in a register office or on approved premises – are registered by registrars. Each local authority is responsible for appointing its own registrars and a registrar's authority is limited to the registration district to which they are appointed. A civil wedding will also be attended by a superintendent registrar, who in practice will conduct the ceremony.

5.14 Anglican weddings are registered by the person who conducted the ceremony, who will usually be the incumbent of the church where the wedding takes place. However, it is ordination (being in "Holy Orders") that determines whether a person has authority to conduct a wedding. The authority of an ordained member of the clergy to conduct a wedding is not limited to a particular church or area, and it is common practice for

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5 In a decision published shortly before this Consultation Paper was published, the court determined that weddings law treats Humanist couples differently to those who hold religious beliefs, but that the difference in treatment is justified because of the wider review of weddings law that is taking place: *Harrison v Secretary of State for Justice* [2020] EWHC 2096 (Admin). This decision does not affect the scheme that we provisionally propose in this paper, which could apply whether or not it extends to Humanist (and independent celebrant) weddings.

6 R Probert, "A uniform marriage law for England and Wales?" [2018] *Child and Family Law Quarterly* 259.

different members of the clergy to conduct weddings in any given church depending on the availability of the incumbent.

5.15 Quaker weddings are registered by a registering officer, who must be certified as such to the Registrar General by the Society's recording clerk.[7] Registering officers are appointed for the district in which the wedding takes place. There is no requirement that they be present at the wedding, or that the wedding should take place in a specific building.

5.16 Jewish weddings are registered by the secretary of the synagogue to which one or both of the couple belong. The wedding need not take place in the synagogue but if the couple belong to different synagogues they must identify which secretary they wish to conduct the wedding. The secretary must have been certified as such by one of the bodies explicitly identified in the legislation. These have been added to over time as different conceptions of Judaism have emerged and now comprise:

(1) The Board of Deputies of British Jews;

(2) The West London Synagogue, which can certify its own secretary and that of any synagogue associated with it; and

(3) The St John's Wood Synagogue, which can certify its own secretary and that of any synagogue associated with it.[8]

The secretary may play a role in conducting the ceremony (for example if they are a rabbi), but there is no requirement for them to do so, or even to attend the wedding.

5.17 It is not possible for a secretary to be certified by one of these authorities for opposite-sex weddings and by a different one for same-sex weddings. This has been an issue for the Masorti movement, which comprises 10 synagogues and six smaller associate communities. Its secretaries are currently certified by the Board of Deputies, but some of its synagogues wish to be able to carry out same-sex weddings and so are moving to having their secretaries being certified by the West London Synagogue instead.

5.18 For other religious weddings, the requirements are even more complex. A religious group needs to have registered its place of worship for weddings before it can appoint an authorised person to register the marriage. Authorisation is given by the trustees or governing body of the registered building. For Roman Catholic places of worship the trustees or governing body includes the Bishop or Vicar General of the Diocese.[9] The

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7 Marriage Act 1949, s 67. The recording clerk is also the relevant governing authority for the purpose of giving consent to same-sex weddings: Marriage Act 1949, s 26B(3).

8 Marriage Act 1949, s 67. The relevant governing authority for the purpose of giving consent to same-sex weddings is respectively the Chief Rabbi or the "person or persons duly recognised" by the members of the West London Synagogue or the St John's Wood Synagogue and their affiliated synagogues: s 26B(5).

9 Marriage Act 1949, s 78(1).

name and address of the authorised person must be certified both to the Registrar General and to the relevant superintendent registrar.[10]

5.19 More than one authorised person may be appointed for any given place of worship, although in this case there will be one "responsible authorised person" who will be the primary point of contact for the General Register Office. An authorised person's authority to register marriages extends to weddings in other registered religious buildings within their registration district.

5.20 Separate provision is made for authorised persons to be appointed to buildings that have been certified for the weddings of same-sex couples.[11] In this case the persons "who are the relevant governing authority in relation to the building" must have given their consent.[12] Exactly who constitutes the "relevant governing authority" will vary according to the structure of each religious group. Within some groups, the decision will be made at the level of the individual building, while within others it will be made at a higher level within the organisation.

5.21 Authorised persons are required to be present at the weddings they register, and the wedding can only take place in a registered place of worship. In the absence of an authorised person, a registrar will need to be present at, and register, a wedding in a registered place of worship.

5.22 The reasons why the current system attaches so much weight to identifying the person responsible for registering the wedding are both strategic and practical. On the one hand, as we note above, focussing on registration sidesteps the question of who conducts the ceremony. On the other, it reflects the state's interest in ensuring that there is a record of the wedding having taken place. It also reflects the fact that weddings currently have to be registered in specific register books, and the convenience of issuing such books to a limited group of identified persons rather than to any person who might conduct a ceremony.

5.23 These varying requirements as to who is responsible for registration, how they are appointed, and what other responsibilities they have, give rise to a number of specific problems: inequality of treatment; a lack of respect for the wishes and beliefs of couples; complexity and lack of clarity; and unnecessary regulations.

ISSUES

Inequality of treatment

5.24 A key problem with the current law is the unequal treatment of different religious groups. While in principle any religious group can appoint a person to register weddings conducted under its auspices, in practice the different conditions that apply to different groups mean that it is easier for some groups than others to do so.

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10 This is the superintendent registrar of the registration district in which the building is situated: Marriage Act 1949, s 43(1).

11 Marriage Act 1949, s 43B.

12 Marriage Act 1949, s 43A.

5.25 Indeed, the fact that only certain religious groups are named in the legislation has led to perceptions that the differences are even greater than they are and that some religious groups are not covered by the current legislation at all. In 2019 the Council of Europe called upon United Kingdom authorities to

> review the Marriage Act to make it a legal requirement for Muslim couples to civilly register their marriage before or at the same time as their Islamic ceremony, as is already stipulated by law for Christian and Jewish marriages.[13]

As Lord Keen of Elie subsequently pointed out, this "does not reflect the true position of marriage law in England and Wales".[14] Nonetheless, the differences that do exist between Anglican, Jewish and Quaker weddings, and those conducted according to other religious rites, clearly foster a sense that the law is unfair.

5.26 For example, there is no reason why the authorisation of a Quaker registering officer or Jewish secretary should enable them to register marriages taking place anywhere, when authorised persons are limited to registering marriages in registered places of worship.[15] Nor is there any reason why the attendance of Quaker registering officers or Jewish secretaries should not be as necessary to the validity of the marriage as that of authorised persons, registrars, or Anglican clergy. The fact that a registrar must attend a wedding in a registered place of worship if no authorised person has been appointed also conveys a message that such weddings are different from Anglican, Quaker or Jewish weddings, for which no equivalent provision is made.

5.27 At the same time, it should be noted that the different treatment of Jewish and Quaker weddings brings its own restrictions. In both cases considerable power is vested in a particular office holder or organisation. The fact that person or organisation has the power to certify who is a registering officer or secretary also means that they have the power to withhold such recognition. The history of Jewish weddings in particular has been complicated by the emergence of different conceptions of Judaism and their initial non-recognition. Even today, if one of the three governing authorities is not willing to certify the secretary of a particular synagogue, then that secretary has no power to register any wedding ceremonies that might take place there. From that perspective, the option of registering a place of worship and appointing an authorised person offers far more freedom.

5.28 The complex history of Jewish weddings illustrates some of the problems with the current approach. It demonstrates the inflexibility that ensues when a single body is identified in legislation, and the need for amending legislation to be passed when that body no longer commands the allegiance of the whole of the religious community. It

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13 Council of Europe, Resolution 2253 (2019).

14 *Hansard* (HL), 4 July 2019, vol 798, col 1516.

15 While in principle an Anglican special licence can allow a wedding to take place anywhere, in practice such licences are generally only granted for weddings in places of worship: see paras 2.84 to 2.85 above.

also raises fundamental questions about the role of the state in effectively endorsing and providing tools to enforce religious orthodoxy.[16]

5.29 Inequality of treatment is not only contrary to our guiding principles, it also carries implications in human rights law. Article 12 of the European Convention on Human Rights protects the right to marry,[17] and article 9 protects the freedom to manifest one's religion or beliefs.[18] Article 14 prohibits discrimination in the enjoyment of those rights.[19] Differences in treatment of people who are in analogous situations therefore carry the risk of violating article 14, in combination with either article 9 or 12, unless those differences have an objective and reasonable justification. For a justification to be objective and reasonable, the differential treatment must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.[20] There is no exhaustive list of legitimate aims that can justify differences in treatment under article 14.

Lack of respect for the wishes and beliefs of individuals

5.30 The fact that the appointment of an authorised person is linked to the prior registration of a place of worship for weddings means that some couples may not have a realistic option of marrying according to the rites of their religious group at all. A religious group that does not worship in a particular building – or in any building at all – cannot conduct legally recognised weddings. This is a particular issue for newer or less wealthy denominations who cannot afford to rent or buy a building. The result is that some religious groups cannot conduct weddings at all, let alone in a location that they regard as meaningful.

5.31 As we explain in Chapter 7 on location in more detail, the current buildings-based system also poses an obstacle to the recognition of non-religious belief organisations and independent celebrants. Many non-religious belief organisations do not have

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16 This point was made at the time of the 1867 to 1868 Royal Commission on marriage, which proposed that synagogues should instead be able to be registered for the purpose of marriage: *Report of the Royal Commission on the Laws of Marriage* (1868) [4059] p xxxvii.

17 Article 12 provides in full:

> Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

18 Article 9 provides in full:

> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

19 Article 14 provides in full:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

20 See for example *Burden v United Kingdom* (2008) 47 EHRR 38 (App No 13378/05) (Grand Chamber decision) at [60].

buildings, or at least not buildings where they would wish to conduct wedding ceremonies even if this were an option available to them.

Complexity and lack of clarity

5.32 As we explain in Chapter 8, registration is not essential to the validity of a wedding. But the person responsible for registration usually has additional important legal responsibilities. Anglican clergy are responsible for conducting the ceremony. Registrars and authorised persons are required to be present when the prescribed words are exchanged.[21] Quaker registering officers and Jewish secretaries are required to confirm that the ceremony conformed to their respective usages.[22]

5.33 The person responsible for registration may also have responsibilities outside the legislative framework. For example, the secretary of the synagogue might also be a rabbi, and an authorised person might be a priest, minister, or imam. However, it is equally likely that the secretary or authorised person will simply be another office holder or even just a member of the congregation, so it cannot be assumed that they will be performing any role in conducting the ceremony.

5.34 By contrast, the law is largely silent on the responsibilities relating to the person conducting the ceremony. The current legislation says nothing about who should conduct a non-Anglican religious wedding: this is left up to the individual religious group. Nor does the person conducting the ceremony have any specific legal responsibilities. Unless they have been specifically identified as the person responsible for registration, rabbis, priests, ministers or imams have no legal role or responsibility and, moreover, no power to register a wedding. Anyone who has the power to register a wedding already has a duty to do so.

5.35 The complexity of the current law, and the different responsibilities that apply to different religious weddings, makes misunderstandings more likely. For example, recent proposals to try to ensure that weddings are conducted in accordance with the Marriage Act 1949 have focussed on the person conducting the wedding. In the absence of any need for an identified person to conduct a non-Anglican religious wedding – or indeed any person at all – such an approach poses practical challenges and is unlikely to be effective.[23]

5.36 On the other hand, the role of the registrar when attending weddings in registered places of worship is also open to misinterpretation. As we discuss in Chapter 6, where the prescribed words have not been integrated into the religious service and have to be said separately before a registrar, it is understandable that this is perceived as a

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21 Marriage Act 1949, s 44(3). This is also required, in less explicit terms, for weddings in the register office or on approved premises: see ss 45 and 46B.

22 Marriage Act 1949, s 55(1)(b).

23 See eg the amendment proposed to the Policing and Crime Bill (which would have required the "celebrant" of a religious marriage to "register the marriage as a legal marriage in accordance with the requirements of the Marriage Act 1949": *Hansard* (HL), 16 November 2016, vol 776 col 1475); the Marriage Act 1949 (Amendment) Bill 2017-19 (which would have imposed the obligation to register the marriage on the "priest or a similar person principally responsible for the solemnization of marriage" and would have required register books to be sent to every such person); and the Marriage Act 1949 (Amendment) Bill 2019-21 (which proposes making it an offence to solemnize a wedding that is not registered).

separate “civil” wedding and that couples feel that their religious rites have not been accorded recognition.

Unnecessary regulations

5.37 Civil weddings are the only type of wedding at which two office holders – a superintendent registrar and registrar – are required to be present. The responsibility of the registrar is clearly that of registering the wedding. The responsibility of the superintendent registrar is simply to be present.[24] While in practice the superintendent registrar will be responsible for conducting the wedding, there is nothing in the Marriage Act 1949 that explicitly requires them to do so.[25]

5.38 When the role of the superintendent registrar was introduced in 1836, requiring them to be present at civil weddings would not have had any significant resource implications. Civil weddings were not expected to be popular, and the overall percentage of such weddings remained relatively low well into the 20th century.[26]

5.39 Now that civil weddings are the most popular type of wedding, multiple deputy superintendent registrars have to be appointed for every registration district to meet the demand. Requiring both a superintendent registrar and a registrar to attend every civil wedding also has a significant cost. This cost is reflected both in the limitations that are placed on when a fixed-fee statutory ceremony is available and in the higher fees that are charged for their attendance at weddings on approved premises and, increasingly, at weddings in register offices.

5.40 The result in both cases is to limit the options that are available for couples. One respondent to the 2019 survey conducted by the wedding planning company Bridebook.co.uk noted that the fees charged for weddings on approved premises led some couples to marry in the register office to save money “as the fee for the registrars to come out is extortionate”. The attendance fees that are charged are reviewed in Chapter 12. From our research the median attendance fee for a Saturday wedding at 2pm is £488 and can be as much as £731.

5.41 It needs to be borne in mind that these fees reflect not only the cost of attendance on the day but also the overall cost of employing a sufficient number of registration officers to be available to fulfil these functions. Robin Mair, a respondent to our 13th programme, gave his perspective as an operational manager of a registration service. He estimated that the requirement to send two members of staff to officiate each ceremony resulted in his service spending £120,000 – about 10% of his budget – on recruiting, training and other staff costs “for staff I don’t need for my operational reasons, only to meet the law”.[27]

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24 Marriage Act 1949, ss 45 and 46B(1)(b).

25 A superintendent registrar may be guilty of an offence if he or she “solemnizes or permits to be solemnized” a marriage that is void for failure to comply with certain prescribed formalities (Marriage Act 1949, s 75(3)(d)). However, as para 5.49 below explains, under the Act “solemnize” would seem to have a wider meaning than “conduct”.

26 R Probert, M Harding and B Dempsey, “A uniform law of marriage? The 1868 Royal Commission reconsidered” [2018] *Child and Family Law Quarterly* 217.

27 See Ch 12.

5.42 Recruiting sufficient individuals to meet the legal requirements is rendered more challenging by the fact that the demand for weddings is seasonal. Bridebook.co.uk's survey of 330 venue owners and managers highlighted the lack of availability of registration officers at particularly popular times. One respondent commented that there were "not enough registrars to cope with the high demand for the 2pm time slot". Another noted that at the time of the survey in October 2019, "none are available for some dates in August 2020", adding that "this makes it difficult or impossible for couples to book us and our business suffers".

5.43 The requirement for both a superintendent registrar and a registrar to attend every civil wedding therefore has costs for the couple, for businesses, and for registration services and is resulting in unnecessary limitations on the availability of civil weddings.

OPTIONS FOR REFORM

Identifying a common concept of an "officiant"

5.44 To ensure that the law is as simple, clear and consistent as possible, we provisionally propose that there should be a single concept of an "officiant" to describe the person who is responsible for ensuring that the legal requirements are met.

5.45 We considered whether the law should move away from the current focus on who is responsible for registering the wedding and focus instead on who conducts the ceremony. However, in the light of the number of religious traditions in which no third person is required to conduct the ceremony, this did not seem to be an appropriate focus for regulation.

5.46 The Society of Friends, for example, believe that God marries a couple and that the community are merely witnesses. Similarly, the National Spiritual Assembly of the Bahá'ís told us that their wedding ceremony does not include an officiant, but simply consists of two parties making vows to each other, in the presence of two witnesses appointed by a Local Spiritual Assembly.

5.47 Within other religious groups, the ceremony may be conducted by a third party even if this is not regarded as essential. Jewish weddings do not require a rabbi to perform the ceremony, or even be present (although in practice rabbis generally do conduct the ceremony). Nor do Muslim weddings require the presence of an imam, although imams do in practice conduct most ceremonies.[28]

5.48 Even where the ceremony is conducted by a third person, the couple may want this person to be a specific individual rather than the holder of a particular office. The Muslim Council of Britain gave the example of a father wishing to conduct his daughter's wedding: as this would be a one-off occasion it is unlikely that he would wish to seek authorisation.

5.49 Within the Anglican church, by contrast, the focus is primarily on who conducts the ceremony and that person's duty to register the marriage is very much secondary. The Church of England told us that the Church would want to keep solemnization as a legal concept for Anglican marriage. However, within the context of the Marriage Act

[28] *Attorney General v Akhter* [2020] EWCA Civ 122, [2020] 2 WLR 1183 .

1949 the term "solemnization" is used to refer to all types of weddings, both opposite-sex and same-sex, and regardless of whether they involve a third person conducting the ceremony. In our view, the term "solemnization" does not connote any specific ceremonial role and substituting the term "officiate" would not involve any change in how Anglican weddings were regulated.[29]

5.50 In any case, it would be open to the Church of England (and indeed any other church) to use the concept of "solemnization" in setting its own requirements of its officiants, if it wishes to attach a particular religious meaning to this term. Our focus is solely on what the law should require. A framework based on who is responsible for ensuring that the legal requirements are met can accommodate those who believe that a third person is required to conduct the wedding as well as those who do not.

Identifying a common set of duties for all officiants

5.51 We are also provisionally proposing that there should be a common set of duties that all officiants are required to fulfil. This would ensure that the law is clear and consistent. It would also ensure that all religious groups would be subject to the same legal requirements.

5.52 If we take what the law currently (if not consistently) requires of Anglican clergy, Jewish secretaries, Quaker registering officers, registrars and authorised persons, we can distil the following key legal duties:

(1) ensuring that the couple freely consent to the marriage;

(2) ensuring that any requirements of the ceremony have been met; and

(3) ensuring that the register (or schedule) is signed.

Our view is that these three duties are core to the role of being an officiant, and that all officiants should be required to fulfil them.

5.53 Exactly what each of these duties would entail to some extent depends on our other provisional proposals and pending reforms. Whether consent needs to be given in a certain form and whether there should be any other specific requirements within the ceremony, is considered in Chapter 6, while the requirement of registration is considered in Chapter 8. We also consider what responsibilities officiants would have in carrying out these duties at paragraphs 5.192 to 5.199 below.

5.54 We think that in order to fulfil these duties an officiant needs to be present at the time that consent is exchanged and at the time that the schedule is signed by the parties and the witnesses. Within some religious traditions, getting married may involve a sequence of different ceremonies, sometimes over several days, and there seems no reason to require the officiant to be present at all of them.[30]

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29 The term "officiant" is already used by the Church of England to refer to a minister: see Church of England, *Marriage*, https://www.churchofengland.org/prayer-and-worship/worship-texts-and-resources/common-worship/marriage#mm094 (last visited 1 May 2020).

30 See further Ch 10 for discussion of the implications of lack of consent.

5.55 We have been told that within certain religious traditions – for example within some Muslim weddings – the bride and groom are kept physically separate until consent has been exchanged, communicating their intention to marry by telephone or tannoy system. In such cases it would be sufficient if the officiant was present with one of the parties at the time of such exchange and then met with both for the signing of the schedule. This is considered in more detail in Chapter 6.

5.56 Requiring an officiant to be present would potentially have implications for Jewish and Quaker weddings, as secretaries and registering officers are not currently required to attend the weddings that they register. In practice, the Society of Friends told us that it already strongly advises its registering officers to be present, or to send a deputy if that is not possible. It would be happy with a requirement that a registering officer had to be present as long as the law was flexible enough to allow *any* Quaker registering officer to be present. The Board of Deputies similarly told us that the only reason why a secretary would not attend a wedding would be if there were multiple weddings at the same time. This was identified as a particular issue for Jewish weddings, given the temporal limitations on when they can take place, but it was noted that there would be no difficulty in requiring the secretary to be present as long as it was possible to appoint more than one secretary, which is already the case for medium and larger-sized synagogues.

Clarifying the role of the registrar

5.57 We think that there are benefits in clarifying the role of the registrar. The fact that a registrar may – in the absence of an authorised person – be tasked with registering a wedding in a registered place of worship has led to some confusion about whether this is in fact a separate "civil" wedding. Given that we are also potentially proposing that religious weddings should be able to take place in a wider range of locations, this raises the risk that there might be still greater confusion between what is civil and what is religious.

5.58 We therefore provisionally propose that registrars would only be able to officiate at civil weddings, not at religious weddings. From the point of view of registration services, no longer being required to register weddings in registered places of worship would ensure that registrars had greater capacity to officiate at civil weddings. It would also create greater clarity as to what is a civil wedding and what is a religious wedding, and remove the anomaly of civil registrars being present at religious weddings.

5.59 Removing the option for a registrar to attend would mean that religious groups would need to ensure that a religious officiant was present instead. At present only around half of all places for worship registered for weddings have an authorised person. We would however hope that the simpler procedure that we set out below – and the removal of the necessity to register a place of worship for weddings – would encourage more groups to take responsibility for ensuring that they had an officiant.

Removing the requirement for a superintendent registrar to attend a civil wedding

5.60 We have also considered whether the law needs to require a superintendent registrar to be present at civil weddings. It has been suggested to us that having a second person present can be helpful in ensuring that everything runs smoothly at larger weddings and allows one to complete the paperwork while the other engages with the

couple and guests. The National Panel for Registration told us that registrars will often manage the event, making sure that anyone who is going to deliver a reading is present, that the wedding rings are available, and that the music is cued up properly.

5.61 However, we note that only one registrar is required to attend a civil wedding in Scotland, Northern Ireland, and Ireland, with no problems of which we are aware. With the move to a schedule system in England and Wales, much of the paperwork will be completed in advance. Various representatives of registration services have also told us that the presence of a second registration officer is not always necessary at smaller weddings.

5.62 Requiring only a registration officer to officiate at a wedding could result in considerable savings. Under the current law no separate fee is payable for the presence of a superintendent registrar at a statutory ceremony, and so this cost cannot be recouped from couples. Reducing the cost of officiating at the statutory ceremony might also enable registration services to make more slots available for such ceremonies than they currently do.[31]

5.63 We accept that there may be operational reasons for a second person to be present in some cases. Local authorities already provide different packages for couples depending on when and where the wedding is taking place. They might well want to offer a package involving two registration officers if there were a large number of guests, or the wedding was taking place in a remote location or late at night. Even so, removing the need for that second person to be a superintendent registrar would provide greater operational flexibility.

5.64 Local authorities would also be able to offer packages in which the registration officer acted solely as an officiant, thereby expanding the range of choices for couples. If the wedding was taking place in the register office, or an independent celebrant was conducting the wedding, or a wedding planner was co-ordinating the organisation of the event on the day, it is likely that only a single registration officer would be needed.[32]

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31 At present many local authorities limit the times at which the statutory ceremony is available: see S Pywell, "Availability of two-plus-two marriage ceremonies" (31 March 2020) *Law Gazette*, https://www.lawgazette.co.uk/practice-points/availability-of-two-plus-two-marriage-ceremonies/5103708.article (last visited 1 May 2020).

32 As we discuss at para 2.56 above, some local authorities are already working with independent celebrants and delegating a certain amount of the ceremonial work, but the couple need to pay the fees of the superintendent registrar and registrar in addition to those of the celebrant. We explore the question of how fees might be regulated – and how these might differ depending on whether a registrar was only acting as an officiant or was also conducting the ceremony – in Ch 12.

Provisional proposals

Consultation Question 19.

5.65 We provisionally propose that all weddings should be attended by an officiant who should have a legal duty to:

(1) ensure that the parties freely express consent to marry each other;

(2) ensure that the other requirements of the ceremony are met; and

(3) ensure that the schedule or (if Anglican preliminaries are retained) marriage document is signed.

Do consultees agree?

Consultation Question 20.

5.66 We provisionally propose that registration officers should only be able to officiate at civil weddings.

Do consultees agree?

Consultation Question 21.

5.67 We provisionally propose that only one registration officer should need to officiate at a civil wedding.

Do consultees agree?

Identifying a clear process for authorising officiants

Civil officiants

5.68 Under our provisionally proposed scheme, registration officers would be responsible for officiating at civil weddings. We do not think that there is any need to change the process by which they are appointed. Local authorities would therefore continue to be responsible for appointing registration officers.[33] The Local Registration Services Association advises those interested in becoming a registration officer that each local authority will set its own entry requirements, but that individuals will need "a good

[33] Registration Service Act 1953; Registration of Births, Deaths and Marriages Regulations 1968 (SI 1968 No 2049), pt 2.

general standard of education (GCSE A* to C) and excellent customer service, public speaking and IT skills".[34]

Religious officiants

5.69 The question of how religious officiants should be authorised is more complex, given the different ways in which Anglican clergy, Quaker registering officers, Jewish secretaries and authorised persons are currently authorised.

5.70 Given that our provisionally proposed scheme envisages moving away from requiring weddings to take place in particular locations,[35] we think that it would be anomalous to require a religious group to have a registered place of worship in order to appoint an officiant.

5.71 In any case, regulating the person rather than the place ensures greater flexibility. The advantages of doing so were emphasised by a number of those responding to the 13th programme, including the Marriage Foundation, the Family Justice Council, the Pagan Federation, the Fellowship of Professional Celebrants, the Association of Independent Celebrants, David Hodson and Dr Russell Sandberg. While most referred to this as a "celebrant" model, their comments would apply equally to an officiant model. Support for this model was also expressed in our pre-consultation work by the OneSpirit Interfaith Foundation, the Wedding Celebrancy Commission, the Muslim Council of Britain and the National Secular Society.

5.72 Looking at the approaches taken in other jurisdictions, there are three broad approaches that could be used to authorise officiants:

(1) recognising the office holders of specific groups as officiants;

(2) allowing certain types of groups to nominate officiants; and

(3) allowing individuals to apply to be authorised as officiants.

5.73 In Scotland, ministers and deacons of the Church of Scotland are recognised by virtue of their office,[36] as is any minister, clergyman, pastor, priest or other celebrant of a religious body prescribed in secondary legislation.[37] Members of other religious or belief bodies must be nominated by those bodies to be registered as approved celebrants; [38] there is also an option for members of religious or belief bodies to be

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34 Local Registration Services Association, *Jobs: Becoming a Registrar*, https://www.lrsa.org.uk/viewjobs.cfm (last visited 1 May 2020).

35 See further Ch 7.

36 Marriage (Scotland) Act 1977, s 8(1)(a). Ministers and deacons of the Church of Scotland may only conduct weddings between opposite-sex couples.

37 Bodies may be prescribed for opposite-sex weddings, same-sex weddings, or both: Marriage (Scotland) Act 1977, s 8(1)(a)(ii) and (1B)(a)(i).

38 Marriage (Scotland) Act 1977, s 9.

temporarily authorised.[39] In Australia and New Zealand, ministers of religion must be nominated by recognised denominations.[40]

5.74 Despite the differences in the detail, certain commonalities can be discerned. First, where one church has a special status under the law, this may require specific recognition of its office holders. Second, the recognition of other religious officiants usually requires a nomination, whether by a recognised group or by a group that meets certain criteria. These commonalities provide a useful basis for thinking about which approach might be best suited to which group in England and Wales.

Recognising the office holders of the Church of England and the Church in Wales

5.75 We provisionally propose that Anglican clergy should be recognised as able to officiate at weddings by virtue of their office.

5.76 Under the current law, any clerk in Holy Orders is automatically authorised to conduct weddings in England and Wales. This was the position under the canon law that governed marriage before state regulation. The legislation that was passed in 1753 and 1823 recognised this authorisation. The current Marriage Act 1949 similarly reflects the fact that ordained members of the clergy are recognised as being authorised to conduct legally binding weddings rather than conferring authority on them to do so.

5.77 Of course, the fact that this was the position historically is not necessarily a reason for it to continue. But the underpinning reasons for this special position have not disappeared. The Church of England remains the established church. Both it and the Church in Wales have generally accepted duties to conduct the weddings of their parishioners when called upon to do so. This is regarded as one of the "vestiges of establishment" within the Church in Wales.[41] We also note that ministers of the Church of Scotland – which is a national church rather than an established church – are automatically entitled to officiate at weddings in Scotland.

5.78 If an officiant model were adopted, both the Church of England and the Church in Wales would favour a version by which their clergy were automatically entitled to officiate at weddings. Both based this on their special position and duties and their pastoral understanding of being the churches for the entire community.

5.79 In terms of who within the church should be able to officiate, the Church of England emphasised the theological significance of ordination alone entitling clergy to officiate at weddings. The Church in Wales favoured a slightly more restrictive definition, suggesting that the officiant should be a clerk in Holy Orders authorised to undertake public ministry. We do not think that legislation needs to enshrine a specific definition.

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39 Marriage (Scotland) Act 1977, s 12.

40 In Australia a "recognised denomination" is a religious body in relation to which a proclamation has been made under the Marriage Act 1961, s 26. The list of recognised denominations can be found in the Marriage (Recognised Denominations) Proclamation 2018. In New Zealand the nomination must be made by one of the religious bodies specified in the Marriage Act 1955, s 8(1).

41 F Cranmer, "Wales and the Law of Marriage: 'Vestiges of Establishment' Revisited" (2015) 174 *Law & Justice* 96.

Instead, it should be left to the Church of England and the Church in Wales to specify their own requirements for officiants.

5.80 Other than the Church of England and the Church in Wales, we are unconvinced of the need to prescribe other organisations whose office holders would be automatically recognised as able to officiate at weddings. Instead, we provisionally propose in the following section that other religious organisations should be able to nominate officiants to the General Register Office to be authorised to officiate at weddings.

5.81 In reaching this provisional conclusion, we are mindful especially of the principle of fairness and equality. At paragraph 5.29 above, we explain that article 14 of the European Convention on Human Rights prohibits discrimination in the enjoyment of the right to marry and the freedom to manifest one's religion and beliefs. We think that adherents of the Anglican religion are in an analogous situation to adherents of other religions, but we do not think that our provisional proposals treat the two sets of individuals differently, in terms of the manifestation of religion or the freedom to marry. People of all religions would be able to have a wedding according to their religious beliefs,[42] officiated at by an officiant sharing those beliefs. As we explain in more detail below, the scheme that we propose for religious officiants other than Anglican clergy would exclude only those individuals belonging to organisations which do not have a genuine religious belief, which do not genuinely intend to conduct weddings, or which promote purposes that are unlawful or contrary to public policy or morality.[43]

5.82 Even if it were thought that our provisional proposals did entail differential treatment of Anglicans on the one hand, and people holding other religious beliefs on the other hand, we think that there is an objective and reasonable justification. For a justification to be objective and reasonable, the differential treatment must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.[44]

5.83 Anglican clergy are in a unique position of being obliged to conduct weddings of their parishioners, unlike any other religious organisation.[45] That obligation can only be discharged if Anglican clergy are legally empowered to conduct weddings. In our view, the need to avoid putting an Anglican member of clergy in the contradictory position of being subject to a legal duty to conduct weddings but being unauthorised to conduct a legal wedding, points to automatic recognition of Anglican clergy. We think it is strongly arguable that this is therefore a legitimate aim.

5.84 It is also a legitimate aim for the state to regulate officiants, because officiants perform an important role in transforming the legal relationship between the parties.[46] Regulation requires both a means of identifying who is an officiant and a means of ensuring that those officiants meet minimum legal standards. The formal process of

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42 We consider the form of wedding ceremonies in Ch 6 below.

43 See paras 5.91, 5.93, and 5.100 to 5.102 below.

44 See for example *Burden v United Kingdom* (2008) 47 EHRR 38 (App No 13378/05) (Grand Chamber decision) at [60].

45 Our Terms of Reference exclude consideration of that obligation: see Appendix 1.

46 Protecting the state's interest is one of the principles underpinning this project: see Appendix 1.

ordination as a clerk in Holy Orders, and the internal discipline of the Church of England and the Church in Wales, satisfy those requirements in relation to Anglican clergy. By contrast, while some non-Anglican priests or ministers also go through a formal process of ordination, within many religious traditions the question of who conducts a wedding is far more fluid. Effective regulation of officiants would therefore be impossible if all religious organisations' office holders were automatically recognised.

5.85 Applying the same rules to all religious organisations is therefore not consistent with pursuing the social and cultural and regulatory aims identified above. However, the principle of proportionality points towards minimising differences so far as possible. In the absence of the obligations that uniquely apply to Anglican clergy, it is potentially divisive to confer automatic recognition on the office holders of some but not all other religious organisations. While we accept that an established or national church stands on a different footing from other groups, it is more difficult to justify distinctions between other religious groups, as the differential treatment of Jewish and Quaker weddings has demonstrated.

5.86 Automatic recognition would also remove any element of state oversight from the office holders of any bodies that are prescribed.[47] In Northern Ireland – which has neither an established nor a national church – there are no prescribed religious groups. Moreover, if legislation listed religious organisations whose office holders were automatically recognised as officiants, it would replicate some of the problems of singling out Jewish bodies and the Society of Friends in the current law. The list would need to be regularly updated to reflect changing religious practices. The range of Non-conformist religious groups in early 19th century England and Wales was one of the key reasons why the original legislation did not list those able to solemnize weddings. Religious diversity is even greater today.

5.87 Our provisional proposals are also proportionate because they would not put any religious organisations at a substantive disadvantage. The office holders of religious organisations other than the Anglican churches would be able to officiate at weddings, provided their organisation nominated them to be authorised officiants.

Allowing other religious groups to nominate officiants

5.88 We think that allowing religious groups (other than the Church of England or Church in Wales) to nominate officiants should form the basis for a revised scheme. This would ensure equality of treatment as between all non-Anglican religious groups. It would increase the choices available to couples, as religious groups would not need to have a registered place of worship in order to nominate an officiant. It would also make the law much simpler, fairer and more consistent than it is at present.

5.89 In the sections that follow we consider how this could work in practice, exploring the questions of whether religious groups would need to fulfil specific criteria and who within the group would be responsible for making the nomination.

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47 In this respect it gives even more freedom than the current exemptions for Jews and Quakers, given that the names of secretaries and registering officers must still be certified to the Registrar General under the Marriage Act 1949.

What would constitute a religious group?

5.90 Under our Terms of Reference, we are not considering what constitutes a religion. Instead, we are working on the basis of the description set out by the Supreme Court in 2013:

> a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system… . Such a belief system may or may not involve belief in a supreme being, but it does involve a belief that there is more to be understood about mankind's nature and relationship to the universe than can be gained from the senses or from science.[48]

5.91 This description would exclude any groups that do not have a genuine religious belief. At the same time, we think that it is sufficiently broad to encompass interfaith organisations. While such organisations, by their very nature, do not have a belief in a specific supreme being, they do have a spiritual belief about humanity's relationship with the infinite. Organisations such as the OneSpirit Interfaith Foundation, for example, note that they "embrace the universal truth at the heart of all spiritual traditions" and recognise "mystical spirituality" as being the origin of all world religions.[49]

What criteria would a religious group need to fulfil to be able to nominate officiants?

5.92 As we have discussed above, some jurisdictions only allow nominations by prescribed religious groups, while others allow nominations by any religious group. Our view is that prescribing the groups that could nominate officiants would replicate many of the problems with prescribing the groups whose office holders could automatically officiate at weddings. Given that several hundred different religious groups currently have places of worship that are registered for weddings, it would also need to be a very long list, to avoid taking away the right to conduct weddings from groups that have long been able to do so.[50]

5.93 Rather than prescribing which religious organisations should be able to nominate officiants, we think that it is preferable to identify what criteria any religious organisation should have to fulfil. Such criteria would be intended to ensure that the

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48 *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 610 at [57], by Lord Toulson.

49 OneSpirit Interfaith Foundation, *What Is Interfaith?*, https://www.onespiritinterfaithministers.com/about-interfaith (last visited 1 May 2020). The OneSpirit Interfaith Foundation is treated as a religious group in Northern Ireland, which indicates that the authorities there believe it meets the *Hodkin* description, which applies throughout the United Kingdom. However, it is treated as a non-religious belief organisation in Scotland.

50 It is difficult to come up with a precise figure, as different denominations have been recorded differently at different times, or may have chosen slightly different designations; conversely, broad-brush designations such as "Christian", "Muslim" or "Hindu" will not fully reflect differences in organisation between those so designated.

right to nominate officiants would, in practice, be exercisable only by those religious organisations that genuinely intend to conduct weddings.

5.94 In Australia, for example, where only "recognised denominations" may nominate ministers to conduct weddings, a religious body will be assessed against a list of considerations before being proclaimed to be a recognised denomination. These considerations include its independence of other religious bodies; whether it has been established for at least three years and is expected to continue, has a substantial number of members and a central authority and processes in place for the nomination of appropriate persons to solemnize marriage; and whether it has clear processes to ensure nominated ministers meet their legal obligations in the solemnization of marriage.[51] As a part of its application to be recognised, a religious body or organisation must also provide an explanation of its objects and activities, evidence of its legal status, and a copy of the form of wedding ceremony it uses.[52]

5.95 As we have set out above, we think that the fact that the majority of religious groups can only conduct weddings if they have a place of worship that is registered for weddings is too restrictive. At best, the requirement for an organisation to have a building could be seen as a proxy measure for its stability and status. However, no other jurisdiction that we are aware of requires an organisation to have a building as a precondition for conducting weddings.

5.96 It is, however, worth reflecting on the underpinning requirement that a place of worship be certified by 20 householders whose usual place of worship it is before it is registered for weddings to take place there. This underlines the importance of community within our weddings law. The community may play a role in preventing weddings from taking place where the parties are not eligible to marry. It may also play a role in supporting couples in their preparation for marriage, and in their subsequent married life. This element of community is also reflected in the definitions of religious bodies in Scotland, Northern Ireland and Ireland, which all refer to "an organised group of people" meeting regularly for religious worship.[53]

5.97 To this end we provisionally propose that a religious group should have at least 20 members who meet regularly for worship or in furtherance of their religious beliefs.[54] While 20 might seem like a relatively low threshold, we would note that this has been the minimum figure for registering a place of worship for weddings for over 180 years without, as far as we know, causing any problems. Setting the minimum requirement

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51 Australian Government, Attorney-General's Department, *Information sheet – Recognised denominations* (December 2019), https://www.ag.gov.au/FamiliesAndMarriage/Marriage/Documents/Information-Sheet-Recognised-Denominations.pdf (last visited 1 May 2020).

52 Australian Government, Attorney-General's Department, *Information sheet – Recognised denominations* (December 2019), https://www.ag.gov.au/FamiliesAndMarriage/Marriage/Documents/Information-Sheet-Recognised-Denominations.pdf (last visited 1 May 2020).

53 Marriage (Scotland) Act 1977, s 26(2); Marriage (Northern Ireland) Order 2003 (SI 2003 No 413), art 2(2); Civil Registration Act 2004, s 45.

54 This should not preclude interfaith organisations being recognised as religious groups. In Northern Ireland there is a requirement that the group "meet regularly for worship" but this has not proved a bar to ministers of the OneSpirit Interfaith Foundation being recognised as able to solemnize weddings in that jurisdiction.

at the same level as the current law would also avoid preventing any religious group that is currently able to conduct weddings from doing so under our new scheme.

5.98 We also think that retaining this requirement will not pose problems for interfaith ministry groups. They do not generally hold large religious services for the public, but instead provide pastoral counselling and care, for example, in prisons and hospitals. We think that their membership communicating amongst themselves regularly, in relation to discussing how they give pastoral care to the community and in training and other matters, will be able to meet this criterion: meetings to plan and provide support to one another in how they engage with the community are meetings in furtherance of their religious beliefs.

5.99 We also suggest that a religious group should have to show that it either has a wedding service, or some belief about marriage, in order to nominate officiants. Again, this criterion would help to limit the power to nominate officiants to those groups that would genuinely intend to officiate at weddings. The requirement should not be seen as any form of check by the state on the content of the ceremony. Nor should it be a requirement that the precise terms of that wedding service should have to be used in every case. Requiring every ceremony to adhere to a specific form would be more restrictive than the current law, which allows weddings in registered places of worship to be conducted "according to such form and ceremony as those persons may see fit to adopt".[55] It would be for religious groups themselves to decide whether a particular form had to be used within their ceremonies.

5.100 We are also of the view that holding a religious belief should not justify actions that are illegal or contrary to public policy. While there is no specific exclusion of such groups under the current law, we understand that the General Register Office takes the view that it would be able to refuse to register the buildings of such groups for weddings, in the event that any applied. We think any exclusions of this kind should be explicit, both to deter nominations from groups that are pursuing illegal purposes and to reassure others that such nominations would not be accepted.

5.101 In thinking about what types of exclusions might be appropriate, we draw on the list set out in the Irish legislation as a potential model.[56] While this only applies to secular bodies, not religious bodies, we think there would be no ground for treating religious and non-religious belief organisations differently in this respect and that the list therefore provides a useful starting point for consideration.

5.102 We would therefore be interested in consultees' views as to whether religious organisations should be prohibited from nominating officiants if they promote purposes that are:

(1) unlawful;

(2) contrary to public morality;

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55 Marriage Act 1949, s 44(1).

56 Irish Civil Registration Act 2003, s 45A(2)(f).

(3) contrary to public policy;

(4) in support of terrorism or terrorist activities; or

(5) for the benefit of an organisation membership of which is unlawful.

Excluding such organisations would be objectively and reasonably justified under human rights law, both in the light of the exceptions to article 9 and in the light of our provisional proposals in relation to non-religious belief organisations.[57] This list of excluded purposes would also cohere with equality and human rights case law, in which it has been held that non-religious beliefs are not protected unless they are worthy of respect in a democratic society and are compatible with human dignity and with the fundamental rights of others.[58] That case law is not directly applicable to religious beliefs, but we think that it provides a useful parallel.

Who within the group would be responsible for nominating officiants?

5.103 We do not think that it is for the state to prescribe which body within any particular religious group should have the authority to nominate officiants. This should be a matter for each religious group to decide for itself, as under the current law. As we note above, it is currently open to any religious group to register its place of worship for weddings and appoint an authorised person as long as 20 householders worship there and support its registration. The variety of religious groups that feature in the list of registered places of worship is a testament to that freedom. Some denominations account for thousands of places of worship, while others have just one.

5.104 Some groups may of course decide that nominations should be done by a representative body or key individual. The Society of Friends, for example, may well want its recording clerk to continue to be responsible for nominating officiants. The same may well be true of the synagogues whose secretaries have long been authorised by particular governing authorities.

5.105 Other religious groups may not have a representative body or the type of structure that lends itself to such centralised processes. The Society of Friends raised the possibility of a diasporic community that does not have an established authority in England and Wales, but is clearly established elsewhere. The Muslim Council of Britain told us that there is no centralised system of religious authority within Islam, noting the differences between its two main traditions (Sunni and Shia).

5.106 Nonetheless, we suggest that the concept of the "relevant governing authority" (an existing concept in the law governing weddings)[59] is sufficiently flexible to accommodate both those groups that have a particular governing structure and those that do not. In British Columbia, for example, the Government's guide to religious

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57 *Manoussakis v Greece* (1997) 23 EHRR 387 (App No 18748/91) at [40]; *Metropolitan Church of Bessarabia v Moldova* (2002) 35 EHRR 13 (App No 45701/99) at [113].

58 *Campbell v United Kingdom* (1982) 4 EHRR 293 (App No 7511/76) at [36]; *R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15, [2005] 2 AC 246 at [23]; *Nicholson v Grainger plc* [2010] 2 All ER 253 at [26].

59 "Relevant governing authority" is a concept used in the Marriage Act 1949 and the Marriage (Same Sex Couples) Act 2013 in relation to the authority to determine whether to conduct same-sex weddings.

bodies advises them that in order to apply on behalf of a religious representative they must identify

> the appropriate level or organizational jurisdiction of their religious body which should make the actual application to the Religious Representative Registry. It is necessary to identify at what organizational level the responsibility lies for doctrinal, administrative and disciplinary directives. The Registry must be able to identify and document the "Governing Authority" with the responsibility to make administrative and disciplinary responses to the registrar general in matters respecting the solemnization of marriage and compliance with the Marriage Act.[60]

5.107 Some stakeholders did not favour authority being delegated to the level of an individual place of worship. For example, the Muslim Council of Britain thought that decisions should not be made at this level. Yet it should be borne in mind that the decision of whether to seek registration of a building for weddings to be conducted there has been decided at the individual building level for over 180 years, and the decision of who to certify as an authorised person has been made at this same level for over 120 years. Making this more restrictive now would potentially be taking away rights from those who have enjoyed them for a lengthy period of time, and restricting choice for couples. There may well be fundamental differences of doctrine and practice within any faith – as evidenced, for example, by the plethora of different groups that might be described as "Christian". As a matter of principle, however, if a particular group is effectively independent and self-regulating, making its own decisions on points of doctrine and practice, we see no reason why it should not be able to nominate officiants as well.

How would the nomination be made?

5.108 We envisage that the nomination would be made to the Registrar General, in the same way that places of worship are registered for weddings and authorised persons certified as such under the current law. It would therefore continue to be for the Registrar General to make the initial decision as to whether a group fell within the description of a religion as set out in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*.[61] It would also be for the Registrar General to confirm whether a religious group had 20 persons meeting regularly for the purpose of worship or in furtherance of their religious beliefs, together with a wedding service or belief about marriage. It would similarly be open to the Registrar General to refuse to accept a nomination from a group if exclusions barring groups with objects contrary to public policy or morality were to apply. Any of those decisions would be open to challenge in the courts.

5.109 We provisionally propose that religious groups would be able to nominate individual officiants by name. We would be interested in consultees' views on whether groups should also have the option to nominate officiants by office.

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60 Vital Statistics Agency (British Columbia), *Religious Representatives' Guide to Marriage in British Columbia* (May 2016) p 5, https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/marriages/vsa020.pdf (last visited 1 May 2020).

61 [2013] UKSC 77, [2014] AC 610.

5.110 Restricting nominations to officiants identified by name would have the advantage of certainty. While it might be administratively burdensome, it should be less burdensome than the current process of recording authorised persons. The current process involves three stages and requires three pieces of information to be recorded: the certification of a building as a place of worship, the registration of that place of worship for weddings, and the identity of any authorised person. Each of these lists already has to be updated when any of those elements changes. As of February 2020, 29,529 buildings were certified as places of worship, of which 22,513 were registered for weddings.[62] We understand that about 12,000 of those have their own registers, indicating that they have at least one authorised person. There is no reason to believe that those nominated as officiants would change more often than those certified as authorised persons.

5.111 By contrast, identifying officiants by office would allow for a nomination to cover successors to the original officiant. It would also be administratively flexible. Offices could be identified in general or specific terms: for example, a church might nominate the single office held by all of its ordained ministers, or it might nominate the respective offices held by ministers at individual churches. The risk is that this would introduce considerable uncertainty. It is relatively easy to identify an office holder who is formally attached to a particular place of worship. It would be more difficult to identify who should be counted as an office holder where ministers move between different places of worship, or where there is no formal process of appointment, or even any concept of a particular office holder.

5.112 Whether nomination is by name or by office, we think that it would be helpful for the General Register Office to maintain a central – and public – list of all officiants in place of the existing list of buildings that have been certified as places of worship and registered for weddings. The General Register Office is best placed to maintain this list, as all nominations would be made to it. If it were decided that nominations could be made by office rather than by name, the list would need to be organised by denomination and set out the nature of the office holders who would be acting as officiants.

5.113 Having a public list would help to offset any concerns that our proposed system would introduce uncertainty and would mitigate against the risk of individuals falsely claiming to be authorised as officiants. It would be an important safeguard in moving away from a buildings-based system. Even under the current system, we have come across examples of individuals advertising themselves as authorised to conduct weddings when they are not able to conduct weddings under the law.

5.114 These benefits would be greater if the list included the names of those nominated. Any couple planning to marry would then be able to check the list to find an officiant of the denomination according to which they wished to marry, or to verify a person's

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62 General Register Office, *Places of worship registered for marriage* (February 2020), https://www.gov.uk/government/publications/places-of-worship-registered-for-marriage (last visited 1 May 2020).

authority to act.[63] Registration officers would also be able to check the list when a couple gave notice of their intention to marry.

Non-religious belief officiants

5.115 As noted at the outset, our Terms of Reference do not permit us to recommend whether non-religious organisations should be able to conduct legal weddings. Instead, we consider how a revised weddings law could include such organisations.

5.116 In thinking about how non-religious belief organisations could be brought within our proposed scheme, our key principles of simplicity, fairness and equality point towards treating groups in the same way as each other, as far as possible. As we stated in relation to religious organisations, human rights law requires differences in treatment to be avoided, unless there is an objective and reasonable justification. We therefore seek to avoid differences in treatment between different non-religious belief organisations, and between non-religious belief organisations and religious organisations, unless there is good reason for different treatment. This point was also made by stakeholders. Humanists UK, for example, told us it believed that law required that any criteria should apply equally to religious and non-religious belief organisations, and that the state should afford both types of group the same "responsibility, recognition and respect".

The mechanism by which officiants could be authorised

5.117 As we discuss at paragraph 5.72 above, the three potential options are to recognise the office holders of prescribed groups, allow nomination by certain types of groups, or allow individuals to apply to be authorised.

5.118 In Scotland any celebrant or belief body prescribed in secondary legislation is authorised to conduct weddings;[64] in addition, belief bodies may nominate their members to be registered as approved celebrants.[65] In New Zealand approved non-religious belief organisations may nominate celebrants to conduct weddings,[66] while in Ireland organisations that meet the definition of a "secular body" can do so.[67]

5.119 In some jurisdictions, individuals who offer non-religious belief ceremonies may apply to be authorised on an individual basis. However, while they may incorporate non-religious beliefs into their ceremonies, they therefore act as civil celebrants, rather than formally representing non-religious belief organisations.[68] This approach would be treating non-religious belief organisations differently from religious ones.

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63 For an example from another jurisdiction (New Zealand), see The Department of Internal Affairs, *Locating a Celebrant*, https://celebrants.dia.govt.nz/ (last visited 1 May 2020).

64 Bodies may be prescribed for opposite-sex weddings, same-sex weddings, or both: Marriage (Scotland) Act 1977, s 8(1)(a)(ii) and (1B)(a)(i).

65 Marriage (Scotland) Act 1977, s 9. There is also an option for members of religious or belief bodies to be temporarily authorised: s 12.

66 Marriage Act 1955, s 9.

67 Civil Registration Act 2004, pt 6.

68 See eg Marriage and Civil Status (Jersey) Order 2018, art 3(1).

5.120 Similarly, if there is no prescribed list of religious organisations whose office holders will be recognised, it would be inconsistent to adopt this approach for non-religious belief organisations. Scotland is the only jurisdiction that we are aware of where the celebrants of prescribed non-religious belief organisations are automatically authorised to conduct weddings, and at present the only belief body to be prescribed is Humanist Society Scotland.[69] As we explain above, we think that giving the right to decide who should conduct weddings to particular individuals and bodies within religious groups is problematic and we would favour moving away from this model. The emergence of separate Humanist groups in Scotland suggests that there may be different conceptions of Humanism, just as there are different conceptions of religions. As we note at paragraph 5.85 above, our view is that having a separate category of prescribed bodies is unnecessarily divisive.[70]

5.121 To minimise any differences between religious and non-religious belief organisations, we provisionally propose that the latter could be allowed to nominate officiants, rather than requiring such officiants to be directly appointed by the state or recognising the office holders of specific organisations.

The definition of a non-religious belief organisation for these purposes

5.122 There are a number of definitions of non-religious belief organisation, in this and other jurisdictions.

5.123 The Marriage (Same Sex Couples) Act 2013 defines a "belief organisation" as "an organisation whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics".[71] The definition adopted in Scotland similarly refers to "an organised group of people… the principal object (or one of the principal objects) of which is to uphold or promote philosophical beliefs and which meets regularly for that purpose".[72]

5.124 In Ireland a "secular" body is similarly broadly defined as an "organised group of people" whose "principal objects are secular, ethical and humanist". However, certain types of organisations are then specifically listed as falling outside the concept of a secular body for these purposes. In addition to those bodies pursuing purposes that are illegal or contrary to public policy,[73] these exclusions comprise:

(1) political parties, and bodies that promote political parties, candidates or causes;

(2) sporting organisations; and

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69 Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Regulations (SSI 2014 No 304), reg 2 and sch 1; Same Sex Marriage (Prescribed Bodies) (Scotland) Regulations (SSI 2014 No 305), reg 2 and sch 1.

70 Our provisionally proposed scheme differs in this respect from that proposed by the All-Party Parliamentary Humanist Group, *"Any Lawful Impediment?" A report of the All-Party Parliamentary Humanist Group's inquiry into the legal recognition of humanist marriage in England and Wales* (2018).

71 Marriage (Same Sex Couples) Act 2013, s 14(7).

72 Marriage (Scotland) Act 1977, s 26(2).

73 See para 5.102 above.

(3) trade unions, representative bodies of employers, and chambers of commerce.

While these exclusions provide greater clarity, the exclusion of bodies that "promote a political cause" could be problematic for organisations that have a political dimension to their work that is subsidiary to their main beliefs.

5.125 Each of these definitions has its advantages and disadvantages. A broad definition offers flexibility, while the exclusions in the Irish scheme rule out those organisations whose beliefs are not related to marriage.

5.126 We think that it would be preferable to provide a positive definition that conveys a sense of why certain groups should be entrusted with the role of nominating officiants, while minimising the differences between religious and non-religious belief groups. To this end we would provisionally propose adapting the description of religion set out in *Hodkin*[74] to a secular context. A non-religious belief group could be defined as

> An organisation that professes a secular belief system that claims to explain humanity's nature and relationship to the universe, and to teach its adherents how they are to live their lives in conformity with the understanding associated with the belief system.

This definition is sufficiently generic to encompass a wide range of non-religious belief organisations. It would, for example, encompass Humanist organisations which have a philosophical belief about mankind's place in the universe. Humanists UK, for example, explicitly refers to "bringing non-religious people together to develop their own views and an understanding of the world around them".[75] Organisations of this kind may be less directive in how they teach their adherents to live their lives, but the idea that individuals should make decisions based on reason, empathy and concern for human beings and other sentient animals is not dissimilar to the teachings of many religious groups. At the same time the definition above would exclude political parties, sporting clubs, trade unions, and chambers of commerce. It would also exclude any organisations that do not have a genuine belief system about humanity's nature and relationship to the universe, in the same way that the description in *Hodkin* excludes groups that do not have a genuine religious belief.

5.127 We explain at paragraph 5.29 the importance of equal treatment in human rights law, under article 14 of the European Convention on Human Rights. A specific aspect of that requirement for equal treatment is that, if Government chooses to enable non-religious belief weddings, any definition of non-religious belief organisations should encompass all organisations whose adherents are in an analogous situation.[76] We think that adherents of belief organisations are in analogous situations if, for each person, having a wedding conducted by the organisation of which they are an adherent is a manifestation of that person's non-religious beliefs.

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74 [2013] UKSC 77, [2014] AC 610.

75 Humanists UK, *Humanists UK*, https://humanism.org.uk/ (last visited 1 May 2020).

76 See, in relation to religious belief, *Savez Crkava Riječ Života v Croatia* (2012) 54 EHRR 36 (App No 7798/08) at [85].

5.128 We believe that the definition provided above meets the requirements of human rights law. For example, we have explained that the definition would exclude political parties and sporting clubs. That exclusion would not amount to unlawful discrimination, because it would not be a manifestation of a non-religious belief protected by human rights law to have a wedding conducted by a political party, or a sporting club.

5.129 As well as adopting this definition of non-religious belief organisations, it might be helpful both for prospective nominating organisations, and for the Registrar General, to have a specific list of exclusions, in order to minimise any doubt about which organisations fall within the definition. Examples might include political parties and the other organisations mentioned at paragraph 5.126 above. We would be interested in consultees' views on whether our proposed scheme should set out a list of excluded categories of organisation, along the lines of those excluded from the definition of secular bodies in Ireland, and if so which groups should be excluded.

What criteria would a non-religious belief organisation need to fulfil to be able to nominate officiants?

5.130 Again, in order to minimise any differences between religious and non-religious belief organisations, both should have to meet the same criteria. We therefore provisionally propose that non-religious belief organisations would have to meet the same minimum number as religious groups, with 20 persons meeting regularly in furtherance of their beliefs.

5.131 This requirement reflects the importance of the community element that we note above. However, we appreciate that non-religious belief groups may not congregate in the same way that many religious groups do. The requirement could be satisfied by remote meetings amongst celebrants or the executive of the organisation in relation to community outreach and training of celebrants, which in our view would amount to meetings in furtherance of the group's beliefs: there would be no need for a public service each week. We therefore think that Humanists UK will have no difficulty in meeting this requirement.

5.132 We also propose that a non-religious belief organisation would have to have either a wedding service or a belief about marriage. This requirement reflects the fact that our proposed scheme is intended to apply only to those non-religious belief organisations for whom officiating at a wedding would be a manifestation of their belief.

5.133 We also ask consultees for their views on whether groups whose activities are illegal or contrary to public policy should be explicitly excluded within the legislation.

Who within the group would be responsible for nominating officiants?

5.134 Just as we do not think that it is for the state to prescribe which body within any particular religious group should have the authority to nominate officiants, so too we do not think it would be for the state to prescribe which body within a non-religious belief organisation would have that authority. Our view is that it would be for the "relevant governing authority" of the organisation to decide.

Independent officiants

5.135 As we noted in relation to non-religious belief organisations, our role in this project is not to recommend whether independent celebrants should be able to officiate legal weddings, but how a revised weddings law could include them.

5.136 Many independent celebrants already play a role in conducting weddings ceremonies, even though they cannot conduct a legal wedding on their own. The Wedding Celebrancy Commission told us about a pilot programme in Staffordshire in which registration officers and independent celebrants worked together. In one ceremony, the independent celebrant opened the proceedings, handed over to the registration officers to do the legal ceremony inside the approved premises, before leading the wedding party outdoors to perform the remainder of the ceremony. As the Wedding Celebrancy Commission explained, the drawback of this scheme is that couples must pay the separate costs of the independent celebrant's fee and the registration officers' attendance fee.

5.137 Nothing in our provisionally proposed scheme would prevent independent celebrants from conducting weddings with an officiant. What we are considering in this section is how our proposed scheme could also make provision for independent celebrants to take on the role of officiants. In order to distinguish this role we will refer to such celebrants as "independent officiants". As with any other type of officiant, their role would be to ensure that the legal requirements are met but we would envisage that most would combine this with conducting the ceremony and that it would be exceptional for the roles to be split.

5.138 There are a number of jurisdictions that offer potential models. In Jersey celebrants can apply to the Superintendent Registrar to be authorised as civil celebrants.[77] In many Canadian provinces, civil weddings can be conducted by independent celebrants (often called "marriage commissioners"), who apply directly to the provincial authority to be authorised.[78] In New Zealand independent celebrants can apply to the Registrar General,[79] while in Australia they can apply to the registrar of marriage celebrants to be Commonwealth-registered marriage celebrants.[80] The Australian scheme was specifically mentioned as a potential model for reform by a number of those responding to the 13th programme, including Dr Vishal Vora, Anne Barber of Civil Ceremonies Ltd, the Fellowship of Professional Celebrants, and Lesley Blessington, a celebrant. What all of these schemes have in common is that individual celebrants can apply to a specific state official to be recognised.

5.139 We are not aware of any jurisdiction in which celebrants can be nominated by a body that is neither a religious organisation nor a non-religious belief organisation. Nonetheless, given that our proposed scheme envisages religious (and potentially

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77 Marriage and Civil Status (Jersey) Order 2018, art 3(1).

78 See eg Alberta (Marriage Act 2000, ss 2(b) and 8(1)); British Columbia (Marriage Act 1996, ss 7(3)(b) and 32); Manitoba (The Marriage Act, s 7(1)), and Prince Edward Island (Marriage Act 1988, s 8.1).

79 New Zealand, The Department of Internal Affairs, Te Tari Taiwhenua, *Marriage Celebrant: A Guide to the Role of Marriage Celebrant in New Zealand* (2009) p 4, http://www.parliament.nz/resource/0000147230 (last visited 1 May 2020).

80 Marriage Act 1961, s 5(1).

non-religious belief) groups nominating officiants, we have considered whether such an approach could also work for independent officiants. While there are organisations such as the Wedding Celebrancy Commission that could potentially act as a nominating body, allowing an organisation that was not a religious or belief organisation to nominate officiants would undermine the very point of having definitions of religion or belief and detract from the recognition of those organisations. In addition, not all independent celebrants are affiliated to an organization, and it might be a contradiction in terms to require an "independent" celebrant to be a part of an organisation.

5.140 We therefore think that there are good policy reasons for proposing a different model whereby independent officiants could be authorised. We provisionally propose that most suitable model would be to allow individuals to apply directly to the General Register Office to be appointed as independent officiants.

5.141 One consequence of their independence from any religious or non-religious belief body is that independent officiants would have to meet specific criteria. We set out what we think these criteria should be below.

5.142 A further consequence of independent officiants being directly appointed by the state relates to the classification of any weddings at which they might officiate. We consider that weddings officiated by independent officiants should be classified as civil weddings. This would mean that there could be certain limitations on what could be included in such weddings, in line with our proposals in Chapter 6. While we provisionally propose that the restrictions on what can be included in a civil wedding should be relaxed, our view is that a civil wedding – whether officiated by a registration officer or independent officiant – should still be distinct from a religious wedding.

Consultation

5.143 Under our Terms of Reference, we are not considering whether non-religious belief organisations or independent celebrants should be able to solemnize marriage. However, our Terms of Reference do require that we consider a scheme that could allow both to do so. Our provisional proposals therefore contemplate a situation in which both non-religious belief organisations and independent celebrants are enabled to officiate at weddings. Because simplicity, fairness and equality point towards a scheme that treats groups the same, in so far as possible, our provisional proposals treat religious organisations and non-religious belief organisations alike, proposing that the same rules would apply to each.

Consultation Question 22.

5.144 We provisionally propose that clerks in Holy Orders within the Church of England and the Church in Wales should be recognised as officiants by virtue of their office.

Do consultees agree?

Consultation Question 23.

5.145 We provisionally propose that:

(1) for religious organisations[81] other than the Church of England or the Church in Wales, the relevant governing authority of the organisation should be responsible for nominating officiants to officiate at weddings; and

(2) (if Government enables non-religious belief organisations to officiate at weddings) the relevant governing authority of the non-religious belief organisation should be responsible for nominating officiants to officiate at weddings.

Do consultees agree?

Consultation Question 24.

5.146 We provisionally propose that, if Government enables non-religious belief organisations to officiate at weddings, such organisations should be defined (to mirror the description of religion in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*[82]) as

> An organisation that professes a secular belief system that claims to explain humanity's nature and relationship to the universe, and to teach its adherents how they are to live their lives in conformity with the understanding associated with the belief system.

Do consultees agree?

5.147 We invite consultees' views as to whether there should be a list of types of organisations that should not amount to a non-religious belief organisation for the purpose of officiating at weddings, and if so, what types of organisations should be listed.

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81 That meet the description given by the Supreme Court in *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 610.

82 [2013] UKSC 77, [2014] AC 610.

Consultation Question 25.

5.148 We provisionally propose that religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations should be able to nominate officiants if the body has:

(1) at least 20 members who meet regularly for worship or in furtherance of their beliefs, and

(2) a wedding service or a sincerely held belief about marriage.

Do consultees agree?

Consultation Question 26.

5.149 We invite consultees' views as to whether the law should expressly exclude religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations from nominating officiants if the organisation promotes purposes that are unlawful or contrary to public policy or morality.

Consultation Question 27.

5.150 We invite consultees' views as to whether religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations should be able to nominate officiants by office, in addition to nominating named individuals.

Consultation Question 28.

5.151 We provisionally propose that nominations of officiants by religious and (if enabled by Government to officiate at weddings) non-religious belief organisations should be made to the General Register Office, which should be responsible for keeping a public list of all nominated officiants.

Do consultees agree?

Consultation Question 29.

5.152 We provisionally propose that (if enabled by Government to officiate at weddings) independent officiants should be able to apply to the General Register Office to be authorised and included on the public list of officiants.

Do consultees agree?

Identifying the criteria that officiants should have to fulfil

5.153 We focus above on who should be able to nominate officiants, and how independent celebrants could apply directly to the state to be authorised. We now address the question of what criteria individuals should have to fulfil either to be nominated as an officiant, or to apply to be authorised independently. We also consider whether rules are needed on whether officiants should be able to operate on a profit-making basis, and whether it should be possible for individuals to be authorised as officiants by different routes.

5.154 We should emphasise that nothing in this section has any application to registration officers or to Anglican clergy. As we note above, registration officers are appointed by local authorities, and we envisage that local authorities would continue to decide what criteria are necessary for their own operational needs. Our proposed scheme envisages Anglican clergy being automatically entitled to act as officiants and we do not think that it is the role of the state to lay down criteria for ordination. Nor do we think that any additional rules about operating on a profit-making basis are needed for either group as there are already controls on the fees that can be charged.[83]

5.155 Nor, indeed, do we think that it is the role of the state to lay down criteria for who should be a priest, minister, imam or other religious leader. Our focus is on who officiates at the wedding, not who conducts it. We also note that religious organisations have long been entrusted with deciding who should be an authorised person, without any criteria being laid down by the state. These considerations are a strong reason for exercising caution in creating a new regulatory framework and for refraining from imposing new requirements without good reason.

5.156 We are also keen to avoid creating a scheme that is administratively burdensome. We envisage that it would be the role of the General Register Office to check whether those applying to be authorised as independent celebrants met any criteria required under the new scheme, and would not want to make the new scheme more complex to administer than the old one. That said, if the decision is taken to extend the range of persons who can officiate at weddings, new requirements may well be required.

A “fit and proper” person

5.157 We think that it would be appropriate to require that an officiant must be a “fit and proper” person to carry out the role. “Fit and proper” means, in essence, that the individual in question should understand what is required of them and be able to fulfil

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83 See Ch 12.

the legal requirements of an officiant. This requirement should apply to officiants nominated by religious organisations or by non-religious belief organisations, and to independent celebrants appointed by the state. Who makes that assessment, what criteria should be applied in making that assessment, and whether any specific training is required may however differ between different types of officiants.

Religious organisations

5.158 As we note above, religious organisations have been entrusted with deciding who should be certified as an authorised person for over 120 years. We therefore take the view that it should primarily be for religious organisations to ensure that the persons they are nominating, whether by name or by office, are "fit and proper" persons.

5.159 Similarly, religious organisations should be responsible for deciding what training and continuing professional development would be appropriate for the individuals that they nominate. The training element of the standard might be satisfied by training as a minister, priest, rabbi, imam or other religious official of the nominating group, by having performed such a role for a minimum period, or by training specifically as a wedding officiant. The continuing professional development element might be satisfied by officiants engaging with updates from the General Register Office or by internal training.

5.160 Most religious organisations will have been responsible for conducting weddings for a considerable time. But under our proposed scheme some religious organisations may be conducting weddings for the first time. If a particular organisation has not previously conducted legally binding weddings, then it should be expected to show that it has processes for training in place for its officiants that relate specifically to the legal aspects of the role rather than the ceremonial aspects.

Non-religious belief organisations

5.161 As we discuss above, our scheme aims to minimise the differences between religious and non-religious belief organisations as far as possible. In thinking about the criteria that an officiant should need to satisfy, we have been mindful of the human rights considerations discussed above.

5.162 While non-religious belief organisations do not have the same history of conducting legally binding ceremonies, we do not think that this is a reason to regulate such organisations more closely. Many of them will have a long history of conducting non-legally binding ceremonies. Humanists UK, for example, has told us of the number of ceremonies it has conducted.[84] Therefore, we provisionally propose that, if Government decides to enable non-religious belief organisations to conduct weddings, such organisations should be entrusted with ensuring that the persons they are nominating are "fit and proper" persons.

5.163 All non-religious belief organisations will, however, be in the same position as those religious organisations that have not previously conducted legally binding weddings in England and Wales. They would therefore be expected to show that they have processes in place for training their celebrants as officiants, and for carrying out

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84 See para 5.7 above.

continuing professional development.[85] Organisations such as Humanists UK have shared their training material with us and emphasised how thorough their practices are.

Independent officiants

5.164 As we set out at paragraphs 5.139 to 5.140 above, our view is that independent officiants should be directly authorised by the state rather than nominated by an organisation. For this reason, we think that it is appropriate to set out more specific criteria for independent officiants to assist the General Register Office in determining whether any given applicant is a "fit and proper" person.

5.165 A number of stakeholders expressed the view that specific requirements should apply to this category. The Church in Wales, in its response to our 13th programme, said that any additional people allowed to carry out weddings "should be appropriately trained and monitored". Celebrant organisations responding to the 13th programme also emphasised the importance of training. The Association of Independent Celebrants supported a celebrant scheme which imposed a qualification requirement on celebrants. Civil Ceremonies Ltd similarly emphasised the importance of training and licensing of celebrants, while Amanda Jordan, a celebrant, recommended trained and regulated professional celebrants. Those recommending the Australian scheme also emphasised the training requirements it entailed. Similar views were expressed by the Wedding Celebrancy Commission: its members were unanimous that a new law should make training and continuing professional development compulsory for independent celebrants, along with regular assessments, complaints procedures, and regulation and monitoring. We have taken these views into account in our proposals on what should be required of officiants.

Minimum age

5.166 We provisionally propose that an independent officiant should be at least 18 years of age. This is the age of majority as set by statute,[86] and the minimum age at which it is possible to marry without parental consent. We think that it would be counter-intuitive for someone under that age to be able to confer the status of married persons on others.

Understanding and training

5.167 We provisionally propose that independent officiants should also be required to demonstrate their understanding of the legal requirements for being an officiant when seeking appointment. In addition, they should be required to show that they have undertaken relevant training.

5.168 Such training would have to be either approved by the Registrar General or provided by the General Register Office. Under the new scheme any training would focus on how to ensure that the relevant legal requirements were observed rather than on the ceremonial aspects. Such training could potentially be provided by one of the existing umbrella organisations, such as the Wedding Celebrancy Commission or any of its

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85 See further paras 5.207 to 5.211 below for the consequences if an officiant acted below the expected standard.

86 Family Law Reform Act 1969, s 1(1).

component organisations. However, it would be distinct from the training that independent officiants had already received as celebrants, whether here or in a jurisdiction that allows independent celebrants to conduct legally binding weddings. For this reason, we do not think that it would be viable to exempt officiants who had previously worked as celebrants from any new training requirement. This is not to cast any doubt on the skill displayed by celebrants in crafting and delivering ceremonies, merely to underline the fact that being an officiant involves a different set of skills and knowledge.

5.169 Independent officiants would also be required to undertake continuing professional development as prescribed by the Registrar General. Again, this would focus on their role as an officiant rather than on the ceremonial aspects of the role. Such training would be necessary to ensure that they were aware of any changes to the law and guidance applicable to the conduct of weddings.

No requirement for professional affiliation and insurance

5.170 We have considered whether there should be a specific requirement that independent officiants should be members of a professional organisation. Among those responding to the 13th programme, the Association of Independent Celebrants favoured a requirement that officiants should be a member of a recognised trade body which provides adequate insurance. During the pre-consultation phase the members of the Wedding Celebrancy Commission that represent membership and training organisations thought that membership of a professional association should be necessary, but the member representing unaffiliated wedding celebrants did not. Our view is that while being a member of a professional body may help officiants to access the necessary training and continuing professional development, we do not think that it should be a legal requirement.

5.171 We have also considered whether there should be a requirement that independent officiants take out insurance. We anticipate that most independent officiants would choose to take out both professional liability and public liability insurance. The members of the Wedding Celebrancy Commission all thought that this should be compulsory. Certainly, it seems a matter of good practice and professionalism to obtain such insurance (and all celebrant organisations in England and Wales that we know of provide their members with insurance). Large-scale weddings will often also be insured.

5.172 We could see that liability could arise if an authorised officiant negligently failed to comply with their responsibilities, causing loss to the couple (for example, a cancelled wedding), or an officiant caused damage to the property where the wedding was taking place. However, we are not aware whether there are often (or ever) claims in practice. There are no such requirements in relation to weddings in registered buildings at the moment, and we are not aware that other jurisdictions that authorise independent celebrants mandate insurance. Our provisional view is therefore that it should not be a prerequisite for appointment as an officiant.

Profit and conflicts of interests

5.173 We recognise that expanding the range of persons who can officiate at weddings may raise concerns about the commercialization of marriage. As the scheme that we are

provisionally proposing has parallels in many other jurisdictions, we have considered how such concerns are managed elsewhere.

5.174 In Scotland celebrants cannot carry on a business of solemnizing marriages for "profit or gain". The guidance issued by National Records of Scotland defines this as occurring when "the interests of enacting, celebrating and promoting the celebrant's religious or philosophical beliefs are subordinated to commercial interests".[87] We have been told by National Records of Scotland that some religious or non-religious belief celebrants had strayed "into commercial activity" and this rule against solemnizing marriages for "profit or gain" is used to address that behaviour.

5.175 We think that there would be value in incorporating a similar restriction into our scheme. We therefore provisionally propose that officiants nominated by religious or belief organisations should be specifically barred from making a business of officiating at weddings for profit or gain. This would not preclude nominated officiants from charging a fee to officiate at a wedding. Nor would it preclude them from making a profit, in the sense of charging a fee that does not simply reflect the costs of providing the service. But it would prevent them from doing so in a way that elevated the making of profits above the expression of their beliefs.

5.176 We should emphasise that we do not think that it is likely that any officiants nominated by religious or non-religious belief organisations that met the criteria set out above would do so. We expect that most religious groups that currently conduct weddings would continue to do so as a service to their community. There have been some who have expressed concern that allowing Humanists to conduct legally binding weddings could lead to commercialisation of weddings; we do not see why that would necessarily follow, but this proposal would, in our view, address any such concerns, by preventing a commercial interest from overtaking the belief motivation for officiating at weddings. We also think it would offer reassurance to such groups to know that other groups would not be able to conduct a business under the guise of promoting a particular belief.

5.177 We have given careful consideration to whether independent officiants should also be barred from making a business of officiating at weddings for profit or gain. The difficulty is that barring independent officiants from making a business of officiating at weddings for profit or gain would effectively be to bar many from operating at all. In addition, a test that focusses on whether beliefs have been subordinated to business interests is inapt where the individuals in question are not part of a wider religious or belief organisation.

5.178 One option would be to limit the fee that they would be able to charge for officiating at the wedding, but allow them to charge such fees as they see fit for any other services they might provide, such as meeting with the couple in advance of the ceremony to plan what will be included and conducting the ceremony. This would ensure parity between those officiating at civil weddings. In practice, however, we think it is unlikely that a couple would opt to have an independent celebrant officiate at their wedding

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87 National Records of Scotland, *Marriage Celebrants – NRS Policy on Authorisation*, p 9. https://www.nrscotland.gov.uk/files//registration/nrs-marriage-authorisation-policy.pdf (last visited 1 May 2020).

unless they also wanted that person to conduct the ceremony and so limiting the fee that they could charge to officiate at the wedding might be artificial.

5.179 The issue does not arise in Scotland, which does not recognise independent celebrants who are not associated with a religious or belief organisation. In Australia, while ministers of religion are prevented from "making a business of solemnising marriages for the purpose of profit or gain",[88] Commonwealth-registered marriage celebrants are not. However, one of the factors taken into account in determining whether applicants are fit and proper persons is whether they have an actual or potential conflict of interest and would be likely to gain a benefit in respect of a business they own, control, or carry out.

5.180 We think that this would be an appropriate rule to apply to independent officiants. It would not preclude them from operating on a business footing and so is less restrictive than that proposed for officiants nominated by religious and belief groups. Nor would it preclude them from offering ancillary services such as floristry or catering. However, we think that there is a conflict between the dignity inherent in being authorised by Government to perform an important role with legal consequences and the commercialisation of that role as a means of making money from additional services. The rule would therefore preclude independent officiants from requiring couples to purchase other services from them or from receiving a commission for referring couples to particular providers of ancillary services.

5.181 We therefore provisionally propose that independent officiants should be required to ensure that they avoid any conflicts of interest in officiating at weddings, but should not otherwise be barred from making a business of officiating at weddings for profit or gain.

5.182 Any concerns that this might lead to weddings becoming commercialised should be allayed by recent research into independent celebrants. This shows that the fees charged are on a par with those charged by non-religious belief organisations and indeed by registration officers when conducting weddings on approved premises. The celebrants surveyed also indicated that they would conduct weddings for a reduced or sometimes no fee in certain circumstances.[89]

Multiple nominations

5.183 We provisionally propose above that different criteria should apply to officiants who are nominated by a religious group or non-religious belief organisation and independent officiants, and in particular that different restrictions on operating as a business would apply to independent officiants. In the light of this, our view is that it should not be possible for any given person to be authorised as an officiant by different routes. There are already restrictions on ministers of religion becoming

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88 Marriage Act 1961, ss 33(1)(d)(ii) and 118; Attorney-General's Department, *Guidelines on the Marriage Act 1961 for authorised celebrants* (July 2018) para 11.4, https://www.ag.gov.au/FamiliesAndMarriage/Marriage/resources-for-marriage-celebrants/Documents/guidelines-marriage-act-1961-authorised-celebrants.pdf (last visited 1 May 2020).

89 S Pywell, "The day of their dreams: celebrant-led wedding celebration ceremonies" [2020] *Child and Family Law Quarterly* 177, 197.

registration officers,[90] and thought would need to be given to whether that restriction should be extended to other officiants.

5.184 We therefore provisionally propose that it should not be possible for the same person to be nominated as an officiant by a religious or non-religious belief organisation and to apply for authorisation as an independent celebrant, or for the same person to be nominated by both a religious and a non-religious belief organisation.

5.185 However, we do not think that it is necessary to have any limits on the number of officiants that any particular organisation can nominate, or on the number of independent officiants. We note that in Scotland one of the conditions for registration as a celebrant nominated by a religious or belief body is that there are not already sufficient registered celebrants to meet the needs of the nominating body. However, none of our stakeholders who we discussed this point with saw the need to impose such limits in England and Wales. Humanists UK, for example, told us that some of its celebrants would only do one or two weddings per year. We agree that it should be possible to officiate at weddings on a part-time basis, necessitating an organisation to have more officiants, so we do not provisionally propose any such limit.

5.186 We are therefore not making any proposal to limit the number of officiants that can be nominated or appointed.

Provisional proposals

Consultation Question 30.

5.187 We provisionally propose that religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations should be responsible for ensuring that the persons they nominate as officiants are "fit and proper" persons.

Do consultees agree?

[90] Local Registration Services Association, *Jobs: Becoming a Registrar*, https://www.lrsa.org.uk/viewjobs.cfm (last visited 1 May 2020).

Consultation Question 31.

5.188 We provisionally propose that (if enabled by Government to officiate at weddings) independent officiants applying to be authorised should be required to demonstrate that they are "fit and proper" persons by proving that they:

(1) are aged at least 18;

(2) understand the legal requirements for being an officiant and performing the role; and

(3) have undergone mandatory training and continuing professional development in the legal aspects of being an officiant, with the content to be determined by the Registrar General.

Do consultees agree?

Consultation Question 32.

5.189 We provisionally propose that officiants nominated by religious and (if enabled by Government to officiate at weddings) non-religious belief organisations should be prohibited from making a business of officiating at weddings, by elevating the making of profits above the expression of their beliefs.

Do consultees agree?

Consultation Question 33.

5.190 We provisionally propose that (if enabled by Government to officiate at weddings) independent officiants should be prohibited from acting with a conflict of interest but that there should not otherwise be limits on the fees that they can charge for officiating at a wedding.

Do consultees agree?

Consultation Question 34.

5.191 We provisionally propose that, if Government enables independent celebrants and/or non-religious belief organisations to officiate at weddings, it should not be possible for the same person to be:

(1) authorised as an independent officiant and nominated by either a religious or a non-religious belief organisation; or

(2) nominated by both a religious and a non-religious belief organisation.

Do consultees agree?

Identifying a common set of responsibilities for all officiants

5.192 As we set out above, we envisage the key role of the officiant as being to ensure that the legal requirements for getting married are met, and we identify the three duties that are core to that role. Given that officiants will be carrying out an important legal function, we think that it is appropriate too that the law should in addition require all officiants to exercise their role responsibly. In this section we provisionally propose that all officiants – whether registration officers, Anglican clergy, nominated officiants or independent officiants – should have a responsibility to uphold the dignity and solemnity of marriage. We also provisionally propose that guidance should be issued to all officiants as to how weddings should be conducted.

A responsibility to uphold the dignity and solemnity of marriage

5.193 We provisionally propose that officiants should, as a key part of their role, have a responsibility to uphold the dignity and solemnity of marriage. We should emphasise that we do not think that it is likely that any officiants – whether Anglican clergy, registration officers, or officiants who had satisfied the "fit and proper person" test outlined above – would do anything to detract from the status of marriage as an institution. In all our discussions with religious and non-religious belief organisations, and with independent celebrants, we have been impressed by the seriousness with which individuals approach the task of conducting weddings. Nor do we wish to imply that weddings should not be fun and happy events. The personal jokes that couples develop during their lives together might seem silly to outsiders but can be very meaningful to the couple and key to the way in which they express their commitment to each other. Nonetheless, we think that there is value in emphasising that marriage is also a serious matter, involving a change of legal status, and that officiants should reflect this in their role.

5.194 The responsibility to uphold the dignity and solemnity of marriage would be general rather than specific and would relate to the conduct of the officiant rather than the content of the ceremony. For example, officiants would be expected to ensure that they were upholding the dignity and solemnity of marriage in the way that they advertised themselves and described their role. During the ceremony itself, they would be expected to comport themselves in a way that reflected their important legal role.

5.195 The focus of the officiant is to ensure that their behaviour, and their participation in the wedding, reflects the dignity and solemnity of marriage. As we have discussed above, we envisage that the officiant would be responsible for ensuring that the legal requirements of the ceremony are met. The officiant has a responsibility to ensure that the portion of the ceremony in which the couple express their consent, in front of witnesses, does not undermine the dignity, solemnity, and importance of marriage. If the officiant was unhappy with the form of ceremony proposed and felt that it would not be consistent with their responsibility to uphold the dignity and solemnity of marriage, they could simply refuse to act. If on the day of the wedding the officiant had concerns about dignity in respect of the elements of the ceremony to which their legal duties applied, their role would be to take what steps they could to reassert dignity. We do not, however, think that the responsibility to uphold the dignity of marriage should require the officiant to stop the wedding from proceeding, or that it should have any consequences for the legal effectiveness of the wedding.

Guidance to officiants on how to fulfil their duties and responsibilities

5.196 We provisionally propose the General Register Office should issue guidance to officiants on how to fulfil their duties under weddings law. Registration officers are already expected to comply with the guidance set out in the Handbook issued by the General Register Office. The General Register Office also produces guidebooks for the clergy and for authorised persons.

5.197 Given that our proposed scheme involves significantly less regulation of certain aspects of the process of getting married, we think that there would be considerable value in having some additional guidance on certain aspects. As we discuss in Chapter 7, we envisage officiants being responsible for giving their agreement (or not) about where any given wedding can take place, with the state issuing guidance to officiants to help officiants ensure that weddings only take place in locations that are safe and dignified. However, it is important that guidance does not seek otherwise to impose limitations on location, else this would defeat the purpose of liberalising the regulatory framework.

5.198 We also think that it would be helpful for all officiants to have guidance on how to detect and deal with forced and sham marriages. As we discuss in Chapter 4, the key time for detecting forced and sham marriages is the notice period. Nonetheless, there may be cases where the fact that the marriage is forced or a sham only comes to light on the day of the wedding, and officiants need to know how to deal with such cases when they arise, such as providing advice about options to a person suspected of being forced into a marriage.

5.199 There may also be a number of practical issues on which it would be helpful for officiants to have guidance. Examples might include how to check the schedule (to ensure that it is still valid and that the persons named are the same persons as those at the wedding), how to complete the schedule, and whether and when to accept responsibility to submit the schedule to the registration authorities. Given that officiants would also need to comply with rules on the keeping of parties' personal data, guidance on what is required in this context would also be useful. However, we think that it is important that such guidance is simply aimed at helping officiants to fulfil their responsibilities under our proposed scheme and does not impose any new substantive or procedural requirements.

Provisional proposals

Consultation Question 35.

5.200 We provisionally propose that officiants should have a responsibility to uphold the dignity and solemnity of marriage.

Do consultees agree?

Consultation Question 36.

5.201 We provisionally propose that the General Register Office should issue guidance to all officiants on how weddings should be conducted.

Do consultees agree?

Clarifying how officiants should be monitored and de-authorised

5.202 The final set of issues for consideration concern how officiants should be monitored, how long their authorisation should last, and how, if necessary, they could be de-authorised. Nothing in this section should be taken as having any application to registration officers or to Anglican clergy.

Monitoring

5.203 We think that the role of monitoring officiants should lie with the religious or non-religious belief organisation that has nominated them, in line with our general view that such organisations should be entrusted with making decisions about who is a fit and proper person to be nominated. It would of course be open to such organisations to impose more stringent requirements on their officiants than exist under the general legal framework. The role of monitoring independent officiants should lie with the General Register Office.

The duration of authorisation

5.204 We have considered whether authorisation should be subject to any time limits. Requiring religious and non-religious belief organisations to re-nominate individuals every few years would impose a significant burden on both them and the state. It could also raise difficult questions about the status of a wedding that took place after that officiant's authority had lapsed. If the decision were taken that officiants could be nominated by office, it would be particularly odd to require re-nomination. We therefore take the view that a nominated individual or office holder should continue to be able to officiate at weddings as long as they are permitted to do so by their organisation. If the organisation decides that a particular individual should no longer be permitted to officiate, the onus is on it to request that individual's withdrawal of authorisation and consequent removal from the official list.

5.205 We have given special consideration to whether the authorisation of independent officiants should be subject to any time limit. On the one hand, independent officiants would be in a different position from other officiants because they are not part of any organisation: their involvement in weddings is not a part of a larger role they have within a particular religious or belief community. As a result, there is no natural end to their authorisation, as for example would be the case for other officiants if they had been nominated by reference to an office they no longer held or if the organisation had decided that they were no longer capable of acting as an officiant. On the other hand, it would be time-consuming to re-authorise independent officiants. Nor would it be necessary as long as they complied with their obligations to undertake continuing professional development.

5.206 Our view is that the authorisation of an independent officiant should continue as long as they continue to comply with their obligations as an officiant, including that of undertaking continuing professional development. The General Register Office would have the power to de-authorise them if they failed to do so, and the responsibility for updating the public list.

Withdrawal of authorisation

5.207 There is also the question of whether there should be a process of withdrawing authorisation if an officiant ceases to be a "fit and proper" person.

5.208 Our view is that the primary responsibility should lie with the nominating body. Religious groups and non-religious belief organisations should be subject to an obligation to de-nominate, and request de-authorisation of, any officiant who ceased to meet the fit and proper person standard, or who had not fulfilled their responsibilities.

5.209 However, if an organisation failed to act in such cases, the General Register Office should have the power to withdraw an officiant's authorisation. As part of this, it should have the power to undertake investigations into the conduct of officiants. If officiants could be nominated and authorised by office, withdrawal of authorisation would nevertheless apply to named individuals, regardless of whether they continued to hold an authorised office. Other holders of the same office would continue to be able to act as officiants.

5.210 The General Register Office should also have the power and primary responsibility to de-authorise any independent celebrant who has ceased to meet the fit and proper person standard or who had not fulfilled their responsibilities. Again, this will require the General Register Office to have the power to carry out investigations into the conduct of celebrants officiating at weddings.

5.211 The potential time-lag between a person ceasing to be authorised and the list being amended raises the possibility that an officiant might appear to be authorised even when they were not. Our view is that this should not have any impact on the validity of the marriage. As we explain in Chapter 10, the fact that an officiant is not authorised would not in itself make the marriage void unless both of the couple knew this to be the case.

Provisional proposals

Consultation Question 37.

5.212 We provisionally propose that the primary responsibility for monitoring officiants and requesting withdrawal of authorisation if they fail to comply with the fit and proper person standard or their duties or responsibilities should lie with the organisation that nominated them.

Do consultees agree?

Consultation Question 38.

5.213 We provisionally propose that the General Register Office should have the power to de-authorise nominated officiants if they fail to comply with the fit and proper person standard or their duties or responsibilities, and if the body who nominated them fails to act.

Do consultees agree?

Consultation Question 39.

5.214 We provisionally propose that the General Register Office should be responsible for monitoring independent officiants and de-authorising those who fail to comply with the fit and proper person standard or their duties and responsibilities, including conducting investigations necessary to exercise its powers.

Do consultees agree?

Consultation Question 40.

5.215 We provisionally propose that there should be no time limit on the authorisation of officiants.

Do consultees agree?

Consultation Question 41.

5.216 We provisionally propose that an independent officiant's authorisation would lapse if they failed to comply with the obligation to engage in continuing professional development.

Do consultees agree?

Chapter 6: The wedding ceremony

INTRODUCTION

6.1 In Chapter 5, we provisionally propose that it should be the duty of the officiant to ensure that each member of the couple gives their consent to marry, and that any necessary ceremonial requirements are observed. In this chapter we explore whether consent needs to be given in a particular form, and whether any particular form of ceremony should be required.

6.2 The current law imposes different requirements depending on the type of wedding. This difference in treatment and complexity has fuelled misunderstandings about the law, leading some groups to believe that the law will only recognise some types of religious wedding, and not others.

6.3 Our starting point is that to devise a law that reflects the principles of certainty and simplicity, and fairness and equality, the same rules should apply equally to all weddings. Further, in line with our principle of respecting peoples' wishes and beliefs, the ceremony that is meaningful to the couple should be recognised by law. A significant criticism of the current law is that, for some couples, that is not currently the case. In addition to being required to marry in a place that might not be meaningful to them (an issue we consider in Chapter 7), couples having a religious ceremony other than an Anglican, Jewish or Quaker ceremony are required to say prescribed words. Some religious groups perceive this requirement as a separate civil ceremony, or an intrusion into their religious rites; couples having these ceremonies might feel as though the law requires them to have two ceremonies.[1] The law also does not adequately consider the wishes of couples having civil ceremonies to have a ceremony that is personal and meaningful to them.

6.4 Because of the importance of the law recognising the ceremony that makes the couple married in their own eyes, we proceed on the basis that the law should continue to require a ceremony, but that the requirements of the ceremony should be flexible. The law should work for all couples and all religions, to recognise the variety of beliefs and practices in England and Wales.

6.5 The robust system of preliminaries we propose in Chapter 4 largely serves to protect the state's interest in marriage, allowing us to make proposals in this chapter that give couples considerable freedom in how they celebrate their wedding day. We provisionally propose that all weddings should take place according to the form and ceremony chosen by the parties and agreed to by the officiant. We also provisionally propose that parties should be required to express their consent to be married, either expressly or in accordance with particular religious rites, with the marriage being formed at the time the parties express their consent. Other than a requirement for two witnesses, our initial view is that there is no need for the law to impose any further requirements in relation to the ceremony. We further provisionally propose to liberalise

[1] See para 6.21 below.

the prohibition on religious content in civil ceremonies, and to remove the requirement for open doors for all weddings.

THE FORM OF CEREMONY

6.6 The current law prescribes rules for the form each type of ceremony must and can take. As we consider below, the current rules give certain types of religious wedding exceptional, privileged treatment, fuelling misconceptions about the ability of other religious weddings to be legally recognised. The law fails to consider adequately the purpose of civil weddings, and as a result fails to provide couples having civil weddings sufficient choice about how to celebrate their marriages. Finally, the requirement for prescribed vows – only required in certain weddings – is perceived by some as an intrusion into their religious ceremonies. Our conclusion is that the current rules are too rigid to allow many couples to marry in a way that reflects their wishes and beliefs, and are simultaneously too complex and uncertain, causing confusion and inconsistency in their application. The state's interest could be protected by simpler and clearer rules which allow couples enough freedom to celebrate their wedding in a way that is meaningful to them. We therefore provisionally propose a scheme that would recognise and reflect the variety of ways that couples mark their weddings in England and Wales today, while providing certainty to the state and couples alike about when a couple became legally married.

6.7 The Marriage Act 1949 imposes different requirements about the form a wedding ceremony must follow, depending on the type of ceremony.

(1) Anglican, Jewish and Quaker weddings are subject to unique provision about the form they must take. The Act makes explicit provision for weddings to take place "according to the rites of the Church of England" or according to the "usages of the Jews" or the "usages of the Society of Friends". Jewish and Quaker weddings are further restricted by the Act in terms of who can marry according to those usages, being confined to persons "professing the Jewish religion", or to members of the Society of Friends and persons authorised by the Society, respectively.[2]

(2) Weddings in registered buildings, that is religious weddings other than Anglican, Jewish and Quaker weddings, may take place "according to such form and ceremony" as the couple "may see fit to adopt", provided that the minister or trustees of the building consents. Weddings in registered buildings are required to include the prescribed words, comprising the declarations and words of contract.[3]

(3) Civil weddings must also include the prescribed words. Other than the prohibition on religious service (which we consider in detail below), there are no other provisions about the content of a civil ceremony, and particularly, no provision that it should be in the form that the parties wish.[4]

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2 Marriage Act 1949, ss 5(1); 26(1)(c), (d) and (e); 26B(2)(a) and (4)(a); and 47(1).

3 Marriage Act 1949, s 44. See paras 2.26 and 2.152 to 2.154 above.

4 Marriage Act 1949, ss 45 and 46B.

6.8 These differences derive from the way in which the law has evolved.

(1) Anglican weddings were originally governed by the canon law alone. When the Clandestine Marriages Act 1753 first put marriage on a statutory footing, it directed that all of the rules set out in the Book of Common Prayer "shall be duly observed", and the subsequent Marriage Act 1823 contained a similar requirement.[5] However, when marriage law was consolidated in the Marriage Act 1949, part II simply set out how a wedding could be conducted according to the rites of the Church of England, rather than explicitly requiring specific rites to be observed. The approved forms of service for Church of England weddings are the Solemnization of Matrimony in *The Book of Common Prayer*",[6] *Alternative Services: Series One*, and the Marriage Service from *Common Worship*.[7] For weddings in the Church in Wales, the service is set out in the 1984 Prayer Book.

(2) Jewish and Quaker weddings were initially exempted from both the 1753 and 1823 Acts. Both Acts provided that they did not apply to "Marriages amongst the People called Quakers, or amongst the Persons professing the Jewish Religion", where both parties belonged to these groups.[8] The restriction of Quaker and Jewish weddings to people of those religions was intended to ensure that these exemptions did not provide loopholes for other couples. Neither Act explicitly stated that Quaker or Jewish marriages were valid.[9] However, the courts recognised Jewish and Quaker marriages as valid and the Marriage Act 1836 subsequently provided that the Society of Friends and those "professing the Jewish Religion" could "continue to contract and solemnize Marriage according to the Usages of the said Society and of the said Persons respectively".[10]

(3) During the passage of what became the Marriage Act 1836 there was little discussion of the form that weddings in registered buildings should take. Most denominations had no history of celebrating weddings according to their own

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5 Clandestine Marriages Act 1753, s 1; Marriage Act 1823, s 2. The Marriage Act 1836 did not directly regulate Anglican weddings but stated that the existing laws and canons would continue to apply and that "all the Rules prescribed by the Rubrick concerning the solemnizing of Marriages shall continue to be duly observed by every Person in Holy Orders of the Church of England who shall solemnize any Marriage in England": s 1.

6 Canon of the Church of England B35.2.

7 For discussion see S Farrimond, "Church of England Weddings and Ritual Symbolism" in J Miles, P Mody and R Probert (eds), *Marriage Rites and Rights* (2015).

8 Clandestine Marriages Act 1753, s 18; Marriage Act 1823, s 31. For the reasons behind this exemption see R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009) ch 6.

9 See R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009) ch 9. There were some doubts about the validity of Quaker weddings: see eg *Lindo v Belisario* (1795) 1 Hag Con 216, 161 ER 530. By contrast, it was accepted that Jewish marriages were governed by Jewish law: see eg *Goldsmid v Bromer* (1798) 1 Hag Con 324, 161 ER 568, in which the marriage was void as the witnesses did not fulfil the requirements of Jewish law.

10 Marriage Act 1836, s 2.

rites.[11] The only exception was the Roman Catholic Church. It was therefore unsurprising that the 1836 Act should have echoed the structure of the Anglican service in requiring couples both to make a declaration that they were free to marry and to exchange words of consent.

(4) Even less thought was given to the form of civil weddings, which were included as something of an afterthought.[12] It was simply accepted that the same words should be required for a wedding in the office of the superintendent registrar as for a wedding in a registered building. This requirement reflected the perception that civil weddings were needed to cater for those Non-conformists who believed marriage to be a civil contract: the potential wishes of those with no faith at all were not considered in the debates. It was only in 1856 that an explicit prohibition on religious service in a register office wedding was included.[13]

Issues

6.9 The various requirements for the form of ceremony raise, in our view, three distinct issues. We consider each in turn.

The separate treatment of Anglican, Jewish and Quaker weddings

6.10 We are not aware that the discrete requirements for Anglican, Jewish and Quaker weddings give rise to problems in practice for those groups. Rather, the concern is that different religious groups are treated differently within the legislation, differences which give rise to misunderstandings about the law as a result.

6.11 Without the benefit of knowing the history of these provisions, the Marriage Act 1949 seems to exceptionalise Anglican, Jewish and Quaker weddings. In our view, this exceptional treatment has contributed to the misunderstanding that the law only recognises religious weddings if they are Anglican, Jewish or Quaker, with all other religious weddings being a form of civil wedding. This misunderstanding is apparent in some of the commentary about the issue of non-qualifying ceremonies, or religious-only weddings, particularly as it arises within the Muslim community.[14]

6.12 This misunderstanding is unfortunate, as the specific rules that govern the content of Anglican, Jewish and Quaker weddings are not fundamentally different from the rule that applies to other religious weddings. Certainly, there is no difference in practice in the application of the different rules. In requiring the consent of the religious group but otherwise giving parties the right to determine the form of ceremony, the law gives all religions the right to control who they marry and the form of their wedding ceremonies.

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11 R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009) ch 9.

12 S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies" [2018] *Child and Family Law Quarterly* 415.

13 Marriage and Registration Act 1856, s 12.

14 See eg The Independent Review into the Application of Sharia Law in England and Wales (2018) Cm 9560; and Aina Khan, *Register our Marriage* (October 2019), https://registerourmarriage.org/sites/rom.hocext.co.uk/files/2019-11/BRIEFING%20by%20Aina%20Khan%20OBE_1%20October%202019.pdf (last visited 1 May 2020).

6.13 Although spared from the requirement for prescribed words, the references in the 1949 Act to Anglican rites and Jewish and Quaker usages may mean that these groups have less scope to change or personalise their form of wedding ceremonies as they see fit, or to incorporate elements of other faiths into the ceremony should they wish to do so, compared to other religious groups. It is unclear what the consequence would be if a wedding was not conducted according to the relevant rites or usages. The assumption must be that a marriage would be valid even if the rites or usages were not exactly observed, but given the lack of clarity in the legislation it is understandable if these groups are more cautious in the advice they give.[15]

Failure of the law to consider the purpose of civil weddings

6.14 For civil weddings, there is no equivalent provision that states that the wedding should take place according to the form the parties see fit to adopt. This flows from the failure of Parliament, when providing an option for civil weddings, to expressly consider the purpose of a civil marriage ceremony, together with the assumption that they would be an unpopular choice for couples.[16]

6.15 We understand that, in the majority of cases, registration officers wish to give couples a meaningful wedding, and so they accommodate couples' wishes to personalise their ceremonies. For example, registration officers regularly incorporate music and additional, personal vows into ceremonies, and we have even heard of registration officers donning costumes to lead a themed civil wedding.

6.16 However, there is evidence that in some cases, registration officers are taking a restrictive view as to what they allow couples to include as part of their wedding ceremony. In some cases, this view is based on an interpretation of the prohibition in the Marriage Act 1949 on the use of any religious service in a civil ceremony (which we explore in more detail at paragraph 6.73 and following below). In other cases, it is not. Although the Marriage Act 1949 does not make any provision for registration officers to veto other content, the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 ("Approved Premises Regulations") require that the content of proceedings on approved premises "must meet with the prior approval" of the superintendent registrar or the registration authority.[17]

6.17 A survey of registration officers and couples found that although registration officers were generally keen to accommodate a couple's wishes if possible, registration officers had varying ideas as to their role. In some cases, registration officers (perhaps guided by local authorities) were taking subjective views on the allowable content of civil ceremonies. Some registration officers objected to requested vows on the basis that they were "too flowery", "possessive", or light-hearted. Nearly 30% of registration

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15 J Jackson, *The Formation and Annulment of Marriage* (2nd ed 1969) p 201, suggests that a Jewish marriage would be void if it did not comply with the requirements of Jewish law but this seems to be based on the position before the 1836 Act. The Board of Deputies noted to us that it is unlikely that someone from within the Jewish community would allege that a wedding was not conducted according to "the usages of the Jews". See para 10.28 below.

16 R Probert, M Harding and B Dempsey, "A Uniform Law of Marriage? The 1868 Royal Commission Reconsidered" [2018] *Child and Family Law Quarterly* 217.

17 SI 2005 No 3168, sch 2 para 10.

officers would not allow a couple to kiss each other five times, with one commenting that "I would not know where to look". Two registration officers would have refused to allow a ceremony involving lighting a candle on the basis that it was a fire hazard.[18]

6.18 Some stakeholders have made similar points to us. We have heard of registration officers being unwilling to personalise ceremonies meaningfully. A survey of venues Bridebook.co.uk undertook to engage with our project gives examples of registration officers refusing to allow pets to be involved in ceremonies and refusing to go upstairs in approved premises.[19] From what we have heard from stakeholders, we understand that the actual or perceived inability to personalise a civil ceremony is driving at least some of the demand for non-legally binding ceremonies conducted by independent celebrants.

6.19 Whether these issues pose a problem may depend on one's view of a civil ceremony. If a couple's decision to have a civil ceremony is seen as an active choice to have a no-frills legal ceremony, then perhaps the inability of some couples to personalise their ceremony is not a problem: perhaps a civil ceremony is "just about the formalities" necessary for the couple to be legally married, and nothing more.[20] However, for many couples, a civil ceremony is the only practical option that they have. This may be particularly true for atheist or agnostic couples, interfaith couples, transgender people, and, given the low proportion of religious groups who have opted-in to conduct same-sex weddings,[21] for same-sex couples. These couples will have the same desire to have a meaningful wedding ceremony as anyone else.

The requirement for prescribed words for some types of wedding

6.20 A requirement for prescribed words can provide the significant benefit of certainty. It provides a clear and universal moment in every wedding ceremony when the couple declare that they are free to marry, and that they consent to marry each other. However, as we noted in the Scoping Paper, this supposed benefit is undermined by the fact that is not a universal requirement in England and Wales: it does not apply to Anglican, Jewish or Quaker weddings. Moreover, even for those weddings where it is required, there is nothing in the Marriage Act 1949 that provides that a marriage is void if the prescribed words are not said.[22]

6.21 We have heard from stakeholders that the requirement for prescribed words is seen as an imposition by some religious groups. This is particularly the case for those

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18 S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies" [2018] *Child and Family Law Quarterly* 415.

19 Bridebook.co.uk, *UK Wedding Industry Law Review Report* (October 2019).

20 S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies" [2018] *Child and Family Law Quarterly* 415, 434.

21 See P Johnson, R Vanderbeck, and S Falcetta, *Religious marriage of same-sex couples: A report on places of worship in England and Wales registered for the solemnization of same-sex marriage* (University of York and University of Leeds, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3076841 (last visited 1 May 2020).

22 Scoping Paper, para 4.40. However, Augur Pearce has explained to us that, in his view, the vows are the contract, a separate element from the marriage's solemnization; without the contract there could be no marriage at all. See Ch 10 for a more detailed discussion of the factors that make a marriage void or voidable.

(primarily non-Christian) groups who developed their own form of wedding ceremonies before being subject to the law in England and Wales. The prescribed words are an intrusive element that the law imposes on couples, and are sometimes seen as a separate, civil ceremony within the religious blessing.

(1) During a scoping phase meeting, Sikh Council UK explained that a Sikh wedding ceremony does not involve the couple making vows. Instead, the marriage is formed as the couple walk together clockwise around Sri Guru Granth Sahib Ji (holy scriptures) as part of the wedding ceremony. Sikh Council UK explained that the current prescribed words have no meaning in the Sikh faith. The Council favoured a solution which would allow the Sikh wedding ceremony itself to be recognised by the law.

(2) In its 13th programme response, the National Spiritual Assembly of the Bahá'ís explained that the main requirement for a Bahá'í wedding ceremony is for each person to say, "We will all, verily, abide by the Will of God" in the presence of two approved witnesses. The Assembly wished for the law to recognise this ceremony as the legal ceremony, "thus obviating the need for a second, civil ceremony". The Assembly was of the view that it would be preferable for couples to be required to sign documentation than to speak specific words.

(3) The Muslim Council of Britain explained that a Muslim wedding ceremony, called a nikah, usually involves making an offer to the groom and his acceptance. Typically, the bride will give her consent prior to the ceremony. If she is present, then usually she will give her consent at the ceremony. The bride however might not be present at the nikah ceremony, or the bride and groom might be in separate locations, with the imam going between them for the nikah. Whether or not the bride and groom are in the same room depends on the practices of the families, and whether the nikah is being held in a mosque which has facilities for women. Because of the variety of forms a nikah can take, the Muslim Council of Britain did not support the current requirement that couples say prescribed words. It instead supported giving flexibility to communities to choose words that suited them. Alternatively, the Council supported a requirement that the bride and groom be together, with the officiant and witnesses, to sign the schedule on which it was stated that the couple had given their consent.

(4) We understand that during a Hindu wedding ceremony, often only the groom makes an oral vow. The couple will walk around the sacred fire three, four or seven times, depending on the family tradition. The couple are regarded as married when they walk seven steps together, at each step making a particular prayer or vow. Although we understand that many Hindu couples have a separate civil ceremony, and are content with that arrangement, no doubt some would prefer their religious ceremony to be recognised as legally effective.

(5) The Jain Network explained to us during the scoping phase that a Jain wedding ceremony is similar to a Hindu ceremony, based on their shared culture. It involves couples walking around a fire four times, while words are being said. A significant proportion of Jain weddings in England and Wales – 10 to 20% – are interfaith. The Jain Network was in favour of reform that would allow Jain

wedding ceremonies and interfaith ceremonies to be legal, without a requirement for a separate civil ceremony; however, the Network also supported prescribed words.

(6) During the scoping phase, the Church of Scientology explained that couples can choose their wedding ceremony from a book of Scientologist ceremonies. These ceremonies do not include the prescribed words, so the prescribed words have to be specifically inserted into couples' weddings. This is not a problem in practice; nevertheless, the Church suggested that it would be easier if couples were able to use a ceremony directly from their book of ceremonies.

6.22 The specific requirement for each party to the marriage to say the words of contract, that they take the other as their wedded "wife" or "husband" also raises concerns. It may pose a barrier for transgender people who have not had their affirmed gender recognised by a gender recognition certificate, gender non-conforming people who do not identify as either gender, or whose gender identity is fluid, or intersex people. The Society of Friends told us of at least one couple who were not going ahead with a civil wedding because, for one of them, their legal gender does not match their gender identity. This concern was also raised within the survey of registration officers, discussed above, with one registration officer suggesting that a gender-neutral option, such as "spouse", should be introduced.[23] The contracting words may also raise concerns for those who regard the terms "wife" and "husband" as having patriarchal and heteronormative connotations.

Options for reform

6.23 Our starting point is that the same rules should apply equally to all weddings. Such an approach would eliminate the complexity, uncertainty and unfairness of the current law's differential treatment of different groups. Should Government decide that non-religious belief organisations and independent celebrants should be able to conduct weddings, we think that the same rules governing the form of ceremony should also apply to the weddings at which they officiate.

6.24 We consider below some possible options which would apply the same rules to all types of wedding, bearing in mind the five principles underpinning our review.[24]

No provision for recognition of a ceremony in any form

6.25 As we noted in the Scoping Paper, before considering the form of wedding ceremony the law should require, a prior question is whether the law should require, or recognise, a ceremony at all. A civil partnership comes into being when the parties sign a civil partnership document.[25] It is possible that a marriage could be formed in a similar way, for example, by both parties signing the schedule in the presence of witnesses and the officiant.

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23 S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies" [2018] *Child and Family Law Quarterly* 415, 434.

24 The full Terms of Reference for our project are included in Appendix 1.

25 Civil Partnership Act 2004, s 2.

6.26 The argument for such an approach is that the state does not have any interest in how weddings are celebrated: having established the parties' capacity to marry during the preliminaries stage, and imposing requirements for registration of marriages, the state's interest in the wedding ceremony is limited to ensuring that the parties consent. This argument has been made, for example, by John Eekelaar.[26]

6.27 We can see the attraction of this argument, most clearly in the benefits of certainty and simplicity, a principle of our review: the same, basic, requirements for preliminaries and registration would apply to all types of wedding. Moreover, by eliminating requirements for different ceremonial formalities for different types of wedding, this option would, on its face, seem to promote fairness and equality, and to respect couples' wishes and beliefs, two other principles underpinning our review.

6.28 We can also see the downsides. Primarily, this solution may not in substance promote either choice or equality, if it meant that a marriage could only be legally formed when the schedule is signed. This moment might not be the point at which the parties view themselves as being married, particularly if they have had a religious (or non-religious belief) wedding ceremony or another form of meaningful ceremony. Through the course of our work to date, we have learned of the variety of religious rites through which couples express their consent to marry; this approach would ignore those rites and beliefs. Indeed, this approach could arguably be seen as a form of universal civil marriage, as the religious (or non-religious belief) ceremony would be superfluous to any understanding under the law of when a marriage was formed.

6.29 Given our view that couples should be able to have a legal wedding ceremony that is meaningful to them, and the strong support stakeholders expressed for giving couples greater choice during our scoping work,[27] we do not think that signing the schedule should be the only way of creating a marriage.

6.30 However, signing the schedule could be one way of expressing the consent necessary for a valid marriage. What amounts to a meaningful wedding ceremony varies across communities and individuals. We explain below our initial view that no particular form of ceremony should be required: the only requirement should be that each of the parties expresses consent to be married to the other, in the presence of the officiant and the witnesses. How they express consent will vary. We think that, if the parties have not expressed consent in another way, the parties could express their consent by signing the schedule. This moment of signing would therefore amount to the ceremony that the law would recognise.

Provision for a ceremony, with the same requirements applying to all weddings

6.31 We now turn to consider options for the requirements for a form of ceremony.

6.32 One solution to the complexity and confusion of different rules governing the form of ceremonies among Anglican, Jewish and Quaker weddings, all other religious weddings, and civil weddings, is to devise a rule that works for all.

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26 J Eekelaar, "Marriage: A Modest Proposal" [2013] *Family Law* 83.

27 See Scoping Paper, para 3.26.

6.33 First, there is no policy reason to treat the form of Anglican, Jewish or Quaker weddings differently than other types of religious ceremony. It moreover runs contrary to two principles of our review: fairness and equality, and certainty and simplicity. An option would therefore be to apply the rule that governs weddings in registered buildings generally, so that all religious (or non-religious belief) weddings may take place "according to such form and ceremony" as the couple "may see fit to adopt", with a requirement that the religious (or non-religious belief) organisation must consent to solemnizing the wedding. Given that we have proposed that the officiant should be responsible for ensuring that any requirements as to the ceremony are met, this policy could be expressed as requiring the officiant's consent. The officiant, representing their nominating body, would be responsible for imposing the ceremonial form and requirements of the body.

6.34 Applying the rule that the religious (or non-religious belief) officiant must consent to the ceremony, but that otherwise it should be according to the form and ceremony chosen by the couple, would obviate any need to make specific rules for the forms of Anglican, Jewish and Quaker weddings. But we do not intend, and nor do we believe, that removing the requirement for Anglican rites, or Jewish and Quaker usages, will necessitate any change in practice for these groups or the weddings they conduct. According to the rule that would apply to all groups, the Church of England and the Church in Wales; the Board of Deputies of British Jews, the West London Synagogue of British Jews, and the Liberal Jewish Synagogue, St John's Wood; and the Society of Friends would continue to be able to decide the form and requirements for the wedding ceremonies at which they officiate. Moreover, Jewish groups and the Society of Friends would continue to be able to determine whose weddings they conduct, according to their beliefs.[28] The decision, as for all religious groups, would be up to the religious group in question. We do not think that the state has a particular role in regulating the form of these weddings and who may have them, as compared to other types of religious wedding.

6.35 The Board of Deputies raised concerns about the prospect of removing the requirement that Jewish weddings be conducted "in accordance with the usages of the Jews". The Board explained the benefit of this requirement in light of the diversity of practice among Jewish communities: the law referring to people ("Jews") rather than a faith ("Judaism") "reduces the potential for complicating internal doctrinal dispute, given it is descriptive rather than normative"; and the requirement ensures that it is for the person officiating the wedding to "satisfy themselves that both parties have capacity in accordance with the usage of the Jews of that congregation to take that step". The Board also raised concerns about divergence between weddings law and the Divorce (Religious Marriages) Act 2002, the latter of which allows a court to order that a decree of divorce is not made absolute in relation to a marriage solemnized "in accordance with the usages of the Jews" until steps are taken to dissolve the marriage (by way of a get) in accordance with Jewish law. Instead of removing the requirement for the "usages of the Jews", the Board of Deputies suggested that the term "usages" could be used in relation to other religious groups.

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[28] The Church of England and the Church in Wales have a common law duty to solemnize the weddings of their parishioners, although clergy are not authorised to conduct same-sex weddings, and can refuse to conduct weddings of certain persons: see para 2.68 above for more detail.

6.36 We do not think that removing the reference to usages will cause any problems in practice for the Board of Deputies or other Jewish groups. By requiring the officiant's consent in accordance with the beliefs of their nominating body, all religious groups will be able to decide whose marriages they will conduct and how those marriages should be conducted; Jewish groups will continue to be able to determine whether or not, according to their usages, the persons have capacity to marry, and how the ceremony must be carried out. We note that the legislation in Scotland does not require Jewish weddings to take place according to the usages of the Jews, or otherwise limit the capacity of people to marry in Jewish wedding ceremonies,[29] and no problems arise in relation to Jewish weddings there.

6.37 We also do not think that it would cause any problems for weddings law not to impose a requirement in relation to usages even though the Divorce (Religious Marriage) Act 2002 does. Jewish communities would still be marrying couples according to these usages as a matter of fact, even if the law governing weddings did not require them to do so.

6.38 Second, in our view, there is a strong policy argument for extending to civil weddings the general rule that the wedding should be in a form that the couple chooses, subject to the officiant's consent. We think it is overdue for the law to consider the purpose of civil weddings. Given what we have heard from stakeholders, we do not think that the function of a civil wedding is simply to provide an official and bureaucratic change of legal status for couples. The popularity of weddings on approved premises since their introduction bears out this view.[30] Rather, we think that, in practice, most couples having civil weddings want as personal and meaningful a ceremony as those having religious weddings. Many stakeholders have made this point to us in our work to date.

6.39 In Chapter 5, we propose that officiants will be responsible to uphold the dignity and solemnity of marriage. The only current rules about dignity apply exclusively to civil weddings on approved premises, and relate to the premises themselves,[31] rather than to the ceremony or role of any official. We also provisionally propose that all couples should have the ability to choose the form of their ceremony, subject to any additional requirements imposed by the religious (or non-religious belief) body conducting the wedding. Taking these two proposals together, we think it is reasonable to require that, as part of their general responsibility to uphold the dignity and solemnity of marriage, the officiant should be responsible to ensure that the portion of the ceremony that contains the legal requirements, and specifically that the officiant's role in the ceremony, does not undermine the dignity and solemnity of marriage. We certainly do not expect that the proposals would cause any problems for the vast majority of weddings, or any changes to how religious groups conduct weddings.

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29 In Scotland, Jewish bodies which have been prescribed to solemnize weddings must not conduct them "except in accordance with the form of ceremony recognised by [them] … as sufficient for the solemnisation of marriages", which applies to all prescribed groups and the Church of Scotland: Marriage (Scotland) Act 1977, s 14(a).

30 Only 7% of weddings were conducted in register offices in 2016: Office for National Statistics, *Marriages in England and Wales, 2016* (28 March 2019) table 1.

31 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 5(1)(b) and sch 1 para 1.

Prescribed words

6.40 The next issue is whether there should continue to be a requirement for prescribed words.

6.41 In our provisional view, the state's interest in a wedding ceremony is to ensure that both parties consent to the marriage. This view is based on the law as it has been in England and Wales for a long time.

6.42 Therefore, in our view, an expression of consent should be the focus of any legal requirements for a wedding ceremony. To us, this seems to be the main function of the prescribed words, specifically, the words of contract: to ensure that the parties have expressed consent to be legally married.

6.43 Conversely, the purpose of the declaratory words – the declaration by each party that they know of no impediments to the marriage during the wedding ceremony – is less clear. Impediments to a marriage should be discovered at an earlier stage, during the preliminaries: indeed, that is the main purpose of preliminaries. Each party to a marriage is already required to make a declaration of no impediments as a part of the notice process.[32] We see no need for it to be a legal requirement for that declaration to be repeated at the ceremony, particularly given that the religious tradition of doing so is confined to some Christian ceremonies.[33]

6.44 Therefore, our focus in considering prescribed words is the expression of consent in the words of contract. The question is whether prescribed words are necessary to fulfil this purpose, or whether consent to be legally married can be expressed by the parties in another way.

A requirement for prescribed words

6.45 One solution to the complexity and unfairness of only requiring some weddings to include the prescribed words would be to require all weddings to include the prescribed words. By imposing a uniform rule, this option would promote fairness and equality: every ceremony would involve the couple making the same legal vows, with the ability of couples to also make additional religious or personal vows. This option could also provide legal certainty, with a marriage formed for the purpose of the law after both parties to the marriage had said the prescribed words.

6.46 This solution could include an option to use the term "spouse", as a gender-neutral alternative to "husband" and "wife".

6.47 The benefits of certainty and simplicity, and fairness and equality, appealed to some of the stakeholders we have spoken to in our work to date. A form of prescribed words, which would apply to all weddings, was supported by the Jain Network, the Pagan Federation in its 13th programme response, the Wedding Celebrancy Commission, and the National Secular Society. This approach is taken in some other

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32 Marriage Act 1949, s 28.

33 In the Form of Solemnization of Matrimony in the Book of Common Prayer the member of the clergy conducting the service will first ask the congregation whether they are aware of any "just cause" why the couple should not be married, and then ask the couple to "confess" any impediment to the marriage.

jurisdictions, with each of the Crown Dependencies requiring all weddings except Anglican ceremonies to include oral declarations and words of contract, without it causing problems about which we have been told.[34]

6.48 But requiring all weddings to include prescribed words would not address the problems experienced by religious groups who perceive the prescribed words as a separate civil ceremony.[35] Indeed, these problems would be extended to Anglican, Jewish and Quaker weddings. It would therefore fail to respect individuals' wishes and beliefs, a principle underpinning our review.

(1) The Church of England and Church in Wales both wish to retain control of their own wedding rites. Church of England weddings take place according to canon law (with approved wedding ceremonies coming from the 1662 Book of Common Prayer, the 1965 alternative, and Common Worship). Imposing prescribed words into the Anglican wedding service would force a significant change in the form of many wedding ceremonies,[36] and might be seen as an encroachment on the religious freedom and privileges of the established church, the Church of England. Church in Wales weddings take place according to the 1984 Prayer Book, and the Church in Wales, which has a special status,[37] explained that it would also resist compulsion to move to standardised civil vows.

(2) According to Jewish law, there are two elements of a ceremony that must take place for a Jewish marriage to be formed: first, the groom placing his ring on the bride's finger, and the bride accepting it (or, for same-sex couples, the placing of rings on each other's fingers); then, the husband speaking the words "Behold you are consecrated unto me with this ring, according to the laws of Moses and Israel". Declarations about no impediments are made in private when the couple's eligibility to marry is checked. The Board of Deputies explained that Jewish communities wish to continue to be able to solemnize weddings as they currently do, free from having to include prescribed words.[38]

(3) The Society of Friends also wishes to be able to continue to conduct ceremonies as it currently does. Accordingly, the Society does not support prescribed words being required in Quaker ceremonies. In particular, the Society of Friends emphasised that Quakers would not be comfortable making a statutory declaration, linking this to the long history of Quakers not taking

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34 Jersey (Marriage and Civil Status (Jersey) Law 2001, art 17(7)); the Isle of Man (Marriage Act 1984, ss 31(3) to (3A) and 32(5)); and Guernsey (Loi ayant rapport aux Mariages célébrés dans les Iles de Guernesey, d'Auregny et de Serk (Guernsey), art 22), including after the reforms are enacted (States of Deliberation Policy and Resources Committee, *Policy Letter: Reform of the Marriage Law* (12 November 2018) p 17).

35 See para 6.21 above.

36 In 2016, Anglican weddings made up nearly 18% of all weddings: Office for National Statistics, *Marriages in England and Wales, 2016* (28 March 2019) table 1.

37 For an explanation of the special status of the Church in Wales, see para 4.112 above.

38 However, the Board of Deputies suggested that if there were a requirement for oral consent to be expressed by both parties, the officiant (the secretary of the synagogue) could ask each party whether they consent before the ceremony begins, in front of the witnesses.

oaths. Moreover, the Society explained that a requirement for a declaration that a person is free to marry, after undertaking the pastoral counselling that takes place prior to the ceremony, would imply doubts about the honesty and integrity of the couple.

6.49 A requirement for prescribed words was also not supported for non-religious belief organisation weddings. Although Humanists UK agreed that an expression of consent is fundamental to a wedding, it did not support the requirement for prescribed words for religious or non-religious belief weddings, arguing that there is no rational justification for them.

6.50 Given the significant downsides, we do not favour the option of requiring all weddings to include prescribed words. Doing so would fundamentally run against the principle of respecting people's wishes and beliefs to enable them to have the ceremony that is meaningful to them recognised by law.

A requirement for words of contract with flexibility as to the precise wording

6.51 Another option would be to require all weddings to include prescribed words, but with flexibility as to the precise wording. In one version of this solution, a religious (or non-religious belief) body could use words from its own form of ceremony which act as a substitute for the prescribed words, or which are not inconsistent with the prescribed words.

6.52 In Scotland, for example, weddings conducted by the Church of Scotland and prescribed religious or belief groups must be in a form recognised by the Church or other group as sufficient for marriage. Other religious and belief weddings must include a declaration by the parties either that they accept each other as husband and wife or that they accept each other in marriage, together with a declaration by the celebrant that they are husband and wife or married.[39] In Northern Ireland, both religious and civil weddings must include an "appropriate declaration" that the parties accept each other as husband and wife, with no particular form of words required.[40] Ireland takes a similar approach.[41]

6.53 While this approach has much to recommend it, we have heard that in some religious traditions, one or both of the parties do not make an oral declaration. We understand this to be the case for Jewish, Sikh, Hindu and some Muslim ceremonies. In these ceremonies, the couple will express their consent in other ways, understood within the community as a part of that religious ceremony, for example, by taking steps or walking around a fire. Again, therefore, this reform does not meet the principle of respecting people's wishes and beliefs to enable them to have the ceremony that is meaningful to them recognised by law.

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39 Marriage (Scotland) Act 1977, ss 9(3) to (3A), and 14.

40 Marriage (Northern Ireland) Order 2003 (SI 2003 No 413), arts 10(3), 15(2)(b), and 19(2)(b) and (3).

41 Civil Registration Act 2004, s 51(3)(b) and (4). A request instead to use the words "the jewel in my crown" and "the star in my sky" has been rejected as insufficient. Note that couples must also make a declaration that they know of no impediment to the marriage, but this declaration can be made up to two days in advance of the ceremony: Civil Registration Act 2004, s 51(9).

A requirement for an expression of consent to marry

6.54 The final option, really a variation of the second option, is simply to require each party to express consent to the marriage. Given that not all religious weddings include an oral expression of consent by either party or both parties to the marriage, we think that the requirement should be flexible, allowing consent to be expressed non-verbally.

6.55 We understand that this is the interpretation of the requirement for declarations in Northern Ireland: it is interpreted purposively, which includes allowing non-oral declarations.

6.56 This approach would ensure that individuals' wishes and beliefs were respected, as well as ensuring the that the law was fair, given the variety of views about how a marriage is formed.

6.57 What is important is that there is a shared understanding by the parties, the witnesses and the officiant, as well as the wider community, as to what constitutes a wedding ceremony, and what amounts to an expression of consent to be married within that ceremony. If a religious body or community has a shared understanding of what amounts to an expression of consent to be married within a wedding ceremony, we think that expression should be recognised by the law as an expression of consent to be legally married. As part of giving legal significance to religious (and other) wedding ceremonies, we also think that the moment of the ceremony at which the religious body believes the couple expresses consent to be married should also be the moment at which the law recognises the couple as married.

6.58 We clarify here that we do not mean that the law should be seeking to determine whether the parties actually consent, in their hearts, to be married. At the moment of their marriage a person may experience a range of feelings from unqualified joy, to uncertainty, doubts and misgivings. Just as under the current law, the requirement in our scheme is an expression of consent. As we explain in Chapter 10, an apparent expression of consent that was given due to mistake, duress, or mental incapacity renders the marriage voidable, and this would continue to be the case under our proposed scheme. In the absence of such vitiating factors, an expression of consent would be taken at face value.

6.59 In order for the law to be able to recognise how a couple expresses consent according to religious (or non-religious) beliefs, religious (and non-religious belief) bodies able to nominate officiants should have the option of providing details of their religious (or belief) ceremony to the General Register Office, with an explanation of the ceremony and how each of the couple expresses consent in accordance with their beliefs.[42]

6.60 Indeed, we do not think that the law should recognise a ceremony in which both parties are not physically present, and do not express their consent in some clear and unambiguous way that is understood within the community and by the officiant and witnesses. That each party give consent in person is a requirement of the Convention

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42 HM Passport Office, *Form 78: Certificate and Application for the Registration of a Place of Religious Worship for the Solemnization of Marriages under Sec 41 and/or Sec 43A of the Marriage Act 1949*, already requires applicants to "provide a copy of the marriage service" the applicant intends to use.

on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, to which the United Kingdom is a party: the Convention specifically requires that marriage can only be legally entered into where both parties express consent in person and in the presence of both an authority competent to solemnize the marriage and witnesses.[43]

6.61 As a further protection, to ensure that each party consents, we think that there should remain a requirement for each party to sign the schedule or marriage document (apart from the requirement for registration, which we discuss in Chapter 8). Signing the schedule could amount to a confirmation of that person's prior expression of consent to be married. Should a particular ceremony for some reason not involve both parties in person expressing their consent in a way which was recognised and understood by the parties, officiant and witnesses as such, signing the schedule could operate as a backstop or failsafe, with the moment of signing itself acting as the expression of consent. To ensure a universal understanding of consent to be legally married, the schedule itself could, where each party signed, include a statement that the party either had consented, or was now consenting, to be legally married to the other. We envision that this statement would be phrased with two alternatives: one would be expressed in the past-tense, to reflect that in the majority of cases, the parties would have already consented to be married (and were married) during the ceremony itself; the alternative wording would be expressed in the present tense, for parties who had not previously expressed consent.

6.62 We think this option provides the flexibility necessary to accommodate the variety of beliefs about weddings in England and Wales today. For example, we understand that in some Muslim nikah ceremonies, the bride is not physically present for the ceremony itself (having given consent earlier). The Muslim Council of Britain agreed that the law should require both parties to be present at the point at which they express consent for the purpose of the law. Therefore, for wedding ceremonies in which the bride is not present, the Council agreed that the point at which the law would recognise the couple as expressing their consent could be at the point they sign the schedule (in the presence of two witnesses and the officiant).

6.63 We also think that this option provides for legal certainty, offering an improvement on the current law. In all cases, the latest point at which the couple would be married would be at the point when they signed the schedule. Although in most cases, they would have been legally married earlier, when they expressed consent during the ceremony, it is generally not necessary to know at what moment in time on a given day a couple was married, particularly when the difference between possible moments at which they were married (after expressing consent or on signing a register) is usually only a few minutes.[44] If the couple had not signed the schedule then it would

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43 (New York, 1962), art 1. Note that art 1(2) provides that "it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent".

44 The one case cited where it did matter is the Australian case of *Quick v Quick* [1953] VLR 223 (Supreme Court of Victoria), in which both parties had said the words of contract, but then the bride took off the ring, declared she would not marry the groom, and fled. The marriage was determined to be valid.

be necessary for the party seeking to establish the marriage to prove that there had been an exchange of consent.[45]

6.64 In assessing whether a couple have consented to be legally married, we do not think that it should be necessary for them to make explicit reference to the law or legal recognition. This would be contrary to our aim of ensuring that couples can express their consent in a way that is meaningful to them. We also note that one form of the current prescribed words does not explicitly state that the person is consenting to legal marriage.[46] The fact that a couple are consenting to be legally married will usually be clear from the fact that they have given notice of their intention to marry and are exchanging consent in front of an officiant.

6.65 However, we know that some couples wish to have a ceremony that does not have legal recognition.[47] Under our proposed scheme, it would remain open to either of the couple to prove that that they made it clear that they were not expressing consent to be legally married. In such cases they would not have given an expression of consent as required by the law. In the vast majority of cases in which the couple wishes to have a ceremony that is not recognised by the law, no notice will have been given. It is therefore unlikely that a couple would not want their ceremony to have legal recognition when they had given notice, although one party might have changed their mind. Moreover, it would not be possible for either party to argue that they had not consented to be legally married once they had signed the schedule (which will only be possible if notice had been given), because the schedule will contain an unambiguous expression of consent to be legally married.

6.66 The discussion above has focussed on religious (and non-religious belief) weddings. However, we think this rule that the law should not require consent to be expressed in a prescribed form should also apply to civil weddings. In the absence of any specifically civil rite, local authorities or the General Register Office might helpfully provide different forms in which a couple could express their consent, to provide options for couples for their vows. However, provided that the general requirement for each party to express their consent to the marriage is met (and that the officiant ensures that their participation in the ceremony reflects the dignity and solemnity of marriage), couples having a civil wedding should be able to formulate their own vows.

Consultation

6.67 In our view, the best way to achieve a law that is fair and equal is for the law to have a single set of rules about the form of ceremony, that would apply equally to all weddings, whether religious, civil or non-religious belief. To enable all couples to have a wedding that is meaningful to them, we propose to remove unnecessary requirements, such as the requirement that some ceremonies include prescribed words. In our view, what is essential to protect the state's interests and to ensure legal certainty is a requirement that each party to the marriage expresses their consent to marry the other. The focus on an expression of consent, without requiring specific

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45 See paras 10.92 to 10.98 below.

46 Marriage Act 1949, s 44(3A). For a further discussion of the point about validity of marriage and consent, see Ch 10.

47 See Ch 10.

words to be said, will facilitate wedding ceremonies according to all religious (and non-religious) beliefs, ensuring that a couple's legal wedding ceremony and the ceremony meaningful to them are one and the same.

Consultation Question 42.

6.68 We provisionally propose that:

(1) during every wedding ceremony, the parties:

(a) should be required to express their consent to be married to each other, whether orally or otherwise, but

(b) should not be required to express that there is no impediment to their marrying each other (with the issue of impediments being addressed during the preliminaries);

(2) religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations should be able to submit details of their wedding ceremonies to the General Register Office, to identify the way(s) each party expresses consent in accordance with their beliefs;

(3) the schedule (or marriage document) should contain a declaration to be signed by each party that they had during the ceremony expressed consent to be married to the other, or they were now consenting to be legally married to the other, the signing of which would itself be an expression of consent if the ceremony did not contain an expression of consent; and

(4) the marriage should be formed at the point when both parties have expressed consent to be married to each other, whether during the ceremony or when signing the declaration in the schedule (or marriage document).

Do consultees agree?

Consultation Question 43.

6.69 We provisionally propose that all weddings should take place according to the form and ceremony chosen by the parties and agreed to by the officiant.

Do consultees agree?

Consultation Question 44.

6.70 We provisionally propose that there should be no special rules about the form of Anglican, Jewish or Quaker weddings, and that there should be no legal limitations on who can have those types of wedding (but like all religious groups, Anglican Jewish and Quaker groups will continue to be able to impose their own requirements as a matter of their own practice).

Do consultees agree?

Translation

6.71 The Marriage Act 1949 requires that the prescribed words be said in English or Welsh, and does not require that they be translated into a language that the couple can understand.[48] The law therefore does not explicitly require the couple to understand the words they are saying. That said, guidance from the General Register Office advises authorised persons to use interpreters if either of the parties does not understand English or Welsh, stating that the prescribed words must be said by the couple in a language they understand as well as English or Welsh, with the interpreter signing the marriage register as a witness.[49]

6.72 If there continued to be a requirement for prescribed words, we think the legislation should expressly require either translation or for parties to say the words in a language that they (and the witnesses and officiant) understand. Because we think that the only requirement for the form of ceremony should be an expression of consent by each of the couple to be married to the other, we do not think a separate policy question is necessary about translation: any substantive requirement for each party to express consent to be wed must be interpreted as requiring the parties to understand the words that they are speaking or the action they are doing to indicate their consent.[50]

RELIGIOUS CONTENT IN CIVIL WEDDINGS

6.73 We explain above that the law has so far failed to give proper consideration to the meaning of civil weddings to the couples having them. As a result, the law prohibits couples from including anything other than incidental religious content in their civil wedding ceremonies. But the law is subject to interpretation, and so variable application, with content from some religions more likely to be excluded than others. In our provisional conclusion, the law goes too far to prevent couples from reflecting their beliefs within their wedding ceremony, and imposes an unnecessarily difficult burden on registration officers, who are tasked with trying to police an unclear rule.

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48 Marriage Act 1949, ss 44 and 52.

49 General Register Office, *A Guide for Authorised Persons* (March 2019) para 3.21.

50 A marriage can be annulled on the basis of mistake if either of the parties did not understand the words they were saying: Matrimonial Causes Act 1973, s 12(1)(c). For examples of such mistakes see *Valier v Valier* (1925) 133 LT 830; *Kelly v Kelly* (1932) 49 TLR 99; *Mehta v Mehta* [1945] 2 All ER 690.

6.74 Our initial view is that certainty and simplicity, and particularly consistency in decision-making, are better served by relaxing the current requirement, which will also enable couples to have a ceremony that is meaningful to them. However, as we explain below, we think it is justifiable that some prohibition on religious content remains. Accordingly, what we propose cannot eliminate all uncertainty or inconsistency, as in some cases interpretation will still be required. However, our proposal does, we think, reduce uncertainty and inconsistency, while giving couples scope to have a ceremony that is personal to them.

6.75 As we explain in Chapter 2, the Marriage Act 1949 prohibits the use of any "religious service" in civil weddings, meaning weddings in a register office or on approved premises.[51] In relation to weddings on approved premises, the Approved Premises Regulations go further, expanding on this rule to make it, in effect, a prohibition on religious content. The Regulations only permit incidental religious references in readings, songs or music "in an essentially non-religious context". Moreover, the Regulations specifically preclude civil weddings on approved premises from including –

(1) extracts from an authorised religious marriage service or from sacred religious texts;

(2) a religious leader leading the ceremony;

(3) religious ritual;

(4) hymns or other religious chants; and

(5) any form of worship.[52]

6.76 The Handbook issued by the General Register Office provides registration officers with more detailed instructions on what is and is not permitted, applying to weddings both on approved premises and in register offices. Registration officers are advised that, for example, Robbie Williams's "Angels" and Mendelssohn's "Wedding March" are permitted. They are also advised that any ritual or symbol which has religious connotations should be avoided: the presence of a canopy (such as a chuppah, beneath which Jewish ceremonies takes place) and references to hand fasting (a part of many Pagan ceremonies) are not allowed; however, an exchange of rings is (despite its association with Christian and Jewish ceremonies).

6.77 It has been said that the purpose of the prohibition on religious service is to maintain a clear distinction between religious and civil ceremonies, in order to protect religious ceremonies. This reasoning sees civil ceremonies as secular:

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51 Marriage Act 1949, ss 45(2) and 46B(4).

52 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 2 para 11.

> Such prohibitions are intended to maintain the distinction between religious and secular ceremonies: religious groups in particular are concerned to ensure that the "special" nature of a religious service is retained.[53]

6.78 However, protecting religious ceremonies does not appear to be the original purpose of the prohibition; nor does it appear that civil weddings were originally intended to be strictly secular. The Marriage Act 1836 did not prohibit a religious service being used in weddings before the superintendent registrar. The purpose of providing an option for civil weddings was not necessarily to provide a purely secular option:

> Legislators thought that they were catering for a subcategory of Nonconformist – ie those who considered marriage to be a civil undertaking – rather than for atheists.[54]

6.79 In the early years of civil marriage, some registration officers did apparently "take it upon them to use a religious ceremony".[55] This option was closed off by the Marriage Act 1856, which introduced a sharper distinction between religious and civil ceremonies and prohibited the use of a religious service in the register office. Later accounts of register office weddings describe them as being short, with little included beyond the prescribed words.

6.80 When the option of marrying on approved premises was introduced in 1995 the regulations initially specified that any material included in the ceremony "must be secular in nature" but after a review this was changed to the current prohibition on material that is "religious in nature".[56]

Issues

6.81 The requirement that civil ceremonies be strictly secular means that many couples are prevented from including content in their wedding ceremony that would be meaningful to them, either for religious or cultural reasons.

6.82 Many people are not either strict adherents of a religion or strict atheists, but fall somewhere in between.[57] For such people, having a wedding according to religious rites might not seem appropriate or desirable; but having a strictly secular wedding might not either. Someone who was raised in a religious faith but does not practice it as an adult might wish to include some religious content in their wedding to reflect their childhood, their parents' beliefs or traditions within their family. Moreover, for many, religious music or vows have cultural significance, separate from any religious belief: for example, the song "Jerusalem", although having Christian themes, has become an anthem for English Rugby.

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53 R Probert and M Harding, *Cretney and Probert's Family Law* (10th ed 2018) para 2-009.

54 S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies" [2018] *Child and Family Law Quarterly* 415, 417.

55 *Report of the Royal Commission on the Laws of Marriage* (1868) [4059], appendix 1 p 8 (evidence given by the Venerable James Randall, Archdeacon of Berks and Chaplain to the Bishop of Oxford).

56 Marriage (Approved Premises) Regulations 1995 (SI 1995 No 510), sch 2 para 11.

57 See J Curtice, E Clery, J Perry, M Phillips and N Rahim (eds), *British Social Attitudes: the 36th Report* (2019) pp 23 to 24, which found that in 2018, 54% of people described themselves as "somewhat religious", "somewhat non-religious", or "neither religious nor non-religious".

6.83 Many stakeholders have told us that couples are not happy with the current restrictions. Some representatives from approved premises told us that they get many requests from couples to have a religious blessing together with their civil wedding on approved premises. In order to comply with the law, registration officers require there to be a break in the ceremony, for example requiring the couple to leave the room after the civil wedding before they return for a religious ceremony, or requiring the couple and guests to move to another location on the premises for the religious service. The Muslim Council of Britain gave examples of this practice, stating that when a Muslim couple is marrying on approved premises, any Islamic prayers that follow the ceremony are generally required to take place in a different part of the venue, perhaps even outdoors. Other stakeholders have explained that readings or other content are prohibited even when they are cultural rather than religious in nature.

6.84 Couples who have different faiths from each other may be particularly ill-served by this sharp distinction in the law between civil and religious weddings. Should neither of their faiths be willing to conduct an interfaith ceremony, they might be left with having a civil ceremony, but they will be unable to include religious content in that ceremony. In its 13th programme response, the Fellowship of Professional Celebrants commented that the law "in effect excludes people of mixed cultures, mixed beliefs and mixed views", preventing them from having a ceremony that is meaningful to them.

6.85 The clear divide between religious and civil ceremonies might be felt to be especially unfair by same-sex couples. The divide in the law might be argued to be justifiable because couples have a choice: have a religious or civil wedding. However, this choice is largely illusory for many same-sex couples. Because few religious groups have opted in to solemnizing same-sex marriages, many same-sex couples in practice have little choice but to have a civil ceremony, devoid of any references to any religious beliefs they might have. Conversely, some religious groups might wish for the prohibition to remain, specifically to exclude references to their beliefs from being used in a same-sex ceremony, which they may consider to undermine the special provisions for religious groups in relation to same-sex weddings, which we explain in Chapter 9.

6.86 The extent of the prohibition on religious content is arguably uncertain, resulting in different interpretations being given by different local authorities and registration officers. A survey of registration officers and couples found "considerable variation in practice as to what was categorised, or recognised, as religious". Registration officers were more familiar with the traditional version of the Church of England marriage service, especially the Book of Common Prayer, and therefore were more likely to prohibit vows that drew on those vows than from other religious services. Even so, there were differences in approach as to whether individual phrases from these vows would be permitted – for example if the couple just wanted to use the words "to have and to hold" or "in sickness and in health" but no other part of the Anglican vows. As the authors highlighted, shorn of their context in a religious service of marriage, these words are not intrinsically religious, as "there is no reference to any deity, afterlife or to

marriage being in any way sacred".[58] Moreover, couples tended to want to include these words for cultural rather than religious reasons. Religious vows from other religions were not necessarily recognised as religious by registration officers, and so were more likely to be permitted within a civil ceremony.

6.87 In some cases, it appears that the need to exclude religious content is going beyond common sense. For example, the Society of Friends has told us that it has been contacted by registration officers concerned about couples wanting to incorporate periods of silence into their wedding ceremonies: the concern was that silence is a religious "ceremony" because Quaker meetings involve silence, or that people might use silence as an opportunity to pray. Stakeholders also suggested that in some cases religious symbols or iconography are being prohibited from approved premises, which was particularly problematic for historical venues, from which it would be impossible to remove all religious symbols (for example, stained glass windows).

6.88 The National Panel for Registration was also of the view that the law lacks clarity. As a consequence, registration officers spend a lot of time scrutinising whether material can be allowed, time which could be better spent on other things.

Options for reform

6.89 Many of the stakeholders we have spoken to in our initial work have been supportive of reform, to varying degrees: some to abolish the prohibition, and others to relax it. These stakeholders often emphasised the importance of allowing couples to have a ceremony that is meaningful to them, which includes the ability to incorporate music, readings or ceremonies that have religious or cultural resonance with them.

6.90 However, many stakeholders also emphasised the need to retain some distinction between religious and civil ceremonies. Many could see a problem if, in effect, a civil ceremony amounted to a lay person officiating at a religious ceremony,[59] or a "religious-lite" ceremony. And of course, there can be no expectation that registration officers will participate in religious services (although, given that they already attend weddings at registered buildings when no authorised person is present, we think there can be no objection to registration officers witnessing religious ceremonies).[60]

6.91 Other stakeholders disagreed with any reform to relax the prohibition on religious service in civil ceremonies, often to protect the unique and special nature of religious (or non-religious belief) ceremonies. Some registration officers to whom we have spoken supported retaining a clear divide between religious and civil weddings. During a scoping phase meeting, the Church of England cautioned that if the law did not retain a clear distinction, competition between religious and civil officiants might develop, which might be seen as a move toward commercialisation. Humanists UK was also of the view that (as a matter of policy and the application of human rights law) not only should religious service be prohibited from civil ceremonies, but non-

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58 S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies" [2018] *Child and Family Law Quarterly* 415, 425.

59 A description used by Professor Thomas Watkin.

60 We provisionally propose in Ch 5 that registration officers would no longer officiate at religious weddings, although this is not in response to concerns that registration officers should not be required to witness religious ceremonies.

religious belief content should as well: Humanists UK favours a secular state, so its view is that civil weddings should be fully secular.

Retain or strengthen the prohibition on religious content

6.92 One path of reform could be to retain the prohibition, or even to strengthen it, to prohibit even incidental religious references in readings, songs or music. The purpose of doing so would be to retain as clear a distinction between religious ceremonies and civil ceremonies as possible, with the function and form of civil ceremonies being exclusively secular.

6.93 This solution would not be practical under a system which only offers couples the choice between a religious (or a non-religious belief) ceremony and a civil ceremony. However, if a third option were offered, having a purely secular route to marriage might be justifiable. One possibility would be, if independent celebrants were authorised to conduct weddings, to allow those weddings to involve some religious expression, while requiring civil weddings by registration officers to be purely secular. However, because the policy decision of whether to enable independent celebrants is not one for us to consider, we cannot pursue this option.

6.94 We are also unconvinced that retaining or strengthening the prohibition on religious content addresses the issues within the current law.

6.95 First, any prohibition on religious content could still result in variable interpretations, as the line between secular and religious would in some cases remain unclear. Whether something is cultural rather than religious would continue to be a difficult question to answer. It also seems inevitable that registration officers would continue to be better able to identify (and so prohibit) religious rites and symbols with which they are familiar, as compared to those with which they are not. This option would therefore not further the principles of certainty and simplicity, or fairness and equality.

6.96 More significantly, it would fail to address the concerns of many couples that they cannot have songs, readings, symbols and other elements that are meaningful to them within their ceremonies. It would not further the principle of respecting individuals' wishes and beliefs. Moreover, couples having civil weddings would be subject to restrictions that other couples were not, undermining the principle of fairness and equality.

6.97 We therefore do not think that retaining or strengthening the prohibition on religious content in civil ceremonies is a viable solution.

6.98 More fundamentally, we disagree that the function of civil ceremonies is purely secular. Civil ceremonies have meaning to the couples who have them, and we do not think the state has an interest in preventing couples from making them personal expressions of their love and commitment.

Relax or abolish the prohibition

6.99 We think the current law prevents many couples from having a ceremony that is meaningful to them. We also think the determination of what amounts to "religious" content is difficult and, in some cases, arbitrary, leading to inconsistency in how the

law is applied to couples. Although some protection of religious services could, in our view, be warranted, the law goes further than is needed.

6.100 With this in mind, there are two possible solutions: relax the prohibition, or abolish it entirely.

6.101 Relaxing the prohibition could involve allowing (expressly or not) more religious content than at present, but retaining some prohibitions. This option is one of degree. One approach could be to continue to exclude most religious content. Alternatively, the only prohibition could be to prevent a full religious service from being used in order to prevent civil ceremonies from becoming, essentially, religious services conducted by lay people. The latter approach seems to be the most common in other jurisdictions.

6.102 In Jersey, for example, weddings conducted by civil marriage celebrants must not "include any religious rituals or symbols or permit prayers or any religious worship or service to be conducted". However, so long as that restriction is observed, some content is expressly permitted:

(1) "hymns, songs or chants, whether or not they contain any references of a religious nature";

(2) "readings from the bible or other holy books or any other reading that contains any references of a religious nature";

(3) "vows or statements of commitment by the persons to each other that make any references of a religious nature, provided that any such vow or statement does not replicate any made in any religious marriage ceremony"; and

(4) "candles, lights, incense, ribbons and other decorations".[61]

The law in Jersey is intended to reflect the desire of many to include religious elements within a civil wedding, while preventing the ceremony from crossing the threshold into becoming a religious wedding service. The Superintendent Registrar takes advice from religious groups to decide whether particular acts amount to religious worship.

6.103 The legislation governing weddings in Scotland does not expressly prohibit religious content in civil weddings.[62] We have been told that registrars are generally happy to conduct ceremonies with some religious content, so long as the religious elements are not delivered by the registrar and are not performing a key legal function (so cannot be included at the time when the couple or registrar is making their legal declarations). If a ceremony is consistently religious from start to finish, registrars will object on the basis that it is essentially a religious ceremony.

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61 Marriage and Civil Status (Jersey) Law 2001, art 17(8) to (10).

62 National Records of Scotland, *What form does a marriage ceremony take in Scotland?,* https://www.nrscotland.gov.uk/registration/getting-married-in-scotland/marriage-ceremonies-in-scotland (last visited 1 May 2020).

6.104 The downside of relaxing the prohibition on religious content is that it might not provide certainty as to what religious content is allowed. Registration officers (and through guidance, the General Register Office) would still be tasked with policing the boundary between acceptable and unacceptable religious content: inconsistency and uncertainty would therefore remain, to a degree. However, in our view, the boundary would be clearer if religious content was acceptable so long as the ceremony did not become, in substance, religious. The Jersey approach might provide some guidance: the types of religious content which couples often request, such as songs, readings, symbols, could expressly be permitted, with the law only prohibiting the ceremony from having so much religious content that it moved from being a secular ceremony to a religious service.

6.105 The other possible solution would be to have no prohibition on religious content in the legislation at all. This is the approach in a number of commonwealth jurisdictions: for example, Canada, New Zealand, Australia and South Africa.[63] Having no rule would be clear, consistent and easy for registration officers to abide by. However, we do not think that it would be entirely appropriate in England and Wales: many stakeholders felt that there should remain a distinction, and some rules should prevent civil ceremonies from becoming religious ceremonies in all but name, outside the control of religious bodies.

Consultation

6.106 The law should not prevent couples from crafting a wedding ceremony that is meaningful to them. The current law does prevent this, by prohibiting couples having a civil ceremony from including any material or symbols in their ceremony that are religious in nature, only allowing incidental references in a non-religious context. We provisionally propose that the law should not impose more restrictions on religious service in a civil wedding ceremony that is necessary to maintain a distinction between religious weddings on the one hand, and civil weddings on the other. We therefore suggest that the law should only prohibit religious service to the degree necessary to ensure that a civil wedding remains identifiable as a civil ceremony, and could not be mistaken for a religious wedding service. This approach would liberalise the law, and could be seen as returning the law to its expression in the Marriage Act 1949 to prohibit "religious service", while abolishing the further restrictions in the Approved Premises Regulations on religious content.

6.107 With any prohibition applying to civil weddings, registration officers (and, if they are authorised to conduct weddings, independent officiants) will be required to interpret it. Our provisional proposal therefore does not bring about complete certainty and simplicity in the law. It will remain the case that officiants will in some cases have to interpret the law. However, we think the proposal strikes the right balance between certainty and simplicity, and respecting couples' beliefs. It places the emphasis the opposite way round to the current law, by starting on the basis that religious content is permitted, rather than starting on the basis that it is not. We think that most people who want some religious content in a civil wedding – whether a hymn or a reading for

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63 Although we do not know if, like in Scotland, in practice religious content is prohibited. See: eg Marriage Act 1996 (British Columbia), Marriage Act 2000 (Alberta), Marriage Act 1990 (Ontario); Marriage Act 1955 (New Zealand); Marriage Act 1961 (Australia); Marriage Act 1961 (South Africa) and Civil Union Act 2006 (South Africa).

example – will not want their wedding to be primarily religious, and so disputes about content are far less likely to arise.

6.108 Moreover, to promote certainty about the limits of the rules and to promote fairness among couples, there might be merit in outlining religious elements or content that is expressly permitted in civil ceremonies. Similar to the law in Jersey, this clause could reduce some of the doubt present under the current law about elements that are commonly requested, such as readings, songs and symbols. We ask consultees for their views.

Consultation Question 45.

6.109 We provisionally propose that religious content should be permitted in civil wedding ceremonies, provided that the ceremony remains identifiable as a civil ceremony rather than a religious service.

Do consultees agree?

6.110 We invite consultees' views as to whether specific examples of religious content should be expressly allowed at civil weddings, and, if so, what those examples should be.

A RELIGIOUS CEREMONY AFTER A REGISTER OFFICE WEDDING

6.111 The Marriage Act 1949 makes provision for a religious service to be conducted following a register office wedding, with the couple required to produce their marriage certificate in order for a religious ceremony to be conducted. The Act also specifically provides that the celebration of a marriage service does not "supersede or invalidate" the existing marriage, and indeed the celebration must not be registered as a marriage.[64]

6.112 This provision was added in the Marriage Act 1856, at the same time that the prohibition on a "religious service" in a register office first made its appearance. It was a reaction to some Anglican clergy advising couples who had married in a civil ceremony that they had to have another ceremony in church, suggesting that a civil marriage was not valid. This provision therefore made clear that a further religious ceremony could be conducted, but that the civil marriage itself was valid.[65]

6.113 We do not think that section 46 serves any useful purpose today. It was passed for very specific reasons, and the validity of a civil wedding is now well beyond question. In addition, the presence of this section has led to confusion about the order in which ceremonies can take place, as it is sometimes interpreted as a prohibition on a religious ceremony taking place before a civil wedding. However, the law does not specifically penalize those who conduct religious ceremonies without any civil

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64 Marriage Act 1949, s 46.

65 S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies" [2018] *Child and Family Law Quarterly* 415, 417 to 418.

wedding. It would be odd if there were a specific prohibition on a religious ceremony, as opposed to any other kind of ceremony, taking place before the legal wedding. Non-religious celebrations take place in advance of legal ceremonies, as some local authorities give couples the option of having a "celebratory ceremony", often outdoors, before moving into the approved premises for the legal wedding ceremony.[66] In other words, the section has served its purpose and seems to be generating confusion today.

Consultation Question 46.

6.114 We provisionally propose that the provision to permit a religious service to be conducted after a civil wedding ceremony (section 46 of the Marriage Act 1949) should be repealed.

Do consultees agree?

TWO WITNESSES

6.115 In Chapter 5, we provisionally propose that an officiant should be required to attend every wedding ceremony. We now consider the requirement for two other witnesses to attend.

6.116 As we explain in Chapter 2, the law requires two witnesses to be present at all weddings. Although this requirement does not expressly apply to Jewish and Quaker weddings, two witnesses are required to sign the marriage register book for Jewish and Quaker weddings.[67] With that slight qualification, the two-witness requirement is one of the few in the Marriage Act 1949 that applies to every wedding.

6.117 In our discussions with stakeholders so far, we have not heard that the requirement for two witnesses poses any problems. Nor have we heard of any appetite for reform, either for more, fewer, or no witnesses. Some stakeholders saw the requirement for two witnesses as part of ensuring that a wedding is a public ceremony, not undertaken in private.

6.118 Moreover, a wedding being witnessed is a requirement under the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, to which the United Kingdom is a party.[68]

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66 See eg North Yorkshire County Council, *Marriage arrangements and ceremonies*, https://www.northyorks.gov.uk/ceremonies (last visited 1 May 2020); Northamptonshire County Council, *Your Day in Northamptonshire*, https://www3.northamptonshire.gov.uk/councilservices/births-deaths-ceremonies/weddings-and-ceremonies/weddings/Pages/your-day,-your-way.aspx (last visited 1 May 2020); East Riding Registration and Celebratory Services, *Celebration Guide: 2017-2019*, p 13.

67 Marriage Act 1949, ss 22, 44(2), 45(1), 45A(2), 46B(1)(a), and 55(2). However, the General Register Office's guidance to secretaries of synagogues states that "two or more witnesses must be present at the marriage": General Register Office, *Guidebook for Secretaries (for Marriages) of Synagogues* (March 2019) para 2.25.

68 (New York, 1962).

6.119 We therefore do not propose to make any changes to this aspect of the law, except to expressly require that all weddings are witnessed by two people. This would be a slight change in the law with respect to Jewish and Quaker weddings: however, both the Board of Deputies and the Society of Friends did not foresee any problems in this requirement expressly applying to their weddings, as the rites of both groups require two witnesses in any event.

OPEN DOORS

6.120 As we explain below, in our view, the requirement for public access to a wedding is unnecessary. It appears to be an unfair imposition on some couples' weddings, but not others, which does not serve a clear purpose. From our work to date, we are unconvinced that the rule is necessary to protect the state's interest. Further, rather than serving a protective function, the requirement itself might pose a security risk to some couples. In our provisional view, it is an unnecessary regulation, which undermines the goal of a scheme that is simple and fair and that gives couples greater choice.

6.121 In Chapter 2, we explain the requirement that weddings take place with "open doors" or, in relation to weddings on approved premises, more specifically with free public access.[69] The open doors requirement applies to all weddings, with the significant exception of Anglican, Jewish[70] and Quaker weddings, and weddings involving a person who is housebound, detained or terminally ill.

6.122 We understand that the rationale for the requirement for open doors is to enable members of the public to attend a wedding to raise an objection based on a legal impediment. The requirement is also thought to support the public character of weddings. Marriage is, in essence, a public expression of the couple's commitment and so some degree of publicity is necessary.

6.123 These functions may be more recent rationalisations for the requirement of open doors, however. Historically, the requirement arose not in relation to weddings, but in relation to religious worship of Non-conformists: the Act of Toleration 1689 allowed Protestant dissenters to have their own places of worship, but only permitted assembly for religious worship after the meeting place had been certified, and only permitted preaching with open doors.[71] This requirement found its way into the requirements for weddings in registered buildings, and for civil weddings, but not for other types of religious weddings.[72]

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69 Marriage Act 1949, ss 44(2), 45(1) and 46B(2); and Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 2 para 12.

70 Despite this, the General Register Office guidance to secretaries of synagogues advises that "the public must have unrestricted access to the place of marriage during any marriage ceremony": General Register Office, *Guidebook for Secretaries (for Marriages) of Synagogues* (March 2019), para 2.24.

71 See W Kennett, "The Place of Worship in Solemnization of a Marriage" (2015) 30 *Journal of Law and Religion* 260, 265, citing Act of Toleration 1689, s XIX.

72 A certain degree of publicity was assumed in the provision in the 1662 Book of Common Prayer that "the persons to be married shall come into the Body of the Church with their friends and neighbours", but there is no requirement in the legislation for the marriage to be celebrated with open doors.

Criticism of the law

6.124 Our initial work suggests that the problem with the requirement for open doors is two-fold. First, it does not apply to all weddings. This runs contrary to the principle of fairness and equality, as some couples are able to have a private wedding when others are not. Second, in our view, in relation to the weddings to which it does apply, it appears to be unnecessary to protect the state's interest. Further if the requirement is interpreted in a substantive way, it imposes significant restrictions on where those weddings can take place. It may also raise safety concerns, as we explain below.

6.125 Anglican weddings (particularly those in private chapels which are authorised by an Archbishop's special licence), Jewish weddings and Quaker weddings do not need to be conducted with open doors. Similarly, housebound, detained or deathbed weddings (which we discuss in more detail at paragraphs 2.162 to 2.180 above) are also not required to take place with open doors. We have not heard of any problems arising from these wedding taking place without public access.

6.126 The requirement for public access does not appear to provide any benefits in practice. In our work to date, we have not heard of a single occasion on which a member of the public stopped a wedding on the day of the ceremony by raising a legal impediment to the marriage. Although such things may happen in novels and movies, they apparently do not happen in real life. We do not think that the law should be structured around a myth that members of the public raise impediments on the day of the wedding; more significantly, we are not sure that the law should facilitate members of the public interrupting, and potential ruining, a couple's wedding day. In our view, the law should encourage anyone knowing of an impediment to a marriage to raise their concerns before the wedding. To ensure that any concerns about impediments to an intended marriage are identified and addressed at an early stage, we have proposed a system of robust preliminaries; we think the system we have provisionally proposed will give registration officers (and clergy) ample opportunity to identify legal impediments to an intended marriage.

6.127 In addition to not serving a clear purpose, the requirement for open doors can be criticised on two bases.

6.128 First, it has provided a rationale for limiting where it is acceptable for a wedding to take place. If a requirement for open doors is given substance, meaning that it is interpreted in a way that would allow a member of the public to object to a wedding during the ceremony, the ceremony location must be easily accessible to the public, meaning not, for example, on a hilltop or in a private home. We discuss this point in more detail in Chapter 7. Our provisional conclusion is that the remote possibility of an objection being raised should not prevent couples from having their wedding in a location that is meaningful to them.

6.129 Second, stakeholders have raised concerns about common-sense risks that could arise from allowing unfettered public access to any event, and specifically to religious worship and family events that are not generally organised with security in mind.

(1) Vicky Portinari of Inner Temple explained that the requirement for public access to a civil wedding poses security concerns. She explained that the approved premises she represents, a private facility, requires a high level of security. In

order to comply with the law while retaining a level of security, the operators must hire additional security guards for the various entrances to the premises, while allowing members of the public to enter.

(2) The concern about security was highlighted to us in particular in relation to religious weddings. The Board of Deputies expressed concern about the possibility of members of the public being able to attend Jewish weddings, especially those in otherwise private venues such as private homes. The Board of Deputies highlighted that security was currently a considerable concern. Given the recent violent attacks on places of worship and members of religious minorities, we think this concern deserves careful consideration.

(3) Stakeholders have raised with us concerns about domestic violence, noting aspects of the law that might put a person who was previously in an abusive relationship at risk of violence from their former partner. We think that the risk of an abusive person turning up at the wedding of their former partner, or of another abusive family member attending a person's wedding uninvited, is another reason to question the desirability of requiring weddings to take place with open doors.

Options for reform

6.130 One option for reform would be to abolish the requirement for open doors, allowing all weddings to take place in private locations, with no requirement for public access. Such an approach would require that impediments to marriage be discovered and assessed during the notice phase. However, if an impediment were raised after authority to marry had been provided, the registration office or General Register Office would be able to get in touch with the officiant identified for the wedding to ensure it did not go ahead.

6.131 Some of the stakeholders we have met to date supported abolishing the requirement for open doors: these include Professor Thomas Watkin, the Marriage Foundation, David Hodson, and the Muslim Council of Britain.

6.132 Other stakeholders suggested that abolishing the requirement for open doors would undermine the public nature of a wedding ceremony. For example, the Church of England explained that the whole process of getting married is important in forming the narrative about what marriage is, suggesting that the public nature of getting married needs to be protected not only at the preliminaries stage, but during the ceremony. The National Panel for Registration also supported the requirement for open doors, but agreed it was not desirable that objections should be left until the wedding day.

6.133 Some jurisdictions continue to require wedding ceremonies to take place with open doors, or open to the public, including Ireland,[73] the Isle of Man,[74] and Jersey.[75] Other jurisdictions have done away with the requirement for open doors. There is no

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73 Civil Registration Act 2004 (Ireland), s 51(2)(c).

74 Marriage Act 1984 (Isle of Man), s 32(6).

75 Marriage and Civil Status (Jersey) Law 2001, art 17(4) to (6).

requirement that a wedding ceremony takes place with open doors in Scotland or Northern Ireland. In a recent consultation on the law in Guernsey, a clear majority of respondents thought that it should be up to the couple whether the marriage ceremony was open to the public; moreover, there were "no known instances of an objection being made in a ceremony" in Guernsey. Consequently, when implemented, the reformed law of Guernsey will not require weddings to be publicly accessible.[76]

Consultation

6.134 Our initial view is that eliminating the requirement for open doors – which only applies to some weddings – would promote fairness and equality in the law. It would allow couples to have their wedding ceremony in a place that is meaningful to them, by removing one of the barriers that prevents weddings from taking place in private locations, such as in private homes.

6.135 It also does not appear that removing this requirement would cause any problems in practice. The requirement does not appear to be protecting the state's interest. No problems arise for those ceremonies not subject to the requirement. And as far as we are aware, no problems arise in the jurisdictions which do not require any weddings to take place with open doors. Although we agree that a wedding is a ceremony in which the state has an interest, our initial view is that the public nature of the ceremony, and the state's interest, can be protected by the requirement that the parties give notice of the intended marriage, by the presence of the authorised officiant and two witnesses at the ceremony, and by registration of the marriage. We therefore provisionally propose to eliminate the requirement for open doors, but welcome consultees' views.

Consultation Question 47.

6.136 We provisionally propose that the existing requirements for a wedding to take place with open doors, or otherwise for public access to be allowed, should be repealed.

Do consultees agree?

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76 States of Deliberation Policy and Resources Committee, *Reform of the Marriage Law* (12 November 2018) para 3.25; States of Deliberation Policy and Resources Committee, Policy Letter: The Marriage (Bailiwick of Guernsey) Law, 2020 (30 March 2020). See also States of Guernsey, *Marriage Law Reform: Public consultation summary of findings*, p 32, https://gov.gg/CHttpHandler.ashx?id=115220&p=0 (last visited 1 May 2020).

Chapter 7: Location

INTRODUCTION

7.1 Having discussed which groups, and who within these groups, should be authorised to officiate at weddings, and what elements should be included within wedding ceremonies, we now turn to location. We consider where weddings should be permitted by the law to take place, with a view to considering how the law should be reformed to enable weddings to take place in a wider range of venues.

7.2 It is important to make the distinction between where the law permits weddings to take place, and where any individual religious (or non-religious belief) group will require weddings conducted according to their practices to take place. Whatever reforms we ultimately recommend, it will remain open to groups to impose their own, additional criteria; indeed, we expect that many will do so. Our focus is instead on what the law should allow: reform would provide options, not impose requirements, about where weddings would be able to take place.

7.3 The current law in England and Wales is often described as a buildings-based system. In most cases, the authority to conduct weddings is based on regulation of a building, usually a place of worship or approved premises. As we explain in Chapter 2, the rules about where a wedding can take place vary, depending on which category the wedding falls into: civil; Anglican; Jewish or Quaker; or any other religious faith.

7.4 The central role that place plays in the law is, to many, a surprising feature.[1] Indeed, the law of England and Wales is unusual in this respect. Many similar legal jurisdictions do not regulate weddings based on the buildings where they can take place: jurisdictions such as Australia, New Zealand and Canadian provinces prescribe few, if any rules, about the location for a wedding. Jurisdictions whose weddings laws are most comparable to those of England and Wales, including Scotland, Northern Ireland, Ireland, Jersey, and Guernsey,[2] have made reforms to place less emphasis on location and to give couples more choice and flexibility in where they can marry.

7.5 The principles of respecting individuals' wishes and beliefs and not imposing unnecessary regulation point us towards a system that puts the decision as to where a wedding can take place in the hands of the couple, together with their officiant, with no locations off-limits as a matter of law. We provisionally propose that this rule should apply to all weddings, putting all groups on equal footing. Under our provisional scheme, weddings will therefore be able to take place anywhere, and the validity of a

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1 See eg W Kennett, "The Place of Worship in Solemnization of a Marriage" (2015) 30 *Journal of Law and Religion* 260, 261.

2 Although not yet in force, reform to the law has been approved in Guernsey, and the Marriage (Bailiwick of Guernsey) Law 2020 will come into effect in 2021: The official website of the States of Guernsey, *Getting married*, https://www.gov.gg/article/120125/Getting-married (last visited 1 May 2020). See also States of Deliberation Policy and Resources Committee, Policy Letter: The Marriage (Bailiwick of Guernsey) Law, 2020 (30 March 2020).

wedding will not be dependent in any way on where it took place; this will promote certainty and simplicity in the law. In order to protect the state's interest that weddings take place in safe and dignified locations, we propose that officiants should be responsible to ensure that locations are safe and dignified. [3]

7.6 This system will overcome the concerns that the current law is unfair, prevents many couples from marrying in a place that is meaningful to them, and needlessly restricts couples' choices. It will also overcome concerns that the regulation of wedding venues, and in particular civil wedding venues, imposes significant costs on businesses and limits competition among them, and imposes costs on couples.

7.7 In this chapter, we first consider the criticisms about the rules governing where civil weddings can take place, before considering the criticisms about the rules governing religious weddings. Next, we consider the difficulties of fitting non-religious belief weddings and weddings by independent celebrants into the current buildings-based system. We then turn to options for reform, drawing on the models used in other jurisdictions. Finally, we outline our proposed scheme – in relation both to where weddings should be able to take place, and what (if any) system of approval of locations should apply. We discuss options for reform and our proposed scheme in relation to civil and religious (and non-religious belief) weddings together, because we think that the best solution is one that would apply equally to all types of wedding.

7.8 We consider the discrete issues of weddings at sea and weddings on military bases in Chapter 11.

CRITICISMS OF THE CURRENT LAW

7.9 The rules governing where a wedding can take place vary considerably depending on the type of wedding. At one end of the scale are Jewish and Quaker weddings, with no limits imposed on where they can take place. At the other end are civil weddings, the locations of which are highly regulated, and weddings according to religious faiths other than Anglican, Jewish and Quaker rites, which are strictly limited in where they can take place.

7.10 The system is needlessly complex, making it confusing for people to understand. The complexity is illustrated in the infographic at Appendix 2. Such complexity makes it more likely that mistakes will be made, particularly by those responsible under the law for registering marriages. The potential consequence of a mistake is a ceremony that creates either a void marriage or no marriage at all.[4]

7.11 More significantly, the system is unfair, in that the ability of couples to have a religious wedding in a place that is meaningful to them differs between religious groups. Some couples do not see their place of worship as a meaningful place for a wedding. We have heard that this is the case for some Muslims, Hindus, Jains, Buddhists and Pagans. For some, it is not a tenet of their beliefs that a wedding should be celebrated in their place of worship; for others, such as Pagans, religious practice itself does not take place within a specific building, but outdoors. Some may wish for a larger

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3 See paras 5.193 to 5.195 above.

4 We discuss the consequences of a failure to comply with the required formalities in Ch 10.

wedding than their place of worship can accommodate: we have heard that many mosques are simply too small for a wedding. Nevertheless, to have a legally recognised religious wedding, these couples will have to hold their wedding in their place of worship.

7.12 Other couples wanting a religious wedding might not even have the option of marrying in their place of worship, so simply cannot have a legally recognised religious wedding. For example, they might wish to marry in a place of worship but belong to a religious group that has only a few buildings registered for marriage around England and Wales, and be unable to travel to the registered building. Or a couple might belong to a religious group that does not have buildings registered for marriage at all. Many smaller denominations meet in private houses or other venues rather than having a permanent place of worship.

7.13 The law also does not work for couples who do not share the same faith. To have a religious wedding, interfaith couples must generally marry in a building that reflects the faith of only one of them, rather than in a space that reflects or honours both of their beliefs.[5] Because of this, many interfaith couples have a civil ceremony, which due to the prohibition on religious service, will be unable to incorporate rites from either of their beliefs.[6]

7.14 Nor does the law facilitate couples to have a wedding officiated at by an interfaith minister, because interfaith ministers do not generally have buildings that can be registered for marriage.

7.15 We cannot see an ongoing policy justification for imposing such a patchwork of different rules on communities and couples. We also cannot see any ongoing policy reason for continuing to require that couples having religious weddings must have their weddings in buildings that have been registered for the purpose.

7.16 As well as being unfair, the law is also restrictive. Couples increasingly want to have a ceremony that is both meaningful and personal to them. They might want to marry in a place that represents a shared passion or their shared life together, rather than a shared religious belief; this may be particularly true for atheist or agnostic couples. Currently, however, the law prevents couples from holding their weddings in many places: for example, for nearly all couples, getting married outdoors is not allowed.

7.17 We think that it is difficult to justify the restrictiveness of the current rules. As we explore below, although we agree that the state has an interest in ensuring that weddings are safe and solemn occasions, there does not seem to be any identified harm that will arise in allowing weddings to take place in a wide range of locations.

7.18 Finally, the regulation of where weddings can take place imposes costs. The most significant regulatory costs are those arising from the approval of premises hosting civil weddings, with varying, but usually significant costs involved in premises being approved. These costs, which are passed onto couples, do not appear to be

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5 Under the Sharing of Church Buildings Act 1969 it is possible for different religious groups to solemnize marriages in a shared place of worship, but formal sharing agreements are rare and in any case tend to be between different denominations within the same faith rather than between different faiths.

6 See para 6.84 above.

proportionate to the purpose they are serving. They exclude small businesses or businesses that only infrequently hold weddings from seeking or maintaining approval. They also exclude non-commercial premises from seeking approval. Couples having a civil wedding outside a register office are therefore required to have their ceremony in a commercial venue: unlike couples in many overseas jurisdictions, they have no option of marrying in a community venue or in their own homes.

Civil wedding venues

7.19 As we explain in Chapter 2, civil weddings can only take place in register offices or on approved premises.

7.20 Most weddings take place on approved premises. In 2017, the latest year for which data are available, 71.5% of all weddings took place on approved premises. Same-sex couples are especially likely to marry on approved premises, at 90.9%.[7]

7.21 Although weddings on approved premises are categorised as civil, in reality some of these civil weddings are part of a larger religious celebration. Religious couples may have their wedding on approved premises for many reasons, including because they do not see their place of worship as a meaningful place to get married, or simply because their place of worship is not large enough to accommodate their guests. For example, we have heard that Muslim and Hindu ceremonies often take place on approved premises, with the civil wedding taking place in the approved room, and then the religious ceremony following, often in another part of the venue. Non-religious belief celebrations, such as Humanists UK ceremonies, and celebrations by independent celebrants also take place on approved premises, again with a separate civil wedding taking place so that the couple can be legally married.

7.22 Fewer weddings are taking place in register offices. Other than the limited availability of simple "statutory" ceremonies in the register office (an issue we explore at paragraphs 13.21 to 13.27 below), we are not aware of issues arising with the register office as a venue. Therefore, the focus in this section is approved premises.

Limitations on what can be approved as "approved premises"

7.23 As we explain in more detail in Chapter 2, approved premises are governed by the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 ("Approved Premises Regulations").[8] To be approved under the Regulations, premises must be a permanent, immovable structure (or a permanently moored boat), which comprises at least an identifiable and distinct room where the wedding will take place.[9] It is specific rooms that are approved, rather than premises generally. Premises for civil weddings must not be religious premises,[10] and "having regard to their primary use, situation,

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7 Office for National Statistics, *Marriages in England and Wales: 2017* (14 April 2020).

8 SI 2005 No 3168.

9 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 2(1) and sch 1 para 5.

10 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 2C(1) and sch 1 para 4(a).

construction and state of repair, the premises must be a seemly and dignified venue for the proceedings".[11]

Inability to marry outside

7.24 The requirements for approved premises, by requiring a permanently immovable structure with an identifiable room, appear to preclude approval of outdoor locations. This point is clarified in guidance issued by the Registrar General, which notes that "the open air, a tent, a marquee or any other temporary structure … would not be eligible for approval".[12]

7.25 However, the Approved Premises Regulations and guidance have not produced consistency in practice. A wide variety of premises have been approved. Some of these do not appear to fit the requirement for a room: as we noted in the Scoping Paper, a "hide", beach huts, garden pergolas, and bandstands have been approved to satisfy couples' desire to marry in the outdoors.[13] Many venues now offer gazebos. Typically, the couple and the superintendent registrar will stand underneath the approved structure while the guests are seated outside: North Yorkshire, for example, states that "many of our venues offer legal ceremonies outdoors, with the couple, their witnesses and the registrars beneath a licensed structure (for example a gazebo) and your guests seated in the open air".[14] While formally the wedding is therefore taking place within a "building", such weddings are, for all intents and purposes, outdoor weddings.

7.26 We have heard from representatives of approved premises and other venues that local authorities interpret the Approved Premises Regulations and guidance differently. For example, Vicky Portinari, of the Inner Temple, said that approval for a structure in the Inner Temple's garden had been denied, whereas outdoor structures had been permitted by other local authorities. Tom Pridmore of Ribble Valley Wedding Heaven said there was not just inconsistency in approval of quasi-outdoor structures, but also inconsistency whether any given wedding could take place, and explained that some local authorities only allow quasi-outdoor weddings structures to be used during certain months of the year.

7.27 We have heard that, contrary to the restrictions of the current law, many couples want to wed outdoors, or inside temporary structures. Many are already having non-legally binding ceremonies outdoors.

(1) Independent celebrants have told us that they conduct non-legally binding ceremonies in a wide variety of venues, including fields, gardens and woodlands. One celebrant said that she most often conducts ceremonies on beaches, moorlands and clifftops, although she also asks couples to have an

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11 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 1 para 1.

12 General Register Office, *The Registrar General's Guidance for the Approval of Premises as Venues for Civil Marriages and Civil Partnerships* (7th ed December 2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848875/registering_a_venue.pdf (last visited 1 May 2020).

13 Scoping Paper, para 1.30.

14 North Yorkshire County Council, *Civil Partnerships*, https://www.northyorks.gov.uk/ceremonies (last visited 1 May 2020).

alternative location in case of bad weather. Independent celebrants have emphasised that couples want more freedom in where they can have their weddings than is currently possible under the Approved Premises Regulations.

(2) OneSpirit Interfaith Foundation, whose interfaith ministers conduct non-legally binding ceremonies in England and Wales, also explained that outdoor ceremonies are a major attraction for couples, with woodlands, stone circles, parks and gardens being frequent choices.

(3) We have also heard from representatives of wedding venues that outdoor ceremonies are extremely popular among couples, with couples frequently requesting gardens and other outdoor locations.

7.28 The National Panel for Registration agreed that many couples want outdoor weddings. Some local authorities are trying to accommodate outdoor weddings, stretching the interpretation of the requirement for a room to approve small outdoor structures. In Norfolk, for example, 67 of the 150 approved premises offer some form of outside structure. In Oxfordshire it is 31 out of 90.[15] However, we also understand that some local authorities continue to refuse approval for essentially outdoor premises. This contributes to the disparity in how different registration services apply the Approved Premises Regulations. Moreover, we understand that some premises are prevented from holding "outdoor" weddings because they cannot, due to planning law, erect a structure in their gardens to be approved as premises under the current law. Emma Robinson of Historic Houses explained that many historic houses are not permitted to build a permanent outdoor structure for a wedding in a garden because of listed building restrictions. In many cases, this means that they cannot offer weddings at all because concerns about wear and tear to the building, together with small rooms with limited capacity and the inability to meet modern fire safety standards, make it impossible to host ceremonies indoors.

7.29 Interestingly, many local authorities have found a way to not just stretch, but to sidestep the Approved Premises Regulations, in order to offer couples ceremonies in a wider range of indoor and outdoor venues. These local authorities are offering a package in which the registration officers will conduct a wedding in a register office or room of an approved premises in the ordinary way, but will then conduct another ceremony for the couple at a location of their choice. This service, often called a "duo" service, ranges from the option of simply moving to the grounds of approved premises, through to having the second ceremony anywhere of the couple's choosing.

7.30 For example, Cheshire East describes the possibilities of its "anytime, anywhere" ceremonies as follows:

> You may decide on a ceremony by the edge of a lake, or in the middle of a fruit tree maze laden with apples and pears, the terrace of a former stately home or even

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[15] Norfolk County Council and Bride, *Marry in Norfolk* (Autumn/Winter 2019), http://edition.pagesuite-professional.co.uk/html5/reader/production/default.aspx?pubname=&pubid=b36de1b2-bde6-4800-ab93-d909c2d93783 (last visited 1 May 2020); Oxfordshire County Council, *Oxfordshire: The Place to Celebrate*, pp 37 to 38, https://www.oxfordshire.gov.uk/sites/default/files/file/birth-death-marriage/ThePlaceToCelebrate.pdf (last visited 1 May 2020).

perched high above the hills of Macclesfield looking out over three different counties! Or maybe what captures your imagination is the opportunity to create your own unique venue for your ceremony (especially for you and you alone!). A very real possibility with a ceremony in a marquee. … Legislation requires that the short legal aspect of the marriage ceremony will continue to be carried out at one of the rooms at the venue approved for civil marriage.[16]

7.31 In providing these services, registration officers are acting in a dual capacity. They are performing the function of superintendent registrar in conducting the legal aspect of the marriage indoors, and then acting as a celebrant in conducting the second, non-legally binding ceremony. They are doing so because the Approved Premises Regulations are too restrictive to cater for the wishes of couples in respect of their wedding venue.

7.32 Many stakeholders have questioned the logic of the prohibition on weddings taking place outdoors. Robin Mair, an operational manager of a registration service, commented in response to the 13th programme consultation that "there is no logic as to why there cannot be a legal ceremony in the open air or in a marquee".[17] An independent celebrant remarked to us at the National Celebrants Convention 2019 that the law was too precious about place.

7.33 The law in England and Wales is out of step with the many other jurisdictions by preventing outdoor civil weddings. Outdoor weddings are permitted to take place in all of our close neighbouring jurisdictions, or will be soon: civil weddings can take place outdoors in Scotland, Northern Ireland, Ireland, Jersey and the Isle of Man,[18] and reforms will soon permit outdoor civil weddings on Guernsey.[19] Civil weddings can also take place outdoors in Canada, Australia, and New Zealand,[20] among many other countries. Recognising the demand for reform, Government has committed to considering whether interim reform to the Approved Premises Regulations is possible

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16 Your Cheshire, *Weddings venue guide*, p 4, http://marketingcheshire.co.uk/wp-content/uploads/2014/10/2014-Cheshire-East-Wedding-Brochure.pdf (last visited 1 May 2020). See also Ceremonies in East Sussex, *Outdoor ceremonies*, https://www.ceremoniesineastsussex.co.uk/outdoor-ceremonies (last visited 1 May 2020).

17 Daniel Hearsum, of Pembroke Lodge, 13th programme consultation response, made a similar point.

18 Scotland: Marriage (Scotland) Act 1977, s 18(1) to (1A); Northern Ireland: Marriage (Northern Ireland) Order 2003 (SI 2003 No 413), art 18(1); Marriage Regulations (Northern Ireland) 2003 (SI 2003 No 468), reg 2; Ireland: Civil Registration Act 2004, ss 51(2)(c) and 52(1) and (2A); Department of Employment Affairs and Social Protection, *Getting Married* (12 December 2018), s 2.1; Jersey: Marriage and Civil Status (Jersey) Order 2018, art 13(1); Isle of Man: Marriage Act 1984, s 19(1) and (2); *Guidance issued by the Clerk of the Rolls under the Marriage Act 1984 sections 19(3) and 55 and Civil Partnership Act 2011 sections 7(3) and (9)* (Government Circular No 26 2011).

19 States of Deliberation Policy and Resource Committee, *Policy Letter: Reform of the Marriage Law* (12 November 2018); States of Deliberation Policy and Resources Committee, Policy Letter: The Marriage (Bailiwick of Guernsey) Law, 2020 (30 March 2020).

20 Canada: eg Marriage Act 1996 (British Columbia), Marriage Act 1990 (Ontario), Civil Code of Quebec 1991, art 365, Marriage Act 1989 (Nova Scotia); Australia: Marriage Act 1961, s 43; New Zealand: Marriage Act 1955, s 31(1).

to allow wedding on approved premises to take place outdoors in England and Wales.[21]

7.34 In our discussions with stakeholders to date, only the Church of England opposed reforms to liberalise where civil wedding can take place. Representatives of the Church of England did not generally support weddings taking place outdoors. The Church explained to us that location and place are deep within its identity, emphasising the importance of the parish system and the physical church. As part of its understanding of weddings as public events, the Church of England takes the view that weddings should take place in public places which the community identifies with weddings; it did not regard a public park (for example) as such a place.

7.35 Although not necessarily pointing to a conclusion that outdoor weddings should not be permitted, stakeholders raised with us concerns about weather. The National Panel for Registration said that if weddings could take place outdoors, viable alternatives should have to be identified in case of poor weather. Moreover, consideration would be needed about whose decision it should be as to whether an outdoor wedding goes ahead, particularly if there is not an indoor option.

7.36 On the point of poor weather, one stakeholder explained that although a covered bandstand was approved, weddings had not gone ahead if "there was even a speck of rain", with registration officers insisting this was necessary to protect marriage register books. This risk was making couples nervous of hiring the bandstand for their wedding. The National Panel for Registration agreed that registration officers do make decisions about the wedding going ahead in bad weather in part to protect marriage register books; however, registration officers also consider the comfort of the parties, their guests, and their own comfort.

Inability to marry in a private building that is not a regular wedding venue

7.37 Barring exceptions for weddings of people who are terminally ill or housebound, the law makes it difficult for civil weddings to place in private homes.[22] The Approved Premises Regulations require that the premises "be regularly available to the public for use" for weddings.[23] Local authorities may also impose further conditions on approved premises:[24] sometimes these conditions militate against private homes being approved, such as requirements for disabled access, facilities for interviewing the couple, waiting rooms for guests, car parking for the superintendent registrar and the registrar, and music systems.[25]

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21 See *First ever marriage review to free-up dream wedding venues*, https://www.gov.uk/government/news/first-ever-marriage-review-to-free-up-dream-wedding-venues (last visited 1 May 2020).

22 As we consider at paras 7.89 to 7.90 below, some religious couples may also wish to marry at home.

23 As well as civil partnership ceremonies: Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 1 para 2.

24 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 6(1)(b).

25 See eg Central Bedfordshire (*Application for premises to be approved as a venue for marriages in pursuance of Section 26(1)(bb) of the Marriage Act 1949 and Civil Partnerships in pursuance of Section 6(3a)(a) of the Civil Partnership Act 2004*, p 7, https://www.centralbedfordshire.gov.uk/migrated_images/app

7.38 There are separate requirements in the law for public access to a venue on the day of the wedding, usually described as a requirement for open doors. We discuss this point in Chapter 6.

7.39 Once again, however, practice varies: some private homes have been approved as premises for civil weddings. Although these homes have purportedly met the requirements, they are not in fact regularly available to the public for weddings: they simply do not advertise of their availability. In reality, it is likely that they host only one wedding, most likely that of a family or friend of the owners or the owners themselves.

7.40 Some couples do wish to wed at home. Independent celebrants have told us that they conduct non-legally binding ceremonies in private homes, generally one of the couple's parent's homes, which is likely to have a special meaning for a couple, and that couples may want the option of having their wedding at home to save money. OneSpirit Interfaith ministers also perform non-legally binding ceremonies in private homes. We have also heard that, according to religious and cultural practice, Muslim wedding ceremonies frequently take place at home. Moreover, in their marketing of "duo" ceremonies offered by many local authorities, authorities are also anticipating that some couples will want to have their ceremony at home or in their own garden.[26]

7.41 Having a wedding at home is an option for legal weddings in other jurisdictions. Claire Follain, the Superintendent Registrar of Jersey, explained that one-off approvals for people marrying in their own homes or the homes of family members was possibly the most popular aspect of the reformed law in Jersey. She explained that a variety of homes are approved, with couples finding it a good option for saving money.

7.42 However, some believe that the option of having a wedding at home does not sufficiently reflect the public nature of marriage. Weddings are required to be in public places in some other jurisdictions. For example, in Ireland, unless exempted by reason of illness, all weddings must be in a place that is open to the public.[27] During the passage of the Civil Registration (Amendment) Act 2014, a minister stated that public access served to "avoid the possibility of coercion, fraud or lack of capacity" of the parties, to prevent weddings from "taking place in secret", and "to provide an opportunity for objections".[28]

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roved-premises-app-form-2_tcm3-4455.pdf (last visited 1 May 2020)); Northumberland Registration Service (*Approved premises for civil marriage and civil partnership*, para 3.2, https://www.northumberland.gov.uk/NorthumberlandCountyCouncil/media/Campaigns/Weddings/Guidance-Notes-2-doc.pdf (last visited 1 May 2020)); Southend on Sea Borough Council (*Notes on the requirements before an approval can be granted*, p 2, http://www.southend.gov.uk/download/downloads/id/516/approval_requirements.pdf (last visited 1 May 2020)).

26 See eg Norfolk County Council, *Marry in Norfolk*, https://www.norfolk.gov.uk/births-ceremonies-and-deaths/marriages-and-civil-partnerships/ceremonies (last visited 1 May 2020); Oxfordshire County Council, *Your day, your way - combining legal and celebratory ceremonies,* https://www.oxfordshire.gov.uk/residents/community-and-living/births-deaths-and-ceremonies/weddings-and-other-ceremonies/marriages/your-day-your-way (last visited 1 May 2020).

27 Civil Registration Act 2004, ss 51 and 52(1).

28 *Seanad Éireann Official Report*, 17 September 2014, vol 234, pp 63 to 64.

7.43 There might therefore be reasons to prevent weddings at home. We explain these reasons, and why we disagree that they present problems in practice, at paragraphs 7.142 to 7.151 below.

Red tape: the approval process and requirements during operation

7.44 In addition to meeting the substantive requirements of the Approved Premises Regulations, approved premises are subject to a rigorous approval process, consisting of detailed provisions for applications for approval and renewal of approval, and conditions that apply to approved premises during civil weddings and civil partnership ceremonies.

The approval process

7.45 We explain the approval process in detail at paragraphs 2.39 to 2.50 above. Approval can only be granted if the premises fulfil the requirements of the Approved Premises Regulations, and any other reasonable requirements that the authority considers appropriate. The Regulations specifically require the local authority to consult with the fire and rescue authority in order to assess the premises' fire precautions, and generally assess the health and safety precautions of the premises. The regulations also require the local authority to hold a public consultation on the application.[29] Moreover, even if all the requirements for approval are met, the local authority may refuse approval if it considers that the superintendent registrar and registrar are unlikely to be available to attend weddings on the premises regularly, bearing in mind the number of other approved premises in the area.[30]

7.46 It is not apparent to us why approved premises are subject to these unique and rigorous pre-approval requirements, when other locations for weddings are not.[31] Nor is it apparent why these requirements are needed in addition to the existing requirements of planning law, building law, licensing law, occupier's liability law and the civil wrongs of negligence and private nuisance, and health and safety law.

(1) If use of premises as a wedding venue amounts to a material change of use of the land, it will usually require planning permission. Planning permission will consider any potential harms of the use, including the effect on the local community and neighbourhood.[32]

(2) If use of premises as a wedding venue amounts to a material change of use according to buildings regulations, then buildings law will apply to ensure that the building is safe in terms of its physical structure, fire safety, ventilation and

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29 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 4 and sch 1 para 3.

30 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 5(2).

31 See paras 7.72, 7.78, and 7.84 to 7.85 below.

32 See Town and Country Planning Act 1990, ss 55(1) and 57.

accessibility.[33] Moreover, local authorities have general powers to deal with defective or dangerous buildings.[34]

(3) If the provision of food or drink amounts to a licensable activity, separate authorisation will be necessary under licensing law, which will consider safety issues as well the effect on the local community to prevent nuisance.[35]

(4) The civil law imposes controls on how premises – whether or not a civil weddings venue – can be used. This includes occupiers' liability,[36] the law of negligence, and the law of private nuisance.

(5) If the owner of the premises is an employer, the employer will have obligations to their employees and to others under the Health and Safety at Work etc Act 1974.

7.47 We are unpersuaded that further regulation of civil venues is required under weddings law. Buildings that are used for residential and commercial purposes, and businesses offering services to the public, are already subject to various legal regimes in order to ensure that the buildings and services are safe for the public and do not create a nuisance. It is not clear to us why those regimes are regarded as sufficient for other activities – including birthday parties, anniversary parties, naming ceremonies, religious ceremonies and celebrations, lectures, and conferences – but not for civil weddings.

7.48 Some approved premises and representatives of other venues made similar points when we met with them, questioning why civil wedding venues are more tightly regulated than venues for other events. They expressed the view that there is sufficient regulation of venues to ensure their safety, making it unnecessary to subject venues to additional regulation simply because they are used for weddings. They noted that weddings do not pose any particular risks, making the comparison with corporate events which often involve large numbers of people and the consumption of alcohol. Because of the specific requirements in the current law, some rooms in approved premises are denied approval, even though the room can be lawfully used for other types of events with large numbers of people.

7.49 A few stakeholders have told us that the extra regulation of civil wedding venues is justified. One venue representative thought that safety regulation of buildings is generally inadequate, so having a separate safety check for civil weddings is valuable. Registration officers have also argued that special consideration should be given to their safety, as they are required to be present at weddings as a part of their employment.

7.50 The National Panel for Registration also disagreed that the health and safety requirements were unnecessary, or that they duplicated other regulations. The Panel emphasised that the process does reveal safety concerns, for example having locked

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33 See Building Act 1984; Building Regulations 2010 (SI 2010 No 2214).

34 Building Act 1984, ss 76 to 78.

35 See Licensing Act 2003, s 4(2).

36 Occupiers' Liability Act 1957.

fire doors and candles in places where they might catch on people's clothing. However, the Panel also acknowledged that local authorities take varying approaches. Some take a more relaxed approach, relying to some extent on a venue's track record of operating safely as a venue for other events; others delegate approval or premises to licensing departments within the local authority, which can take a more bureaucratic approach.

Conditions of approval

7.51 Under the Approved Premises Regulations, approval of premises is subject to conditions, both standard conditions and conditions specific to the particular local authority. The standard conditions require that during the wedding, and an hour leading up to it, no food or drinks can be sold or consumed in the room, with an exception that non-alcoholic drinks can be consumed prior to the ceremony.[37]

7.52 The National Panel for Registration explained that the prohibition on food and drink in the ceremony room is important to protect the seemly and dignified nature of the wedding. On that basis, they were supportive of retaining the prohibition.

7.53 We are not convinced that allowing food and drink would necessarily affect the dignity of a wedding ceremony. There is nothing inherently undignified about the consumption of food or drink, reflected in the cultural associations between food and drink and ceremony. We also note that the lack of prohibitions on food or drink for weddings other than those on approved premises has not given rise to concerns about dignity in those contexts.

7.54 Moreover, the restrictions on food and drink cause problems in practice for some, and in particular, for small premises that are unable to separate where the wedding is to take place from the rest of the venue. In the Society of Friends' experience with the Approved Premises Regulations (when some meeting houses were approved for civil partnership ceremonies before same-sex marriages were permitted by the law), this rule prevented them from serving tea, as some meeting houses comprise a single room. We were told that other small venues, such as small restaurants, also struggle to comply.

7.55 The consumption and sale of alcoholic drinks raises specific considerations. Clearly, the couple getting married, the officiant and any witnesses should not be impaired from consuming alcohol. We also understand that serving alcohol to guests can result in disruptive or unruly behaviour during the ceremony. This point was made by the National Panel for Registration, which expressed concern about guests being drunk and so not taking the ceremony seriously.

7.56 However, we are not sure that these concerns necessitate an outright prohibition on alcohol within the ceremony room. The current law does not prevent anyone from being impaired, as the couple and guests can drink alcohol prior to the ceremony or in another room. Because of the risk that guests may simply bring alcohol from one part of the venue into the ceremony room, we have been told that some local authorities will ban food or drink being served anywhere on the premises before the ceremony.

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[37] Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 6 and sch 2 para 7.

Even then, such a prohibition does not stop the wedding party or guests from drinking alcohol outside the venue before the ceremony, perhaps going to the pub beforehand. Although perhaps well-intentioned, this rule does not appear capable of effectively achieving its aim in practice.

7.57 Representatives of venues told us that these rules are too restrictive. They explained that many couples find the rules unreasonable, wishing to offer their guests a drink when they arrive at the venue before the ceremony. They argued that it should be up to couples to decide.

7.58 We tend to agree. We are not sure that the current prohibition on serving food and drink in the ceremony room is justified, particularly given that it only applies to certain types of wedding.

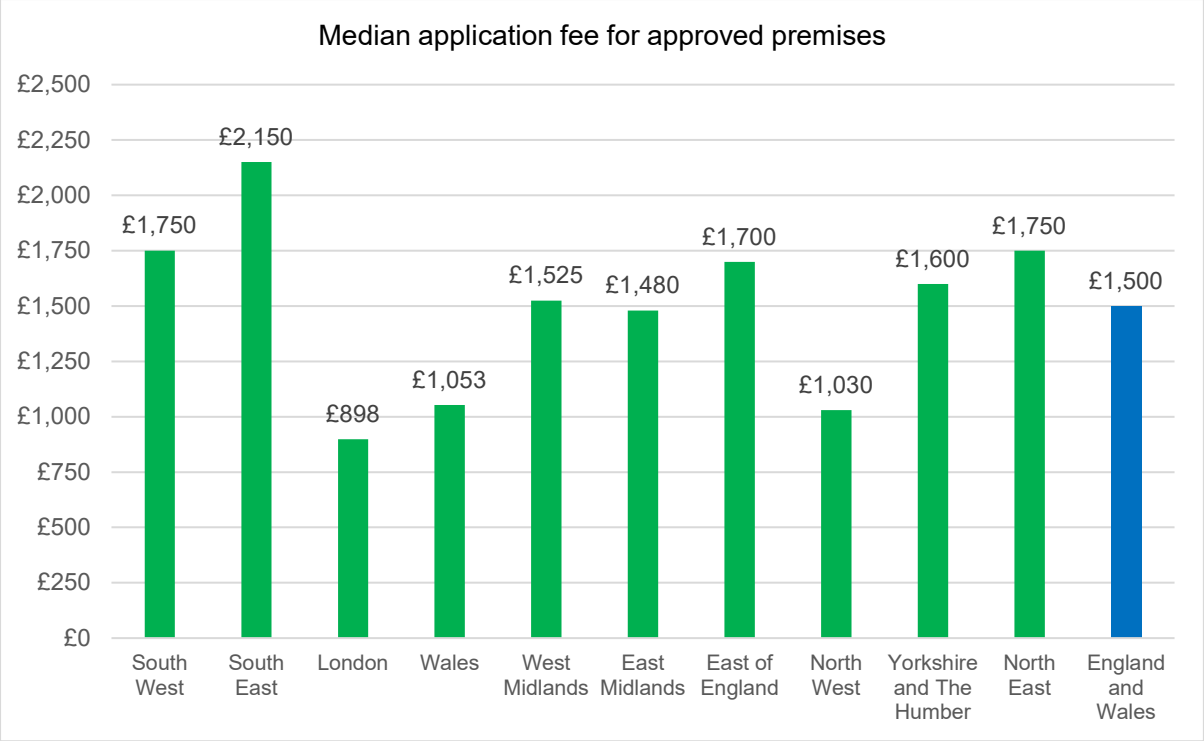
Costs of approval

7.59 The regulation of approved premises generates costs. The most direct costs are the fees that local authorities charge premises for approval and renewal applications. These fees are significant. There are also indirect costs in complying with the requirements. Both the direct and indirect costs are borne by venues, but will ultimately be passed onto couples in the fees charged for venue hire. Consequently, getting married on approved premises is likely to be more expensive than marrying in other locations, as a consequence of the legal regulation.

7.60 The Approved Premises Regulations allow local authorities to set the fees for applications for approval and renewal of approval. However, local authorities are limited to charging fees on a cost-recovery basis, with the Regulations providing that fees must not exceed the amount that "reasonably represents" the authority's costs or average costs.[38]

7.61 Our initial research shows that the median application fee (specifically, the fee for approval of a single room that is not already licensed to serve alcohol) in England and Wales is £1,500. The fees ranged from £51 in Haringey to £3,210 in Redcar and Cleveland. There is also substantial regional variation: the lowest median fee is in London, £898; the highest is in the South East, £2,150.

[38] Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 12.



7.62 Our research did not reveal whether in practice renewal fees are different, as most local authorities do not publish their renewal fees online. Of those that did, some charged the same fee for renewals as for first applications, and some offered reductions, ranging from 87% to 4% of the application fee. We also understand that some local authorities charge annual fees for premises to retain their approval.

7.63 Whether and what local authorities charge for premises applying for more than one room to be authorised also vary. Some local authorities may charge a single fee for multiple rooms in one premises; others may charge different fees depending on the number of rooms.[39]

7.64 The costs of approval might inhibit smaller or non-commercial venues from applying for approval or from renewing approval. We heard from independent celebrants that they knew of venues which did not apply to renew approvals because the size of their business did not justify the cost. We also heard directly from venues on this point, some of whom said that they had not been able to apply for approval because they would be unable to recover the costs. One stakeholder explained that potential venues, for example self-catering complexes or barns, did not apply because weddings would not be a significant part of their business and so the costs of approval were not worthwhile. Another noted that some self-catering rental accommodation would find it difficult to recover the costs of approval, because generally such accommodation can only be booked for an entire weekend, limiting the number of weddings that could take place per year. In a survey conducted by Bridebook.co.uk, one third of venues thought that the costs imposed by the regulations were too high,

[39] Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), regs 2(1) and 3(2)(b), and sch 1 para 5.

with some venues explaining that the costs of approval are restricting business growth.[40]

7.65 The National Panel for Registration disagreed that costs were necessarily prohibitive for venues, giving an example of the approval fee in Lancashire of £500, plus £200 per year. The Panel acknowledged that fees may vary, for example, depending on the process the local authority uses.

7.66 The current approval processes may also impose indirect costs on premises, as any changes necessary to meet the requirements or conditions for approval can be expensive. We heard of one example where a commercial venue, already used for other events, was required to have inward opening fire doors replaced with outward opening versions, and had to make revisions to accessible entrances. These costs were very high, and could have been prohibitive for many venues.

7.67 We also heard of the costs of building a structure necessary to hold ceremonies in gardens, to allow essentially outdoor weddings. As we note above, such structures may require planning permission, which can impose additional costs on venues.

7.68 Finally, although local authorities are able to charge fees to recover the costs of approval, the approval process may nevertheless impose costs on local authorities. Robin Mair, a local authority employee working as an operational manager, also referred to the costs of administering the licensing of venues as one wasted cost caused by the current law.

Religious wedding venues

7.69 Where the law permits religious weddings to take place depends on the religion, with different rules governing Anglican weddings, Jewish and Quaker weddings, and all other religions. With the exception of Jewish and Quaker weddings, these rules generally require the wedding to be held in a place of worship.

Anglican weddings

7.70 As we explain in Chapter 2, Church of England and Church in Wales weddings must generally take place in an Anglican church or public chapel. Additionally, couples are limited to marrying in a parish where at least one of them is resident or usually worships, or in a parish with which one of them has a qualifying connection.[41]

7.71 The Church of England and Church in Wales also have the benefit of an exception to the general rule. The Archbishop of Canterbury has discretion, based on the Ecclesiastical Licences Act 1533, to issue a special licence to allow an Anglican wedding to take place anywhere. However, the practice of the Archbishop is only to

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40 Bridebook.co.uk conducted this survey as part of its preparation for a pre-consultation venue event: Bridebook.co.uk, *UK Wedding Industry Law Review Report* (October 2019).

41 Marriage Act 1949, ss 6, 12(1), 15, and 25(2)(a); Church of England Marriage Measure 2008, s 1; Marriage (Wales) Act 2010, s 2). This is an area in which the rules governing Church in Wales weddings have "limped" behind those applying to the Church of England, in respect of changes that allow couples with a qualifying connection to a parish to have banns read and be married in any of the parishes with which that parish is grouped: Church of England Marriage Measure 2008, s 1A(1) as inserted by the Church of England Marriage (Amendment) Measure 2012. We discuss the issue of limping at Ch 1 n 71 above.

grant special licences for weddings in Anglican places of worship which are not generally licensed for weddings (such as private Oxbridge chapels) or in which the couple would not otherwise be able to marry. Special licences are only granted for weddings in private places, most often hospitals and hospices, if one of the parties or their family members are terminally ill.

7.72 There is no external approval process, or costs of regulation, for Anglican wedding venues. Parish churches are automatically lawful venues for weddings. Other churches, cathedrals and chapels may be licensed for weddings by the bishop of the diocese.[42] In England parish centres for worship can also be licensed for weddings by the bishop.[43] There is no need for certification or registration by the registration service, although the Registrar General will need to be informed so that the necessary register books can be issued. Where the Church wishes to authorise a wedding taking place in an alternative venue, it can do so using the Archbishop's special licence.

7.73 It is perhaps unsurprising that the law matches Anglican wedding practices. The Marriage Act 1949 is the culmination of a legal scheme that is, essentially, based on Anglican wedding ceremonies. Marriage was entirely unregulated by the state until the 18th century, with the Anglican Church taking sole responsibility for weddings. When the state did first seek to regulate weddings, in the Clandestine Marriage Act 1753, it imposed requirements based on canon law: the wedding had to be conducted by a minister of the Anglican church, within a parish church or public chapel, following the publication of banns or on the authority of a licence. Other than the exceptions for Jewish and Quaker weddings, the law required everyone to marry according to Anglican rites.[44] The various amendments to the law since 1753 have allowed other religious groups to conduct weddings and civil weddings, but have not changed the fundamentals of the law governing Anglican weddings.

7.74 Discussions with representatives from both the Church of England and Church in Wales suggest that they are content with the rules that govern Anglican weddings.

7.75 The current law governing Anglican weddings ensures a focus on the venue, fitting with the Churches' belief that weddings should take in Church buildings in a local Christian community. The Anglican churches do not need legislative reform to be able to use a wider range of venues: bishops are able to license venues for Anglican weddings even if they are not consecrated, and special licences can permit weddings to take place in other locations.

7.76 The Church in Wales suggested to us that if the law is reformed, their interest is in parity. If other religious groups could regularly hold weddings outdoors, the Church in Wales might be interested in using churchyards (which are consecrated) for ceremonies. However, there appears to be little or no appetite in the Church in

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42 Marriage Act 1949, ss 20 to 21.

43 Mission and Pastoral Measure 2011, s 43.

44 See W Kennett, "The Place of Worship in Solemnization of a Marriage" (2015) 30 *Journal of Law and Religion* 260; R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009).

England or the Church in Wales to make use of any freedom in the law to conduct weddings in other locations.

7.77 It would be possible for the Anglican Churches to continue to operate as they currently do within a more permissive legal structure; the Churches' own rules could place limits on location. However, the Churches' preference was that the civil law should require Anglican weddings to take place in certain places. Moreover, they preferred that Anglican weddings conducted in other places should be void, which could only be achieved by the civil law, not by canon law.

Jewish and Quaker weddings

7.78 Jewish and Quaker weddings are treated differently to all other types of wedding: in stark contrast to the extensive regulation of the location of other types of weddings, the law is silent about where they can take place. They can therefore take place anywhere.

7.79 The reasons for this distinct treatment are historical. Jewish and Quaker weddings were excluded from the Clandestine Marriage Act 1753, on the basis that these groups were small and had long histories of self-regulation. This exceptional treatment was carried forward into the Marriage Act 1836, when civil registration was introduced. Although the 1836 Act required that notice be given to the registration service of intended Jewish and Quaker marriages and that such weddings be registered, it otherwise left Jewish and Quaker weddings unregulated.

7.80 In practice, Quaker weddings usually take place in meeting houses. Recently, approximately a quarter of Quaker weddings have been taking place in other buildings, including on approved premises. Generally, Quaker weddings only take place in meeting houses or in buildings which could meet the requirements of the Approved Premises Regulations.

7.81 Jewish weddings take place in a wide variety of places, including outdoors. Some take place in synagogues or in the grounds of synagogues. Jewish weddings also take place on approved premises, outdoors, including in the gardens of approved premises, and in private homes.

7.82 This system works well for Jewish and Quaker weddings, perhaps naturally as the decision as to where weddings can take place is up to the religious groups themselves. Nevertheless, the Society of Friends and the Board of Deputies supported reform to allow others to be able to enjoy the same freedoms to hold weddings in a place meaningful to the community and couple. Because the Society of Friends, as a matter of principle, limits where they hold their own weddings based on the general limitations the law imposes, they would welcome for themselves the liberalisation of the law governing wedding locations generally.

All other religious weddings

7.83 All religious weddings other than Anglican, Jewish and Quaker weddings may only take place in a certified place of worship which is registered for marriage. Couples are also subject to rules about the registration district where the wedding can take place.[45]

7.84 We explain the process of certification of a place of worship and registration for marriage at paragraphs 2.144 to 2.147. The process of approval is set by statute, and the fees are set by regulation. The process is simple, and the fees low: £29 for certification of the place of worship, and £123 (or £64 in cases where the building is already registered for opposite-sex marriages or same-sex marriages as the case may be) for registration for marriage.

7.85 This process does not involve the same level of red tape as the approval of premises for civil weddings. For example, there are no unique fire safety requirements, nor any ability for Government or local authorities to impose conditions on places of worship that they must meet to perform weddings.[46] This process also is also much less expensive than the approval of premises for civil weddings, preventing the need for religious groups to have to try to recover regulatory costs from couples.

7.86 Although the process is straightforward and inexpensive, it is still nevertheless arguably unfair. It is only required for some religions. It is not required for the Church of England or Church in Wales, synagogues recognised by one of the identified Jewish authorities,[47] or the Society of Friends.[48]

7.87 These differences in treatment arose for historical reasons. As we note at paragraph 7.73 above, the law governing weddings in England and Wales began by simply replicating the canon law of the Anglican church, with exceptions for Jewish and Quaker weddings. Weddings according to other religious groups were not permitted until the Marriage Act 1836. The 1836 Act allowed members of other religious groups to marry in their own places of worship so long as the building was registered for marriage and a registrar was present at the time. This scheme was introduced with the practices of Non-conformists and Catholics in mind. Since 1856, it has been possible to certify and register non-Christian places of worship.[49]

7.88 The fundamentals of the 1836 Act remain in place to this day. But the law was not devised with a variety of religious faiths, and beliefs about marriage, in mind. We have

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45 Marriage Act 1949, ss 34, 35, 41, 43A and 44.

46 Other than the requirement that, for at least the first year, and afterwards in the absence of the appointment of an authorised person, a registrar must attend all weddings: Marriage Act 1949, ss 41, 43B, and 44(2).

47 Synagogues that have not been recognised by the Board of Deputies of British Jews, the West London Synagogue of British Jews or the Liberal Jewish Synagogue, St John's Wood have had to register for marriage under s 41 to solemnize weddings: see Marriage Act 1949, s 67, "secretary of a synagogue".

48 Although they do not need to be registered for marriage, synagogues and meeting houses need to be certified as places of worship in order to be exempt from liability to pay non-domestic rates: Local Government Finance Act 1988, s 51 and sch 5 para 11.

49 See the Places of Worship Registration Act 1855; Marriage and Registration Act 1856.

been told that the law does not work well for all of the many faiths present in England and Wales today.

7.89 The law does not work for those religious couples who do not see their place of worship as a meaningful place for their wedding.

(1) Stakeholders have told us that many Muslim couples do not see mosques as the usual place for a wedding. As a consequence, few mosques are registered for marriage: as of January 2020, only 298 Muslim places of worship were registered for marriage, 21% of the number of Muslim certified places of worship.[50] The Muslim Council of Britain explained to us that, in Islam, there is flexibility in where a Muslim wedding ceremony (called a nikah) can take place. Accordingly, where Muslim weddings take place varies. Some communities, such as Muslim Gujarati communities, often have nikah ceremonies in mosques, and some mosques are registered for marriage. However, other communities do not have nikah ceremonies in mosques. The Council noted that younger couples are more often looking for venues which are not religious venues. Other couples want to marry in their own homes or outdoors. In some cases, even if the couple wished to marry in a mosque, many mosques are too small to host weddings.

(2) Stakeholders have told us that not all Hindu weddings take place in a temple. Some take place in private homes or, for very large weddings where as many as 1,000 guests attend, on approved premises.

(3) The Jain Network explained to us during our scoping work that Jains do not marry in temples: Jain weddings typically take place in a community hall or at the bride's home, and very large weddings take place in hotels.

(4) The Network of Buddhist Organisations told us during our scoping work that Buddhists do not see marriage as a religious ceremony, so many Buddhists prefer to have their wedding in places other than a temple.

7.90 The law also does not work for faiths which do not have their own places of worship within a local community.

(1) Pagan religious practice generally takes place outdoors or in private homes, not in places of worship, as the Pagan Federation explained to us during the scoping phase. Most Pagan ceremonies therefore take place outdoors, so cannot be legally recognised.

(2) During a Churches' Legislation Advisory Service meeting, Paul Tunde Soile of the Free Churches Group told the Commission that some free churches do not have their own places of worship.

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50 General Register Office, *Places of worship registered for marriage* (February 2020), https://www.gov.uk/government/publications/places-of-worship-registered-for-marriage (last visited 1 May 2020).

(3) Interfaith ministries may not have their own places of worship. This is true for OneSpirit Interfaith Foundation.

7.91 Couples belonging to faiths which do not see their place of worship as the most meaningful place to marry, or which do not have their own places of worship, are not given a choice to have a legally recognised religious wedding that is significant to them. Instead many such couples will have a civil wedding, with a separate religious service.

7.92 Some couples who cannot marry in a place that is meaningful to them under the current law may not have a legally recognised wedding at all. This point is made by the case law on non-qualifying ceremonies:[51] many of those cases, in which the courts found that the marriage was neither valid nor void, were religious ceremonies that took place in locations other than registered places of worship, including a Hindu ceremony in a restaurant, and Islamic ceremonies in a private flat, a hotel, and the Moroccan consulate.[52]

7.93 Other religious groups, although not prevented by the building-based system from conducting weddings, have nevertheless expressed support for the law to provide more choice to couples. For example, the Church of Scientology told us during the scoping phase that although the majority of Scientology marriages might continue to take place in the church (as they do in Scotland), the location of a wedding is a personal decision for the couple to make. In its 13th programme consultation response, the National Spiritual Assembly of the Bahá'ís of the United Kingdom said a change that would allow weddings to take place anywhere would be beneficial for Bahá'í weddings, as well as for other faith communities and those with no faith. Elizabeth Slade of the General Assembly of Unitarian and Free Christian Churches, during a Churches' Legislation Advisory Service meeting, explained that the Unitarian wedding service is not rigidly prescribed; therefore, she also expressed support for an investigation of increased flexibility to allow weddings to take place outside religious buildings. As we note at paragraph 7.82 above, the Society of Friends and the Board of Deputies also supported reform to extend to other religious groups the same legal freedoms they enjoy about where a wedding can take place.

7.94 The requirement to marry in a registered place of worship also does not seem to work well for couples who have different faiths from each other. The current system requires such couples to marry in a place of worship of one of their faiths, with that religious group free to conduct a ceremony involving different beliefs. It does not allow couples to choose a location outside a place of worship, where they could have a wedding that would involve aspects of both of their faiths, as such a wedding would have to be civil, and so could not involve religious content.[53]

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51 See paras 10.24 to 10.34 below.

52 Respectively, *Gandhi v Patel* [2002] 1 FLR 603; *A-M v A-M (Divorce: Jurisdiction: Validity of Marriage)* [2001] 2 FLR 6; *Sharbatly v Shagroon* [2012] EWCA Civ 1507, [2013] Fam 267; *Dukali v Lamrani* [2012] EWHC 1748 (Fam), [2012] 2 FLR 1099.

53 We consider whether religious content should be permitted in civil weddings at paras 6.73 to 6.108 above.

Non-religious belief wedding venues

7.95 Ceremonies conducted according to non-religious beliefs, such as Humanism, are not currently recognised under the law. As we explain in Chapter 1, part of our work involves making recommendations for a reformed law which could allow non-religious belief organisations to conduct legal weddings if Government decides that they should be able to do so. We therefore must consider whether the current building-based system would work for them. As Humanists UK is the only non-religious belief organisation currently campaigning to conduct weddings in England and Wales, we consider whether the current law would pose problems if it applied to them.

7.96 As we explain in detail in Chapter 2, the rules governing where a wedding can take place varies. Most weddings must take place inside a building, whether that is a place of worship or approved premises. The only groups who can conduct legal weddings in a wide variety of places are Jews, Quakers, and, if a special licence is used, Anglicans.

7.97 A buildings-based system would not work well for the ceremonies conducted by Humanists UK. Humanists UK, and Humanist groups generally, do not tend to conduct their ceremonies in buildings.[54] Humanists UK emphasised to us that that having a venue which is meaningful to the couple is an important aspect of a Humanist ceremony. Humanist weddings take place in a variety of venues, with many taking place outdoors.

7.98 Because different groups are governed by different rules under the current law, it could be argued that non-religious belief organisations should be governed by the rules that are the least restrictive. Humanists UK has made this argument, contending that the Jewish and Quaker model should be applied to Humanist weddings.[55] However, we think questions would arise as to how that model would work in practice for Humanist weddings, given the specific legal prohibitions on who can marry in a Jewish or Quaker ceremony[56] and the requirement that such ceremonies are "according to the usages" of those groups. More significantly, as we explain above, the building-based system does not work for many religious and interfaith couples. We do not think that reform should duplicate existing anomalies to privilege certain groups over others, creating more complexity and unfairness in the law. We think that a better solution to allow Humanist weddings to take place in a manner consistent with Humanist practices is a reformed system that works for everyone, by ensuring that all couples can have a wedding in a place that is meaningful to them.

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54 That said, Conway Hall was registered for marriages by the South Place Ethical Society from 1935 to 1977, until its registration was cancelled when the Society's eligibility was questioned: R Probert, "A uniform marriage law for England and Wales?" (2018) 30 *Child and Family Law Quarterly* 259, 272 to 273.

55 All-Party Parliamentary Humanist Group, *Any Lawful Impediment: A report of the All-Party Parliamentary Humanist Group's inquiry into the legal recognition of humanist marriage in England and Wales* (2018) pp 37 to 41.

56 To marry according to Jewish usages, the couple must each profess the Jewish religion; to marry according to the usages of the Society of Friends, the couple must each be members of the Society or be authorised by the Society.

Independent celebrant wedding venues

7.99 Independent celebrants cannot currently solemnize legal weddings in England and Wales. In order to make recommendations for a reformed law that could allow independent celebrants to solemnize weddings, if Government decides that they should be able to do so, we must consider whether the current rules on locations would work for weddings conducted by them.

7.100 Independent celebrants already conduct ceremonies on approved premises. Sometimes these weddings will not be legally binding; in other cases, independent celebrants work with registration officers to provide couples with a personalised ceremony, and the involvement of the registration officers means that the wedding is legally recognised.

7.101 But the non-legally binding ceremonies conducted by independent celebrants are not limited to approved premises. The focus of the services provided by independent celebrants is personalisation. An important element of personalisation is a location that is meaningful to the couple. The Wedding Celebrancy Commission explained that wedding ceremonies by independent celebrants can take place anywhere: in hotels, homes, fields, barns, pubs, gardens, woodlands, as well as on boats. We have been told of ceremonies taking place on beaches, clifftops, and moorlands. The Wedding Celebrancy Commission explained that a process of pre-approval would be very cumbersome and bureaucratic for independent celebrant-led ceremonies, given the variety of wedding locations used. The current buildings-based system, both in the limits it imposes on the places that can be authorised and the process of authorisation itself, would not work well under any scheme which allowed independent celebrants to officiate at legally binding weddings.

OPTIONS FOR REFORM

7.102 The law governing where weddings can take place is complex, confusing, restrictive and unfair. For civil weddings, it is also needlessly bureaucratic, with the many regulations imposing costs on couples getting married and preventing some businesses from hosting weddings.

7.103 We now consider options for reform, drawing on the models in other jurisdictions. In assessing possible solutions, we consider whether they would further the five principles underpinning our project.[57] We also bear in mind that Government, in the 2018 Budget, expressed its support for reducing the red tape associated with civil wedding venues, in order to give couples meaningful choice and to lower the cost of wedding venues for couples.[58]

Retention of the current system, but with a wider range of locations permitted

7.104 One possibility for limited reform is to retain the existing building-based system but to allow weddings to take place in the gardens or courtyards of approved premises or

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57 The full Terms of Reference for our project are included in Appendix 1.

58 HM Treasury, *Budget 2018* (October 2018) para 5.52.

registered places of worship. It could also move away from approval of specific rooms.[59]

7.105 The system in Ireland is a good example of a system that remains fundamentally based on buildings, but which allows more choice as to where weddings can take place. In Ireland, all weddings must take place in a building that is open to the public, or "a courtyard, garden, yard, field or piece of ground that is open to the public and lying near to and usually enjoyed with the building".[60] There are additional rules that apply to civil weddings, including that venues other than the register office must be approved by the Health Services Executive. The requirements for approval are similar to those in the Approved Premises Regulations in England and Wales. The legislation permits weddings to take place in an approved venue as well as outdoors in a venue's garden or courtyard, but not in a private home or at an outdoor location far from any building, such as (in most cases) a woodland or beach.

7.106 To its benefit, this option would allow couples more choice than the existing scheme, by allowing them to have their wedding in some outdoor spaces. As it would not entail significant reform, it would likely be easier for the General Register Office, local authorities and registration officers to implement. It would also be an easy change for existing approved premises, who having gained approval have a financial stake in the existing system; their approved status could continue to be valuable but they would be able to offer more flexibility to couples about where within the approved building and grounds weddings could be held. And it would also be beneficial for religious and non-religious belief groups who would like to conduct weddings in the gardens or courtyards of their places of worship or buildings.

7.107 This option would also have the advantage of retaining the existing requirements on civil venues about dignity and safety. It could therefore be seen as protecting the state's interest.

7.108 But this option also has a number of disadvantages, which in our provisional view outweigh its advantages.

7.109 This limited reform would likely mean that different rules would continue to apply to different groups, with more regulation of civil weddings. It would be an open question as to whether separate rules should be retained for Anglican, Jewish and Quaker wedding locations, or whether those weddings should be subject to the same restrictions and regulation applying to other religious weddings.

7.110 If a requirement for a registered place of worship continued to apply to religious groups, this option would offer no assistance to those religious (and non-religious belief) organisations who do not have their own buildings or who do not see their place of worship or the grounds of their place of worship as a meaningful place to marry. Conversely, if religious (and non-religious belief) weddings could take place in

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[59] Reform along these lines could be taken forward by Government in its interim work on reviewing whether the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168) could permit weddings to take place outside, although only in relation to civil wedding venues: see *First ever marriage review to free-up dream wedding venues*, https://www.gov.uk/government/news/first-ever-marriage-review-to-free-up-dream-wedding-venues (last visited 1 May 2020).

[60] Civil Registration Act 2004, s 51(2A).

any building open to the public, without any requirement of pre-approval by the state, then the situation would improve for those groups; however, there would be divergence between religious (and non-religious belief) weddings and civil weddings. A continuing difference in treatment would undermine the principle of fairness and equality underpinning our review. The added complexity of different rules depending on the type of ceremony would also undermine the principle of certainty and simplicity.

7.111 Significantly, this option would not help couples for whom the most meaningful place to marry is outdoors in a place unconnected to a building, such as on a beach or hilltop, or in a forest, field or meadow. Consequently, the law would not provide the option of marrying outdoors that many couples want. For example, it would not facilitate Pagan weddings, would not work well for Humanists UK weddings, and would not work for couples having civil weddings who wish to marry in some types of outdoor spaces. Accordingly, we think that this solution does not go far enough to respect individuals' wishes and beliefs, a principle underlying our review.

7.112 Finally, this option would not eliminate the unnecessary regulation of approved premises, nor the complexity of the process of approval. Many of the criticisms of the system of approved premises relate to the approval process and the costs of approval and compliance. Retaining the existing scheme but only liberalising the type of locations that could be approved would not prevent some venues from being priced out of approval, nor would it prevent the costs of approval being passed onto couples.

7.113 Therefore, our provisional view is that limited reform of this nature would not achieve the principles underpinning our project. While it would provide couples with more choice than the current law, it would retain restrictions on location based on connection to a building which do not appear to have a clear justification. It therefore would, in our view, retain unnecessary regulation, the effect of which would be to prevent couples marrying in a place that has meaning to them. Fundamentally, it would retain a scheme in which different rules apply to different groups, rather than providing for fairness and equality.

Pre-approval of place by local authorities, with no substantive restrictions on the types of locations permitted

7.114 Another possibility would be to retain a fundamentally placed-based system. Like a buildings-based system, a place-based system would require pre-approval of the location by local authorities; however, unlike a buildings-based-system, a place-based system would not limit the types of locations which could be approved to buildings. Therefore, an outdoor space (an identified field or stretch of coastline, for example) could be an approved place.

7.115 Northern Ireland provides an example. In Northern Ireland, there are separate rules governing where civil weddings and religious weddings can take place. Civil weddings can be held in a register office or at an approved place. An "approved place" can be any identifiable place, including "any premises, fixed building, temporary structure, enclosures and similar structures, land and any vessels or vehicles".[61] Religious

[61] Marriage Regulations (Northern Ireland) 2003 (SI 2003 No 468), reg 2.

weddings are able to take place anywhere, and so are determined by the religious body in question, with no pre-approval process.

7.116 Jersey also offers an example of a system that requires pre-approval but offers freedom in the types of venue which can be approved. Since the recent reforms, both civil and religious wedding locations are subject to the same approval process, with approval determined by the elected head of the parish, the Connétable. Weddings in Jersey can take place at approved locations, which can include open air locations and vehicles (so long as the vehicle remains static for one hour before and during the ceremony). Approved locations include religious buildings, hotels, restaurants, historic buildings, a field, a zoo, a vineyard and a Neolithic gravesite, as well as several private homes.[62]

7.117 Allowing weddings to take place in any type of location while retaining a formal process of pre-approval would have the advantage of giving couples and religious (and non-religious belief) organisations more meaningful choice as to where their weddings are conducted. It would therefore further the principle of respecting individuals' wishes and beliefs.

7.118 A formal process of pre-approval would also protect the state's interest. It would require weddings to take place in venues approved by the state, allowing the state to regulate locations, for example based on dignity and safety.

7.119 Whether this solution would promote fairness and equality would depend on whether the pre-approval process for locations would apply equally to all weddings, or only to civil weddings. Fairness and equality would point to imposing the process on religious (and non-religious belief) weddings as well.

7.120 Religious bodies who must currently register places of worship for marriage might not raise any concerns with being subject to such a process, so long as the process were comparable to the certification and registration of places of worship; if not, there would be a risk of reform resulting in more regulation of religious weddings.

7.121 However, it would be difficult to require religious groups who are not currently subject to any state authorisation process to seek pre-approval for their venues. Certainly, the discretion to hold an Anglican wedding anywhere based on a special licence might not fit with a system of pre-approval by the state. The Society of Friends also expressed concern about any potential system of pre-approval, believing it should be the decision of the religious group as to where a wedding can take place, not the state; the Society also expressed misgivings about the risk of any costs of approval. Finally, given the wide variety of locations where Jewish weddings take place, we do not think a process of pre-approval would work well for the Board of Deputies and other Jewish groups. For the same reason, a system of pre-approval would also not work well for Humanists UK if non-religious belief organisations were able to conduct weddings.

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62 Marriage and Civil Status (Jersey) Law 2001, art 23(1); Marriage and Civil Status (Jersey) Order 2018, arts 13(1), 14, 15(1), 16, 18, 20 and 21; Superintendent Registrar of Jersey, *Approved Marriage Locations*, https://www.gov.je/LifeEvents/GettingMarried/Pages/ApprovedMarriageLocations.aspx (last visited 1 May 2020).

7.122 A clear disadvantage of this option is that it would be unlikely to address the issue of unnecessary regulation and cost, a principle of our review. Any formal system of pre-approval will result in some regulation and cost. The system could be simpler, and so cheaper for venues and couples, than the current system for civil weddings: for example, if health and safety requirements were not bespoke to wedding venues but relied on proof of compliance with other existing regimes. But even if the approval process were simpler than the current process for civil venues, it nevertheless might impose more costs on religious groups than the current system, if the costs of pre-approval were higher than the fees currently set for certification and registration of places of worship.

7.123 Again therefore, this limited reform would mean that some couples would not be able to marry where they most want, as it would be unlikely that couples (or venues) would go through a formal approval process for a location that would only be used once, such as a private home. Although this option would go further than the current law to respect individuals' wishes and beliefs, it might not go far enough, and keeps in place an unnecessary layer of regulation.

No limits on the types of locations permitted, with approval by the officiant

7.124 Our preferred solution is to remove the need for a pre-approval process for all wedding venues. Instead, the parties and the officiant would be required to agree to the location, with the General Register Office providing guidance to officiants on matters the officiant would be required to consider in agreeing to the location: dignity and safety. Of course, religious (and non-religious belief) organisations would be free to impose their own, further rules in order to restrict the locations in which their weddings could take place. We consider that this approach maximises choice, without compromising on the dignity or safety of a wedding, while ensuring fairness and equality for all couples, regardless of whether they seek a religious (or, if permitted, a non-religious belief) wedding, or a civil ceremony.

7.125 There are many examples of systems of this sort operating effectively in jurisdictions around the world, including Scotland. There, civil weddings can take place at a registration office or an appropriate place. An appropriate place is any place which is not religious premises and which is agreed by the parties and the local registration authority. Scottish local registration authorities do not impose a pre-approval process. Instead, agreeing to the proposed location is ultimately up to the registrar conducting the wedding. The registrar will consider and, if necessary, inspect the venue. If they have any concerns, they might consult their local authority's health and safety officer or, very occasionally, the national registration body, National Records of Scotland. They will also require the venue to nominate a responsible person to help with the organisation of the wedding. Fees for the registrar agreeing to the venue are bound up with the costs of the ceremony itself, with the overall costs reflecting the registrar's time and travel expenses. Religious and non-religious belief weddings are not subject to any regulations as to where they can take place.

7.126 A similar system is planned in Guernsey. Once the reforms come into effect in 2021, weddings will be able to take place in a wide range of locations, including outdoors, in the air and in territorial waters. It will be for the celebrant to approve the venue, with guidelines for celebrants to be published by the Registrar General; no registration of

venues will be necessary, nor will there be specific health and safety, fire safety, or public access requirements.[63]

7.127 Canadian provinces, Australia and New Zealand have similar regimes. In those countries, weddings can generally take place anywhere, without any statutory requirement for approval of the location.[64]

7.128 A clear advantage of this solution is that it would respect individuals' wishes and beliefs, by allowing couples to marry in place that is meaningful to them. This would be equally true for all couples: for Anglican couples for whom a wedding in a church would be most meaningful; for Muslim couples marrying in a private home; for Pagan couples marrying outdoors; and Humanist couples marrying in a location personal to them and their relationship. By applying the same rule to all weddings, this option would also promote equality and fairness.

7.129 Reducing the complexity inherent in having different rules for different weddings, and the complexity of pre-approval, would also further the principles of certainty and simplicity. The law would be easier for all couples and officiants to comply with.

7.130 This option would also reduce unnecessary, costly regulation, most apparent in the current process of approved premises for civil weddings. There would be no formal application process for approval or renewal. Venues, and therefore couples, would be free of the costs of pre-approval, able to save their money or spend it on other priorities. Local authorities would also be spared the significant workload of assessing approval applications and regulating approved premises.

7.131 As mentioned above, it would be open to religious (and non-religious belief) officiants to impose further requirements, depending on the beliefs of their faith or organisation. However, variation between registration officers or local authorities would not be desirable. This is already a concern in the current law, and seems to be a risk in any new system. Guidance issued by the General Register Office could offer advice on the basis of which registration officers could and should refuse to officiate at a wedding at a particular location, to help to avoid differences between local authorities.

7.132 It might be argued that this solution would lead to the state losing control over where weddings can take place, and so would not further the principle of protecting the state's interest. However, we do not believe that the state needs to exercise absolute control over the location of weddings. Much of the state's interest in weddings is to prevent weddings where there would be an impediment, to identify forced and sham marriages, and to keep a record of marriages. These interests can be protected by robust preliminaries and registration of marriages.

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63 States of Deliberation Policy and Resource Committee, *Policy Letter: Reform of the Marriage Law* (12 November 2018); States of Deliberation Policy and Resources Committee, Policy Letter: The Marriage (Bailiwick of Guernsey) Law, 2020 (30 March 2020); The official website of the States of Guernsey, *Getting married*, https://www.gov.gg/article/120125/Getting-married (last visited 1 May 2020).

64 See Canada: eg Marriage Act 1996 (British Columbia), Marriage Act 1990 (Ontario), Civil Code of Quebec 1991, art 365, Marriage Act 1989 (Nova Scotia); Australia: Marriage Act 1961, s 43; New Zealand: Marriage Act 1955, s 31(1). In many of these places couples might be required to identify the place of their intended marriage when giving notice.

7.133 In our view, any interest that the state has in where a wedding can take place should focus on ensuring that the wedding is safe and appropriately dignified. As we consider in more detail below, we think that this interest can be protected by a responsibility on officiants to ensure that locations are safe and dignified. We do not think that the legitimate interests of the state necessitate a formal pre-approval process. That is the view that has been taken by Scotland and other Commonwealth countries that share a heritage with us.

CONSULTATION

7.134 Having identified the general approach that would, in our initial assessment, best achieve the aim of allowing greater choice within a simple, fair and consistent legal structure, we now consider the detail of our proposed scheme.

7.135 In order to recommend a scheme that is fair and equal, as well as certain and simple, our starting point is that there should be one rule about where weddings can take place, that applies to all weddings. History rather than policy has led to the current situation. We think having different rules and levels of regulation for different types of wedding is unjustifiable in modern England and Wales. With one possible exception,[65] we see no good policy reason to regulate some wedding locations more than others.

7.136 We also wish to propose a law that respects individuals' wishes and beliefs. We therefore think that all couples should have greater freedom to choose a wedding location that is meaningful to them. As we explain below, we have not been persuaded that there is any policy reason to prevent weddings from taking place in any specific type of location. We therefore do not propose that any types of location should be forbidden. To ensure that all couples can have a wedding in a place that is meaningful to them, we propose that the couple together with the officiant should be able to agree where the wedding is held. Requiring that the officiant approve the location will ensure that the state's interest – in ensuring that weddings that take place in safe and dignified locations – is met. And by de-regulating the process of approval, our scheme will eliminate the unnecessary regulation in the current scheme.

Where should weddings be legally permitted to take place?

7.137 We have not been presented with a justification for why any particular types of venues should be prohibited from hosting weddings. When we have spoken to authorities in Scotland, Jersey, and Northern Ireland – all places where couples have more freedom in the types of venues where they may wed – none suggested any particular type of venue was a concern.[66] Instead, we have heard from them and from English and Welsh stakeholders of the wide variety of places where couples want to hold their weddings: in places of worship, in hotels or stately homes, in restaurants and pubs, in museums, in gardens or courtyards, under a marquee, in self-catering complexes or

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65 To prevent the use of religious and non-religious belief premises for other types of wedding: see para 7.152 and following below.

66 We were told by National Records of Scotland that Arthur's Seat in Edinburgh was a popular choice; however, we were also told that underwater ceremonies had not been permitted due to the practical problem posed in terms of signing the schedule. The Superintendent Registrar of Jersey also explained that weddings would not be permitted to take place at a venue during the same day it was hosting a large event such as a music festival or motorsport competition.

overnight accommodation, in woodlands or fields, on beaches or hilltops, or in their own homes or the homes of family members. We have also heard that couples might want to marry on trains and on boats,[67] and, for the particularly adventurous, possibly in the air, such as in a hot air balloon. We cannot see any principled reason to exclude any of these locations. Indeed, all of these locations (including the possibility of a ceremony in a hot air balloon)[68] are already being catered for by many of the local authorities offering "duo" ceremonies.

7.138 We moreover have not heard of any problems arising from lack of regulation in Scotland. We have not heard of couples or religious groups in Scotland insisting on having their weddings in unsafe or undignified locations.

7.139 Similarly, groups in England and Wales also did not suggest to us that couples ever insist on having a ceremony in an inappropriate place. The Board of Deputies and the Society of Friends, whose weddings are not regulated as to where they can take place, did not suggest this was a concern. Similarly, Humanists UK and independent celebrants, who both conduct ceremonies outside the limits of the current law, also could not identify problems in practice. A wedding is most meaningful to the couple getting married, and the religious (and non-religious belief) communities supporting them. Therefore, we think that couples and officiants can be trusted to ensure the venue is the right one for the important occasion.

7.140 Some religious groups have suggested that the law should not be liberalised, in order to prevent different views arising about where a wedding can take place within any given religion. This point was raised by the Church of England during pre-consultation discussions and Sikh Council UK during the scoping phase.

(1) The Church of England thought that the civil law was better placed than the Church, through its internal rules and canon law, to ensure that clergy adhere to the rules that weddings must take place in a church or authorised chapel;[69] the Church moreover thought that an Anglican wedding conducted in a place other than one permitted by the Church should be void according to the civil law.

(2) The Sikh Council UK explained that although there is no central organisation for Sikhs in England and Wales, there are strict protocols in place which require all Sikh weddings to take place inside a gurdwara. Because of the code of practice, the risk of different views being taken is minimal, but if Sikh weddings were to take place outside of gurdwaras it would create tensions within the community.

Although we understand the point, we do not think it is an appropriate policy goal of weddings law to help governing bodies (or umbrella bodies) to impose internal discipline within a religion. It is not for the state to arbitrate between different views

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67 We consider the specific issues of weddings in the territorial sea and coastal waters and in international waters in Ch 11.

68 Wiltshire Council, *Combination ceremonies*, http://www.wiltshire.gov.uk/registrations-combination-ceremonies (last visited 1 May 2020).

69 Excluding weddings taking place on the authority of a special licence, whose location are not regulated by the Marriage Act 1949.

within a religious faith, picking which view should govern all adherents. We think where a wedding can take place within any given religious (or non-religious belief) group is a matter for that group, according to its own processes.

7.141 That said, we think it is reasonable for the law to give officiants the tools necessary to ensure that venues are safe and appropriate to the occasion. The majority of the stakeholders we have heard from have been supportive of some rules on safety and dignity. However, concerns about safety or dignity do not mean that any particular location should be barred. We discuss safety and dignity below,[70] in relation to approval of locations.

Private homes and hard to access locations

7.142 We have heard some concerns about weddings taking place in private, such that private homes should be excluded. We do not think that these concerns justify preventing couples from holding their wedding in private or in hard to access locations (such as hilltops).

7.143 First, weddings in private homes already take place for deathbed and housebound weddings. Some Jewish weddings also take place in private homes, and some Anglican weddings take place in private chapels. We have not heard of any problems arising with these weddings.

7.144 Second, we are not aware of any problems arising in jurisdictions, such as Scotland, which do not require wedding locations to be publicly accessible. The upcoming reforms in Guernsey will also allow weddings in private homes.

7.145 Third, we disagree that the public nature of a wedding necessarily means that it cannot take place in a private home or other private venue. As we note at paragraph 7.34 above, representatives of the Church of England have suggested that weddings should only be able to take place in a venue that the public associates with weddings, flowing from the conception of weddings as public acts. We agree that weddings are public acts; however, we disagree that means they must take place in a publicly accessible building. In our view, the requirement for notice of the intended marriage, the presence of an officiant, authorised by the state to be present to ensure the requirements of the ceremony are met, and of the two witnesses, and registration of the marriage are sufficient to make a wedding a public ceremony. We note that weddings already take place in buildings that may not generally be associated primarily as being a venue for weddings, for example, in hotels. Further, people's perceptions about where weddings take place will change if the law facilitates a wider range of places, including those that are not themselves open to the public.

7.146 Finally, we disagree that the requirement for open doors or public accessibility serves an ongoing protective function, either to identify impediments to a marriage or to protect against forced or sham marriages.

7.147 There is a belief that members of the public should be given an opportunity to object at a wedding ceremony, identifying at the last minute an impediment to the marriage. As we explain in Chapter 6, we are not aware that this happens in practice. We do not

[70] See para 7.166 and following below.

think that this is surprising, as our view is that the best opportunity to discover impediments is during the preliminaries stage. Therefore, our initial view is that a couple should not be required to marry in a public place.[71]

7.148 There is also a belief that a wedding in private, particularly in a home, might raise concerns in relation to forced or sham marriages. For example, it might be that a person could be more easily forced into a marriage in a private place such as a home, or that the party forcing them would be emboldened in a private location, a concern expressed by the National Panel for Registration.

7.149 We do not think that concerns about forced and sham marriages require weddings to be held in public places. First, we question whether a private venue increases the risk of a forced marriage: a person may feel more pressured into going through with a wedding if it takes place in public with many people attending. More significantly, we believe that the scheme for preliminaries that we have provisionally proposed will facilitate the identification of forced and sham marriages by officials. Enforcement against forced or sham marriages does not take place on the day of the wedding. Home Office policy is not to act on concerns about a sham marriage by preventing the wedding taking place on the day; rather, the focus is on preventing a person from getting an immigration advantage from the marriage, that is, from gaining a legal right to remain in the United Kingdom based on the marriage. Forced marriages involving persons with capacity to marry are also not generally prevented by enforcement action on the day; rather support is provided to the person suspected of being forced, prior to the wedding taking place. Even if police did wish to take action to prevent a forced marriage on the day of the wedding, they are not restricted in where they can go, so can access private venues. Moreover, should concerns arise on the day of the ceremony, they could be addressed by the officiant – who will be given guidance from the General Register Office on forced and sham marriages.[72] Providing public access adds nothing to this safeguard.

7.150 We therefore do not think there should be a requirement that civil weddings, or any types of wedding, have to take place in a location that is publicly accessible. We moreover cannot see a justification for the requirement, imposed on approved premises, that the venue must regularly be available to the public for weddings; we see no harm arising from a location only being used for a single wedding.

7.151 Indeed, there would likely be problems arising from a private home being regularly used for weddings, for example, creating nuisance in the local community. As we note at paragraphs 7.46 above, planning law, licensing law, the civil wrongs of negligence and private nuisance, among others, will continue to apply as usual. Our initial view is that these laws are sufficient to regulate the use of private homes as wedding venues, just as they are sufficient in relation to other types of event.

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71 See also paras 6.134 to 6.135 above.

72 We note that registration officers are under a duty to report suspicions of sham marriages to the Home Secretary: see the Immigration and Asylum Act 1999, s 24.

Religious (and non-religious belief) locations

7.152 We have identified one possible exception to the general proposal. We think there might be a justification for the law to prevent spaces owned by religious organisations from being used for other types of wedding. Despite recent reforms, Scotland, Northern Ireland, and Ireland continue to prevent civil weddings from taking place on religious premises.[73] Rules to restrict the use of religious or non-religious belief venues to those groups may help to protect those spaces for the use of those groups.

7.153 Bearing in mind that non-religious belief organisations do not tend to have premises in the way that many religious do, we think that an equivalent rule could be justified in relation to non-religious belief organisations, if they were able to solemnize weddings.

7.154 By imposing an additional restriction on where civil weddings could take place, such a rule would create a difference in treatment in the law, contrary to the principle of fairness and equality. However, this treatment might be justified by the significance of beliefs in relation to a place of worship (or other building associated with a belief); the same cannot be said for commercial or other non-belief locations.

7.155 However, we are not sure whether this protection is necessary. Property law – and so the rules about licences and trespass – will apply regardless of reforms to the law governing weddings. Therefore, religious (or non-religious belief) organisations will be able to control for themselves who uses their buildings. Other jurisdictions have taken this view. For example, in Jersey where all types of wedding (other than Anglican weddings) must take place in an approved place, places can be approved for religious weddings only or for all types of weddings.[74] There may be a demand, in particular, for the use of private religious venues to be used for civil weddings: for example, Emma Robinson of Historic Houses explained that some historic venues have private chapels in which they would like to be able to use for small civil weddings, noting that this would be a popular option for some couples, particularly older couples.

7.156 There might also be concerns about how to determine whether a building is a religious or non-religious belief premises. A building may be used for a variety of purposes, both religious and civil or secular. Under the Approved Premises Regulations, to be approved for civil weddings, premises cannot be religious premises, which means premises "used solely or mainly for religious purposes", or premises which were used solely or mainly for religious purposes "and have not been subsequently used solely or mainly for other purposes".[75] In practice, we understand that some approved premises have been cautious about allowing religious services on their property, for fear of falling foul of this test and no longer being able to host civil weddings.

7.157 We therefore ask consultees an open question on this point.

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73 Usually meaning a building which is solely or primarily used for religious purposes: Marriage (Scotland) Act 1977, s 18(1A)(b); Marriage Regulations (Northern Ireland) 2003 (SI 2003 No 468), reg 20(2); Department of Employment Affairs and Social Protection, *Getting Married* (12 December 2018) s 2.1.

74 Marriage and Civil Status (Jersey) Order 2018, art 14.

75 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 2(1).

Consultation Question 48.

7.158 We provisionally propose that all weddings should be legally permitted to take place anywhere.

Do consultees agree?

7.159 We invite consultees' views as to whether the law should limit weddings in any particular venues, including:

(1) outdoors,

(2) on inland waters such as lakes or rivers,

(3) in the air, and / or

(4) in private homes.

Consultation Question 49.

7.160 We provisionally propose that civil wedding locations should not have to be publicly accessible or regularly available to the public for the solemnization of civil marriages.

Do consultees agree?

Consultation Question 50.

7.161 We invite consultees' views as to whether the law should prohibit:

(1) civil weddings from taking place in religious venues and (if non-religious belief organisations are enabled by Government to officiate at weddings) non-religious belief venues?

(2) (if non-religious belief organisations are enabled by Government to officiate at weddings) religious weddings from taking place in non-religious belief venues?

(3) (if non-religious belief organisations are enabled by Government to officiate at weddings) non-religious belief weddings from taking place in religious venues?

What process of pre-approval, if any, is necessary?

7.162 Having provisionally proposed that all weddings should generally be legally permitted to take place in any type of location, we now turn to whether those locations still need to be pre-approved by the state, and if so, what that process should look like.

7.163 In our work to date, no convincing case has been made for the specific regulations governing approved premises. We do not think that civil wedding ceremonies pose unique safety risks that justify requiring venues to go through a bespoke approval process, and to adhere to ongoing conditions. In our view, the current approved premises process is largely redundant given the requirements of planning law, building law, licensing law, tort law, and health and safety law. That the rules governing approved premises are unnecessary is arguably demonstrated by the fact that religious wedding locations are not subject to them, with no safety problems arising in religious weddings that we are aware of.

7.164 Moreover, the significant regulatory burden and costs imposed by the approval process, both in applying for approval, paying for renewals or annual fees, and in meeting conditions for approval, do not appear to be justified. Although the aims of ensuring that wedding locations are safe and dignified are entirely valid, we do not think these aims necessitate the significant fees imposed on venues and ultimately couples; nor do they warrant precluding smaller businesses, or businesses who are not predominately wedding venues, from being able to host legal wedding ceremonies.

7.165 The requirement for religious weddings to be conducted in a registered place of worship does not add anything in terms of safety or dignity. That is because there are no safety or dignity requirements within the certification and registration regime, perhaps based on an assumption that places of worship are dignified and safe. Its main consequence in terms of where weddings can take place is to exclude religious organisations that do not have buildings or who do not celebrate weddings in their places of worship from conducting legal weddings.

7.166 In general, we think that the state's interest in where a wedding takes place is limited to ensuring that the location is safe and dignified. We do not think a formal pre-approval process is necessary to protect this interest. In our initial view, safety and dignity can be protected sufficiently by requiring that the officiant attending the wedding approve the location of the ceremony in advance, making their decision based on a responsibility to ensure that the location is safe and dignified, with guidance provided by the General Register Office. We also think that the law must allow for individual officiants to decide for themselves whether the particular proposed wedding location is accessible to them.

7.167 As we have explained, officiants nominated by religious organisations will have an absolute discretion to agree or disagree to conduct a wedding in a particular venue, based on the religion's beliefs about where a wedding should be solemnized. If they are authorised to conduct weddings, non-religious belief organisations will have the same discretion. But registration officers and, if authorised to conduct weddings, independent officiants, will be in a different position. They will not be acting based on religious or non-religious beliefs about where weddings should and should not be conducted. We therefore think that they should generally be obliged to conduct

weddings in all sorts of locations, assuming of course that the location is safe and dignified, and accessible to them.

Safety

7.168 Although we consider much of the approved premises regime to be redundant, we think it is important that wedding venues are safe. Indeed, most jurisdictions we have considered have some rules or process, even if informal, in relation to assessing the safety of venues (although usually only for civil wedding venues).[76] Moreover, issues of safety are more likely to arise when a wider range of locations are permitted for a wedding. Although a building that is used to host functions will already be subject to various regimes to ensure that it is safe, the same cannot be said for a field, woodlands, or a hilltop, locations which will not generally be caught by planning law or building law requirements for buildings open to the public.

7.169 There is also an important point to be made about workplace safety. For example, registration officers will be attending weddings in the course of their employment. Local authorities have a responsibility to ensure that registration officers are safe at work. Although different types of local authority staff will have to attend a wide range of venues in the course of their employment (for example, those in social care), this does not mean that the law should not provide a way for a registration officer to refuse to attend a wedding venue that is unsafe. However, we do not think that workplace safety necessitates a formal pre-approval process. Registration officers are already attending a variety of locations – including beaches, private gardens, hilltops, and canal boats – that are not subject to a formal pre-approval process as part of the "duo" ceremony packages that many local authorities are offering.

7.170 In our view, the officiant should have a right to refuse to conduct a wedding in an unsafe location. They should work with the couple to find an alternative location that is safe. We have heard some examples of how this works in practice from other jurisdictions. For example, we were told by Rod Burns of National Records of Scotland about a couple who wanted to have their wedding on a riverbank that had become perilously undercut by the river; the simple solution had been to move the ceremony slightly further away from the river.

7.171 We think the General Register Office should provide guidance to officiants in relation to assessing whether a location is safe for a wedding. We do not think that this guidance should attempt to replicate the process for approved premises, in its complexity and rigour; rather, we think it should be based on a common-sense assessment. We say more about the process below.[77]

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[76] For example, in Ireland meeting health and safety requirements is an explicit requirement in Government guidance for approval of a wedding conducted by a registrar: Department of Employment Affairs and Social Protection, *Getting Married* (12 December 2018). In Northern Ireland, although the law does not explicitly cite safety as a requirement, we understand that local authorities conduct safety assessments: Marriage Regulations (Northern Ireland) 2003 (SI 2003 No 468), regs 16(4) and 17(4). Conversely, in Jersey, there are no requirements for health and safety, with the matter being one for the premises occupier.

[77] See para 7.184 and following below.

Dignity

7.172 We agree with the stakeholders who expressed the view that the state has an interest in ensuring that weddings are appropriately dignified. We discuss this point in Chapters 5 and 6, as dignity encompasses more than the venue. In those chapters, we discuss our provisional view that officiants should have a general responsibility to uphold the dignity and solemnity of marriage. The responsibility will mean that if the officiant was concerned that the form of ceremony proposed was inconsistent with their obligation to uphold the dignity or solemnity of marriage in their own behaviour, they could work with the couple to create a form of ceremony that did reflect the dignity and solemnity of marriage, or refuse to act.

7.173 As part of this general responsibility to uphold the dignity and solemnity of marriage, we think officiants should be responsible for ensuring that the wedding location is a dignified place to hold a wedding. As we explain below, we think this responsibility will be exercised in considering whether to agree to a ceremony location when the wedding is being planned; it does not encompass attempting to police the dignity of the venue, or the behaviour of those in attendance, on the day of the ceremony.

7.174 In the current law of England and Wales, the only requirements in relation to dignity apply to civil weddings on approved premises. Other jurisdictions that we have considered also only impose a requirement that the venue is an appropriately dignified one on civil wedding venues.[78] As we explain above, the principles of fairness and equality point to applying any responsibility on all officiants, so to all types of wedding.

7.175 In practice, religious (and non-religious belief) organisations will have their own requirements about where a wedding can take place, which will reflect the organisation's beliefs about the meaning of marriage and dignity. So it is unlikely that nominated officiants would rely heavily on guidance from the General Register Office on the dignity of the location. However, the guidance will be especially useful for civil officiants – registration officers, and if authorised by Government, independent officiants – to encourage their decisions to be consistent, and to discourage civil officiants from imposing subjective or personal views about what is dignified on couples beyond the interests of the state.

7.176 Currently, the requirement for dignity only appears in the requirements for approval of premises, and the prohibitions on food and drink at weddings on approved premises.

7.177 Under the current law, as a requirement of a grant of approval, the Approved Premises Regulations impose the following requirement on approved premises:

> Having regard to their primary use, situation, construction and state of repair, the premises must… be a seemly and dignified venue for the proceedings.[79]

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78 For example, requirements for dignity and solemnity apply to civil wedding venues in Ireland (Department of Employment Affairs and Social Protection, *Getting Married* (12 December 2018)) and Northern Ireland (Marriage Regulations (Northern Ireland) 2003 (SI 2003 No 468), reg 20(2)). Conversely, requirements for dignity and solemnity apply to all wedding venues except Anglican wedding venues in Jersey (Marriage and Civil Status (Jersey) Order 2018, art 16(2)(a)(ii)).

79 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 1 para 1.

7.178 We think this assessment is a useful one, as it contextualises the assessment of dignity based on the use of the premises. We provisionally think that this test should be incorporated into guidance for all officiants, to provide advice on how officiants should meet their responsibility to uphold the dignity of marriage.

7.179 However, having given approval, we do not think that officiants should then have any legal responsibility to manage the dignity of the premises on the day of the wedding. We think that our proposal in Chapter 5 – that officiants be responsible to uphold the dignity and solemnity of marriage – is sufficient to ensure an officiant would work with the couple to ensure that, in practice, the arrangements at the premises are dignified enough to reflect the officiant's role in the couple's change of legal status.

7.180 We disagree that wanting weddings to be dignified and solemn means that food or drinks, including alcoholic drinks, should be banned from the premises before or during a wedding, as the current law does in relation to weddings on approved premises. Offering guests tea or champagne on arrival does not, in our view, undermine the dignity of a wedding. We think that the law must also be sensitive to different religious and cultural practices in relation to food and drink, and their association with religious and cultural celebration. We therefore do not think that officiants should be responsible for whether the couple, witnesses or guests partake of any food or drinks before or during the ceremony (barring concerns that the couple or witnesses were intoxicated and so unable to give consent or understand the ceremony). Again, to uphold the dignity of marriage, we think that it is sufficient for the officiant to discuss the couple's plans for the wedding ahead of time, to ensure that the couple understands the officiant's responsibilities in relation to dignity and the significance of the ceremony.

Accessibility

7.181 Currently, some local authorities require approved premises to be fully accessible to people with disabilities. Given that we do not think that a wedding venue should be required to be publicly accessible, we do not think that there should be a blanket requirement for disabled access for all wedding locations. Of course, businesses providing services to the public will be required to make reasonable adjustments for disabled persons, so commercial wedding venues and public places of worship will generally have to be accessible by people with disabilities.[80] But private homes, hilltops and other more remote locations may not be. How accessible the wedding location needs to be will depend on who is attending the wedding, and so should be a decision for the couple. We would expect couples to take into account any disabilities of their guests in choosing their venues.

7.182 Given that the officiant must attend the wedding, they must be comfortable in accessing the location. This applies equally to registration officers (and, if authorised, independent celebrants) who generally will be responsible to officiate at weddings in a wide variety of places. (As we note above, religious and non-religious belief organisations will have an absolute discretion to refuse any location.) If the couple want to marry in a hot air balloon, and the registration officer who was going to officiate at the wedding has a phobia of flying, of course the registration officer should be able to refuse. Similarly, if a registration officer is not physically comfortable

[80] Under the Equality Act 2010, ss 20 to 22, and 29.

walking to the top of the hilltop, they should be able to decline to conduct the wedding there. In those cases, the registration authority should find another registration officer who would be able to officiate at the wedding at the location the couple has chosen. We have been told that such an informal process among registrars works well in Scotland.

7.183 We think that the requirement that the officiant is able to attend a wedding at a given location can be met by a requirement that the officiant agrees to the ceremony location.

How the officiant should approve the wedding location

7.184 In jurisdictions where there is no formal approval process for venues, or when celebrants are conducting ceremonies outside the legal regime, various approaches are used by the officiant to assess the location in advance of the ceremony.

7.185 In Scotland, it is generally the registrar conducting the civil wedding who will determine if the venue is suitable. If the registrar is unsure, they can consult their colleagues or their local authority's health and safety officer. We understand from officials from the Guernsey government that, when the law is reformed, it will similarly be for the officiant to approve the location, subject to guidance of the Registrar General.

7.186 We understand that celebrants currently conducting ceremonies in England and Wales that are not legally recognised generally visit the planned location in advance of the wedding. We have heard from the Wedding Celebrancy Commission that, wherever possible, independent celebrants visit the location of the ceremony in advance, and raise any concerns about the location with the couple. Similarly, OneSpirit Interfaith Foundation ministers also visit the couple's chosen location ahead of the ceremony to make a decision about its suitability.

7.187 Conversely, the Board of Deputies told us that secretaries of synagogues and rabbis do not generally conduct an assessment or visit the location for a Jewish wedding in advance of the wedding. Given that this system has worked well for Jewish weddings, the Board of Deputies did not think rules for venues were necessary.

7.188 Given the diversity of practices together with the diversity of potential wedding venues, we do not think it is useful to try to prescribe a process that officiants must follow to agree to officiate at a wedding in a given venue. If the officiant is already familiar with the location, they might not think it necessary to visit it ahead of time, or they might be content with looking at information about the venue online or relying on information provided by the couple. However, if the officiant is not familiar with the location, or the location is remote or outdoors, the officiant might decide to visit it in advance of the wedding to make sure it is safe and dignified. An officiant might also make an assessment based on correspondence with the location's occupier or event manager, or information provided by them, such as photographs. If the wedding is going to take place inside a building, the officiant might also ask to see evidence of compliance with safety requirements, such as fire safety, or proof of insurance.

7.189 We think that guidance should be provided to offer advice to officiants on how to undertake this assessment. For example, our initial view is that the General Register

Office would provide guidance suggesting when an on-site visit is necessary, and when documentary evidence of compliance with other regimes is necessary. Similarly, religious (or non-religious belief) organisations, and also independent celebrant member organisations, may also provide additional guidance on what steps each of their officiants should undertake. But we do not think that it is necessary for the law to impose any explicit requirements.

Consultation Question 51.

7.190 We provisionally propose that it should be the responsibility of the officiant to decide whether the location for the wedding should be approved.

Do consultees agree?

Consultation Question 52.

7.191 We provisionally propose that, as a part of their responsibilities, officiants should ensure that the wedding location is:

(1) safe, and

(2) dignified.

Do consultees agree?

7.192 We provisionally propose that guidance should be produced by the General Register Office to provide advice to officiants on how to assess whether a location is safe and dignified for a wedding.

Do consultees agree?

Possibility of an optional pre-approval process for regular wedding venues

7.193 Although we provisionally propose that the officiant attending the wedding should be responsible for ensuring that the location is safe and dignified, it might be inefficient for that decision to be made in relation to every wedding at every venue. What we have in mind are venues that regularly host weddings, for example some hotels or religious buildings. It might not be efficient to require the officiant for each wedding at such venues to take their own view.

7.194 Therefore, we think that it could be helpful for local authorities to maintain lists of locations that had already been assessed as suitable for weddings. Such lists could be made available to other local authorities and to religious (and non-religious belief) organisations (and, if permitted to solemnize weddings, independent celebrants). Officiants would not need to make their own decision as to the safety or dignity of such locations, which would prevent the necessity of one location being repeatedly agreed to. Similarly, for weddings in religious buildings the responsibility to ensure that

the location is safe and dignified would not need a separate decision if weddings were regularly celebrated there, or had been celebrated there for some time.

7.195 Whether this approach would offer greater efficiency may depend on whether officiants would visit the venue in advance for other reasons. Humanists UK told us that its celebrants would continue to visit a wedding venue in advance of the wedding in any event. We expect this is true for other organisations as well. For many celebrants, visiting the venue is not just about safety and dignity, but about helping the couple to plan the ceremony and, potentially, to be prepared to help to lead or manage events on the day. However, registration officers, particularly if they were already familiar with the particular venue or if they were not leading the ceremony but only officiating it, might not visit it in advance unless it was necessary to do so. Given that civil weddings account for the majority of weddings, any increased efficiency in relation to registration officer-officiated weddings might make it worthwhile to have a voluntary list of venues that have already been found to be safe and dignified.

7.196 Unlike a formal system of pre-approval, such lists would be voluntary. This approach would therefore better respect individuals' wishes and beliefs, as it would not prevent a couple from marrying in a particular location because the location had not been approved in advance.

7.197 Inclusion on the list might have to be subject to rules or guidance. Unless it were an entirely informal system, some authority would have to be responsible for operating it, most likely local authorities or perhaps the General Register Office.

7.198 We ask consultees whether they think an optional system of this kind would be worthwhile.

Consultation Question 53.

7.199 We invite consultees' views as to whether there should be an optional pre-approval process available for locations that frequently host weddings, that operates alongside the general rule that the officiant must agree to the location.

7.200 If consultees agree that there should be such a pre-approval process:

(1) who should be responsible for it, and

(2) how should it work?

Chapter 8: Registration

INTRODUCTION

8.1 After a couple's wedding, their marriage is registered. Registration is not what makes a wedding legally binding, and we do not propose that this should change.[1] But registration provides important evidence that the parties have had a wedding and become subject to the rights and responsibilities of marriage. This evidence can be used in legal proceedings. The data that are collected during the registration process become public records. Making those data public emphasises the fact that marriage changes a person's legal status, and that there is a public interest in knowing that a person's legal status has changed. The information recorded is also valuable to people including policymakers, academics, and individuals tracing their family history.

8.2 The legal requirement for weddings to be registered with the state was introduced by the Marriage Act 1836. Many of the details of how registration works reflect the antiquity of the law. For example, records are handwritten in duplicate, and whereas the names of couples' fathers can be entered in marriage register books, those of their mothers cannot. There is no option for marriages to be registered in Welsh alone, despite Welsh having official status in Wales.

8.3 Registration is a documentary process, and so reform of registration is intertwined with reform of the documents that are created at the preliminaries stage. We explain at paragraph 4.8 above that the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 allows Government to introduce a system in which a document called a schedule would authorise weddings conducted after civil preliminaries. When that system is introduced, the schedule will be signed at the end of the wedding ceremony, and returned to the registration service for registration to be completed.[2] A "marriage document" will perform a similar function for weddings authorised by Anglican preliminaries.[3]

8.4 In this chapter, we discuss how the schedule system will address some of the problems with the current law, and make provisional proposals about how registration under a schedule system should work in our proposed new scheme. Registration under our proposed system, in line with one of the principles underlying our reforms, would be simpler and more certain. There would be less scope for error, and errors could be corrected more easily. The same requirements would apply to every type of wedding, and organisations would no longer be required to keep custody of hard-copy register books indefinitely. Our proposals would also uphold our principle of respecting individuals' wishes, by enabling those who wish to do so to register their wedding in Welsh only, and would pave the way to enable fully electronic registration of weddings.

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1 See paras 10.92 to 10.95 below.

2 See the Glossary for the meaning of "registration service".

3 Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, s 1(2).

CURRENT LAW

8.5 We explain at paragraphs 5.12 to 5.21 above that although the current law does not regulate who conducts wedding ceremonies, it stipulates for each type of wedding who is the person responsible for registering the marriage. Immediately after the wedding ceremony[4] the responsible person registers the marriage by making handwritten duplicate entries in two marriage register books.[5] The entries are signed by the responsible person, the parties, and two witnesses.[6] The person responsible for registration keeps the marriage register books, and every three months forwards the details of any marriages to the local superintendent registrar, who in turn forwards the details to the Registrar General.[7]

ISSUES

8.6 Stakeholders have identified a number of problems with the current law, including that errors are easy to make and hard to correct, that the system is inefficient, and that marriage register books are a vulnerable medium on which to store important information.[8]

8.7 The fact that there are around 84,000 register books in use around England and Wales makes it very difficult to change the types of information that are recorded when a marriage is registered.[9] There has been particular interest among the public and Parliamentarians in recording the names and occupations of the parties' mothers, in addition to the names and occupations of the parties' fathers.[10] Members of Parliament have noted the inequality of the current law, and the value to family historians of recording mothers' details.[11] Government expressed its willingness to change the law, but stressed that under the existing system, it would be necessary to replace the 84,000 marriage register books held across England and Wales, which would be practically difficult and costly to achieve.[12] Instead it preferred a "comprehensive solution with a framework for the modern digital economy".[13]

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4 Or, in the case of a Quaker wedding, as soon as convenient: Marriage Act 1949, s 55(1).

5 Marriage Act 1949, s 55(1). If the marriage is registered by a registrar, only one marriage register book need be used: Marriage Act 1949, s 55(1)(a).

6 Marriage Act 1949, s 55(2).

7 Marriage Act 1949, ss 57 to 59.

8 For example, the Churches' Legislation Advisory Service, the Society of Friends and Robin Mair (a local authority staff member).

9 *Hansard* (HL), 26 January 2018, vol 788, col 1246.

10 A public petition attracted 70,365 supporters: *Mothers' names should be on marriage certificates alongside fathers' names*, https://www.change.org/p/mothers-names-should-be-on-marriage-certificates (last visited 1 May 2020).

11 *Hansard* (HC), 8 December 2015, vol 603, cols 292WH and 296WH.

12 *Hansard* (HC), 8 December 2015, vol 603, cols 306 to 309WH. See also, *David Cameron on families* (18 August 2014), https://www.gov.uk/government/speeches/david-cameron-on-families (last visited 1 May 2020).

13 *Hansard* (HC), 8 December 2015, vol 603, col 307WH.

8.8 Although the Welsh language has official status in Wales,[14] the forms for registering marriages cannot be completed in Welsh alone. They must be completed in English, or in both Welsh and English.[15] In her submission to our 13th programme consultation, the then-Welsh Language Commissioner, Meri Hews told us of cases where couples have refused to register their marriage, because of the absence of a Welsh-only option.

OPTIONS FOR REFORM

Schedule system

8.9 In the Scoping Paper, we said that one possibility for reform would be to introduce a system similar to that used in Scotland, where marriages are registered by completing a document called a "schedule".[16] Schedules would be issued by registration officers, following civil preliminaries,[17] and would replace superintendent registrar's certificates as the document which authorises the wedding. Schedules would be signed immediately after the ceremony, and returned to the registration service, which would issue marriage certificates on request. Religious organisations and (if they were enabled by Government to conduct weddings) non-religious belief organisations and independent officiants would have no legal obligation to keep records after the schedule had been returned, although they would be free to do so.

8.10 The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 empowers Government to introduce a schedule system, and Government has indicated it plans to exercise that power.[18] We therefore do not make any provisional proposals for the introduction of a schedule system for the registration of marriages. Instead, we proceed on the basis that any future system for registration will be based on the schedule system.

8.11 In Chapter 4 we ask for views on whether Anglican preliminaries should be replaced by universal civil preliminaries. If Anglican preliminaries are retained, the authority to marry would continue to derive from the publication of banns, or from a common licence or special licence. The 2019 Act instead includes provision for clergy to issue a marriage document, similar in form to a marriage schedule, which would be used to register the marriage.[19]

Information to be recorded

8.12 Under a schedule system, the parties will continue to supply their personal details when giving notice of their intention to marry: their respective names, dates of birth, occupations and marital statuses. In Chapter 4 we provisionally propose that the parties would also be required to provide the name of their intended officiant. The

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14 Welsh Language (Wales) Measure 2011, s 1(1).

15 Registration of Marriages Regulations 2015 (SI 2015 No 207), reg 3 and sch 1.

16 Scoping Paper, para 4.47.

17 See the Glossary for the meaning of "civil preliminaries", and see further Chs 2 and 4.

18 Home Office: Registration of Births, Deaths, Marriages and Civil Partnerships: Written Answer (HC) 21404 (6 March 2020) (Kevin Foster).

19 Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, s 1(2)(b).

identities of the parties and the presence of an authorised officiant would be of central importance to a valid marriage under our proposed scheme. So that information would be recorded on the marriage schedule or marriage document, when issued.

8.13 The location of the wedding plays no role in relation to the validity of the ceremony under our proposed new scheme. But we think that the location, along with the date of the wedding and the details of the parties' parents, is important information that will continue to be valuable for people, including policymakers, academics, and family historians. We therefore provisionally propose that the location and date of the wedding, and the names and occupations of the parties' parents should be able to be added to the schedule or marriage document after the ceremony, and before it is signed. Allowing both parents' details to be added would address the inequality of the current system. We think that the schedule should allow the parties to identify their two parents in the way they prefer. Each parent should be identifiable as "mother", "father", or "parent".

Returning the schedule

8.14 The explanatory notes to the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 contemplate that the parties will be legally responsible for returning the schedule to the registration service after their wedding, within a certain timescale.[20] For civil weddings and religious weddings attended by a registrar, the registrar would retain the schedule after the ceremony. The Faculty Office has said that the General Register Office's intention is for couples to be legally responsible for returning the schedule or marriage document after an Anglican wedding.[21] The illustrative draft regulations published by Government in 2018 suggest that the time period for returning the schedule will be seven days.[22]

8.15 Some stakeholders have expressed to us the view that the legal responsibility for returning the schedule should lie with officiants, not the parties.[23] The Church of England has told us that if the parties were required to return the schedule or marriage document, it would undermine the Church's ability to serve as a "one-stop shop" for getting married. The Muslim Council of Britain suggested that the importance of the officiant's role would be diminished if they were not required to return the schedule. Couples might question why it was necessary to have an officiant at all, if the officiant did not take custody of the schedule at the end of the ceremony.

8.16 Given that registration serves an important state interest in recording changes of legal status, it might be thought to make sense that officiants, who are authorised by the state, take responsibility for returning the schedule, ensuring that all the legal formalities are complied with. There are practical considerations, too: couples might

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20 Explanatory notes to the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, paras 5 and 38.

21 Faculty Office, *Marriage Law News* (5 August 2019), http://www.facultyoffice.org.uk/special-licences/marriage-law-news/ (last visited 1 May 2020). See the Glossary for the meaning of "Faculty Office".

22 Registration of Marriages Regulations (draft statutory instrument), reg 16, deposited in the House of Lords Library on 17 April 2018 by Baroness Williams of Trafford. See also *Hansard* (HL), 26 January 2018, vol 788, col 1248.

23 The Board of Deputies, the Church of England, the Family Justice Council, and the Muslim Council of Britain.

be preoccupied after their wedding, and forget to return the schedule, especially if they are going on a honeymoon.

8.17 On the other hand, returning the schedule should not be a difficult task. We expect most people would choose to send it by post. Even if the legal responsibility lies with the parties, in practice they could delegate the task to the officiant or a trusted friend or relative. In Scotland, legal responsibility lies with the couple. But we were told by National Records of Scotland that it is usually the celebrant who actually returns the schedule, and that there have been almost no problems with the system there. Similar comments were made to us by officials from the Northern Ireland Executive about the system there.

8.18 Our view is that the arguments are finely balanced, and that the system could work well regardless of who has legal responsibility to return the schedule. Because Government has indicated that it will legislate to make the parties legally responsible,[24] we do not feel that it is necessary for us to make a provisional proposal as part of our work. Nor do we make any provisional proposal about the time period within which the schedule must be returned.

Language

8.19 Welsh has official status in Wales.[25] As the Welsh Language Commissioner explains, "Welsh speakers in Wales have rights to deal with public organisations through the medium of Welsh".[26] Although couples can currently register the marriage using bilingual forms, we think that the principle of fairness and equality points towards allowing couples to use Welsh-only forms. This change would avoid the problem identified by the former Welsh Language Commissioner Meri Hews of couples refusing to register their marriage, because of the lack of a Welsh-only option. We therefore provisionally propose that couples should have the choice of a schedule printed and completed in English only, in Welsh only, or in both English and Welsh.

Electronic registration

8.20 The existing law makes limited provision for the use of electronic documents. Registration officers – but not other people responsible for registration – are able to record marriage notices and send quarterly returns of marriage registrations electronically.[27] But the process for registering marriages remains largely paper-based. Superintendent registrar's certificates and marriage register books are in paper form only and signatures are handwritten.

8.21 The schedules and marriage documents to be introduced under the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 will also be paper documents on which signatures will be handwritten. But a schedule system could enable fully

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24 Registration of Marriages Regulations (draft statutory instrument), reg 16, deposited in the House of Lords Library on 17 April 2018 by Baroness Williams of Trafford.

25 Welsh Language (Wales) Measure 2011, s 1(1).

26 Welsh Language Commissioner, *Rights to use the Welsh language*, http://www.comisiynyddygymraeg.cymru/English/My%20rights/RightstousetheWelshlanguage/Pages/RightstousetheWelshlanguage.aspx (last visited 1 May 2020).

27 Marriage Act 1949, ss 27(4A) and 57(2A) and (2C).

electronic registration in the future. In a fully electronic system, the schedule authorising the wedding, or the marriage document issued following Anglican preliminaries, would be issued in electronic form. At the end of the wedding, the schedule or document would be signed with electronic signatures, and then transmitted to the registration service electronically.

8.22 A fully electronic system has the potential to be more efficient and convenient, because it would no longer be necessary to transport a physical document to and from the wedding venue. It would also be easier for registration officers to amend the schedule before the wedding, if needed, for example in case of a change of officiant. Registration officers could more easily revoke an electronic schedule if an impediment to the marriage emerged after it had been issued. It would also eliminate the risk of paper documents being lost, stolen or damaged. The Church in Wales, the National Panel for Registration, the Churches' Legislation Advisory Service, the Society of Friends, and the Board of Deputies told us that they would in principle support a fully electronic registration system.

8.23 It would also be possible to have a partially electronic registration system. A paper schedule or marriage document could be issued and taken to the wedding, where it would be signed by hand. But the schedule or marriage document could then be transmitted to the registration service electronically. Such a system is used in New Zealand, where celebrants can return completed documents to the civil authorities by sending a scanned or photographed copy by email.[28] Allowing the schedule or marriage document to be returned in electronic form could also have benefits in terms of efficiency and convenience.

8.24 However, there are reasons to be cautious about introducing electronic registration. The Church of England, the Church in Wales and the Board of Deputies all told us that, for the foreseeable future, it would be important that a paper option was retained for those individuals who are unable to use an electronic system. We also expect that some couples may place value in the ceremonial aspect of applying handwritten signatures to a paper document. Further, the National Panel for Registration and the Society of Friends stressed that any electronic system should be secure. We agree.

8.25 Our provisional view, therefore, is that a fully electronic system of registration should not be introduced immediately. But we also think that, so far as possible, our proposed scheme should be future-proof, and able to take advantage of the potential benefits of technological developments. Therefore, we provisionally propose that an option for fully electronic registration should be introduced at a future date, when infrastructure is in place to provide a high level of security. A non-electronic option would need to be retained, for people who could not use an electronic system.

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28 Births, Deaths, Marriages, and Relationships Registration Act 1995, s 89A(1); Internal Affairs, *Marriage and Civil Union Celebrants: A Guide to the Role of Celebrants in New Zealand*, p 10, https://www.govt.nz/assets/Documents/Celebrants/Guide-to-being-a-celebrant.pdf (last visited 1 May 2020). Some Australian states and territories allow marriage celebrants to lodge completed documents with the civil authorities online: Attorney-General's Department, *Guidelines on the Marriage Act 1961 for authorised celebrants* (July 2018) p 83, https://www.ag.gov.au/FamiliesAndMarriage/Marriage/resources-for-marriage-celebrants/Documents/guidelines-marriage-act-1961-authorised-celebrants.pdf (last visited 1 May 2020).

8.26 In thinking about what legal reforms would be necessary to enable fully electronic registration, we have in mind the conclusions we reached in our report on the electronic execution of documents.[29] We explained that statutory requirements for signatures can generally be satisfied with electronic signatures, unless there is something explicit in an enactment, or case law on the relevant document, that requires a particular kind of signature. We also cited our 2001 advice to Government, where we concluded that statutory requirements for "writing" and "documents" can be satisfied electronically.[30]

8.27 We therefore take the view that it would not be necessary to confer any legislative power on Government or on the Registrar General to introduce electronic registration. It would be for the General Register Office to introduce electronic registration by allowing schedules to be issued in electronic form, signed electronically, and returned in electronic form. That would be an administrative change, and would not require legislative amendment.

Correction of errors

8.28 The introduction of a schedule system should make errors less likely to occur, because most of the information that is registered will be gathered at the preliminaries stage, instead of being handwritten on the day of the wedding. Some mistakes are inevitable, and so it is important that any system has the capacity for correction of errors. We do not think that detailed legal provision is necessary, however. Instead, we take the view that the correction of errors should be an administrative process carried out by the General Register Office, according to its own procedures.

CONSULTATION

Consultation Question 54.

8.29 We provisionally propose that after a wedding ceremony, the schedule or (if Anglican preliminaries are retained) marriage document should be able to have added to it:

(1) the date of the wedding;

(2) the location of the wedding; and

(3) the names and occupations of the parties' parents, each of whom the parties should be able to identify as "mother", "father", or "parent".

Do consultees agree?

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29 Electronic execution of documents (2019) Law Com No 386.

30 *Electronic commerce: formal requirements in commercial transactions – Advice from the Law Commission* (2001) paras 3.5 to 3.23 and 3.41, https://www.lawcom.gov.uk/project/electronic-commerce-formal-requirements-in-commercial-transactions/.

Consultation Question 55.

8.30 We provisionally propose that couples should have the choice of registering their marriage in English only, in Welsh only, or in both English and Welsh.

Do consultees agree?

Consultation Question 56.

8.31 We provisionally propose that an option for electronic registration should be introduced at a later date when infrastructure is in place to provide a high level of security.

Do consultees agree?

Chapter 9: Equality law and religious weddings

INTRODUCTION

9.1 Weddings law contains special provisions for religious groups in relation to same-sex weddings and weddings involving transgender people.[1] In this chapter, which is of explanatory relevance only, we consider how the existing special provisions would be maintained under our proposed new scheme. Those special provisions mean that the Church of England and Church in Wales are not included within the legal scheme for same-sex weddings. Nor are the Anglican churches obliged to conduct weddings involving people who have an acquired gender under the Gender Recognition Act 2004: an exception to their duty to marry their parishioners. The current law also contains special provisions so that other religious groups are not obliged to conduct same-sex weddings or weddings involving people who have an acquired gender. We also look at the position of other groups that would or might be able to conduct weddings under a reformed law: non-religious belief organisations, independent officiants, and registration officers.

9.2 We begin by explaining the policy background and the Terms of Reference of our project.[2] Our Terms of Reference require us to uphold the existing special provisions for religious groups, and to ensure that any new groups enabled to conduct weddings would not be able to discriminate between opposite- and same-sex couples. We will not be considering the issue of whether those new groups would be able to discriminate on the ground of gender reassignment.

9.3 We then detail how what is commonly referred to as the "quadruple lock" of special provisions in the current law works. The quadruple lock would be maintained under our proposed new scheme. Because we are not proposing any changes to the effect of the law, we do not make provisional proposals for reform or ask consultation questions in this chapter. However, the existing special provisions are interwoven with the structure of the law. We therefore describe what consequential amendments would need to be made for the special provisions to fit in to our proposed new scheme. As under the current law, the Church of England and the Church in Wales will continue not to be included in the legal scheme for same-sex weddings. There will continue to be special provisions so that other religious groups are not obliged to conduct same-sex weddings, but will be able to opt into doing so.

9.4 Finally in this chapter, we explain that the special provisions in relation to same-sex weddings and weddings involving transgender people do not extend to people who provide secular wedding venues and other secular services. The law would not change under our proposed scheme.

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1 We use the phrase "special provisions" throughout this chapter to refer to the law about religious groups in relation to same-sex weddings and weddings involving transgender people.

2 See Appendix 1 for our full Terms of Reference.

9.5 We recognise that some consultees will not agree with the way that the current law contains special provisions for religious groups in relation to same-sex weddings, and will therefore not support similar special provisions being created in a new scheme for weddings. Nevertheless, our Terms of Reference are clear that having been "decided by Parliament following wide public debate", that policy question is beyond the scope of this review.

THE POLICY BACKGROUND AND OUR TERMS OF REFERENCE

Religious organisations

9.6 Our Terms of Reference provide that the project:

> will not consider the question of whether or not religious groups should be obliged to solemnize marriages of same sex couples, which was decided by Parliament following wide public debate.

We are therefore not considering any change to the policy, enacted by Parliament in the Marriage (Same Sex Couples) Act 2013, that religious groups are not obliged to conduct same-sex weddings, and that the Church of England and Church in Wales are not included within the legal scheme for same-sex weddings. Our objective is to maintain the special provisions for religious groups and their officials under our proposed new scheme.

9.7 Parliament has also enacted special provisions in 2004 and 2010 that except religious organisations and their officials from obligations to conduct weddings involving people who have an acquired gender under the Gender Recognition Act 2004.[3] We take the view that those exceptions are matters of social policy, which we are not equipped to revisit. Our objective is therefore to maintain those exceptions under our proposed new scheme.

Non-religious belief organisations and independent officiants

9.8 Our Terms of Reference also mean that if Government chooses to enable non-religious belief organisations or independent officiants to conduct legally binding weddings, those groups will not be able to discriminate between opposite- and same-sex couples. Therefore, the same-sex marriage special provisions would not extend to those groups under our proposed scheme. We have heard no objection among non-religious belief organisations and independent celebrants to conducting such weddings; indeed, most already carry out non-binding ceremonies for same-sex couples.

9.9 Like sexual orientation, gender reassignment is a protected characteristic in equality law.[4] The existing special provisions that apply to religious organisations in relation to weddings involving transgender people would not cover non-religious belief organisations and independent officiants. We have not heard from any stakeholders of a desire among non-religious belief organisations and independent celebrants to treat people differently on the basis of gender reassignment. However, the question

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3 In the Gender Recognition Act 2004 and the Equality Act 2010. See paras 9.22 to 9.24 below for further detail.

4 Equality Act 2010, s 4.

whether to extend those special provisions would be a matter of social policy, appropriately addressed by Government rather than by an independent law reform body. For that reason, we will not be considering whether any special provisions should apply to non-religious belief organisations and independent officiants, in relation to weddings involving transgender people.

Registration officers

9.10 It would remain the case under our proposed scheme that registration officers would not be allowed to refuse to conduct same-sex weddings, or weddings involving transgender people. That rule reflects the fact that registration officers are employed by the state to conduct a public service. It is important that civil weddings conducted by registration officers should be available to everyone with legal capacity to get married.

9.11 We acknowledge that, as private individuals, some registration officers may have strongly held religious beliefs that are inconsistent with conducting same-sex weddings, and weddings involving transgender people. However, the state has a legitimate interest in protecting the rights of same-sex couples and transgender people. It is for that reason that the European Court of Human Rights has held that it is legitimate for the state to require registration officers to conduct same-sex civil partnerships, even if doing so is contrary to the religious beliefs held by some registration officers.[5] For the same reason, it is also lawful to require registration officers to conduct same-sex weddings, and weddings involving transgender people.

SPECIAL PROVISIONS UNDER THE CURRENT LAW

Same-sex weddings

9.12 The Marriage (Same Sex Couples) Act 2013 enables same-sex couples to get married, including in a religious wedding other than an Anglican wedding. At the same time, the 2013 Act contains special provisions that ensure that religious organisations and their officials are not obliged to conduct same-sex weddings. Government has described the special provisions in the 2013 Act as a quadruple lock.[6] There are four parts of the quadruple lock:

(1) provisions that are specific to the Church of England and Church in Wales;

(2) the requirement that religious organisations must formally opt in if they wish to conduct same-sex weddings;

(3) provisions that protect religious organisations, religious leaders who conduct wedding ceremonies,[7] and people appointed to register religious weddings from being compelled to conduct same-sex weddings; and

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5 *Eweida v United Kingdom* (2013) 57 EHRR 8 (App Nos 48420/10, 59842/10, 51671/10 and 36516/10).

6 *Hansard* (HC), 5 Feb 2013, vol 558, col 129; *Hansard* (HL), 3 June 2013, vol 745, col 939.

7 See the Glossary for the meaning of "religious leader".

(4) exceptions to equality law.[8]

Anglican-specific provisions

9.13 The Marriage (Same Sex Couples) Act 2013 contains provision that means that any duty of the Church of England and Church in Wales clergy to solemnize marriage, and any corresponding right to have an Anglican wedding, is not extended to same-sex weddings.[9] Further, Church of England canon law is not illegal because it provides that marriage is between one man and one woman.[10]

Opting into same-sex weddings

9.14 There is no provision in the law for same-sex Anglican weddings, and so the Church of England and the Church in Wales are not included in the rules about opting into conducting same-sex weddings.

9.15 However, other religious organisations are able to conduct same-sex weddings, but only if they formally opt in. To opt in, the relevant governing authority of the religious organisation must give its written consent to same-sex marriage.[11] Relevant governing authorities are identified either by name or by description in legislation.

(1) For weddings in registered places of worship, the relevant governing authority is the person or persons recognised as competent to give consent to same-sex weddings by the religious organisation for whose religious purposes the building is used.[12]

(2) For weddings according to Quaker and Jewish usages,[13] the relevant governing authority is either named in legislation, or identified as the person or persons recognised by various named synagogues.[14]

(3) For weddings of people who are terminally ill, detained or housebound,[15] the relevant governing authority is the person or persons recognised as competent

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8 *Hansard* (HL), 3 June 2013, vol 745, cols 939 to 949; Government Equalities Office, *Marriage (Same Sex Couples) Act: A factsheet* (April 2014) p 2, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/306000/140423_M_SSC_Act_factsheet__web_version_.pdf (last visited 1 May 2020).

9 Marriage (Same Sex Couples) Act 2013, s 1(4).

10 Marriage (Same Sex Couples) Act 2013, s 1(3).

11 Marriage Act 1949, ss 26A(3) and 26B(2)(b), (4)(b) and 6(d); Marriage (Registrar General's Licence) Act 1970, s 1(3). Weddings in armed forces chapels are an exception: before the Secretary of State applies for an armed forces chapel to be registered for same-sex weddings, they must consult with the relevant governing authority of any religious organisation which makes significant regular use of the chapel, but the Secretary of State need not obtain the authority's consent: Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2013 (SI 2014 No 815), reg 3.

12 Marriage Act 1949, s 26A(4).

13 Other than weddings authorised by Registrar General's licence, involving people who are terminally ill.

14 Marriage Act 1949, s 26B(5).

15 Other than weddings involving detained or housebound parties according to Quaker or Jewish usages.

to give consent to same-sex weddings by the religious organisation according to whose rites or usages the marriage is solemnized.[16]

9.16 In addition to the consent of the relevant governing authority, the owners of certified places of worship must formally opt into same-sex marriage, by applying for the building to be registered for same-sex weddings separately from registration for opposite-sex weddings.[17]

9.17 We explain at paragraphs 5.12 to 5.21 above that the current law does not regulate who conducts wedding ceremonies, other than Anglican ceremonies, but instead regulates who registers the marriage. Accordingly, there is no requirement for individuals to formally opt into conducting religious same-sex wedding ceremonies. Instead, a person who is authorised to be present at and register marriages solemnized in registered places of worship opts in by agreeing to be authorised for same-sex weddings.[18] There is no formal action needed for the people who register Quaker and Jewish marriages to opt into same-sex weddings, but those people can nevertheless refuse to act at same-sex weddings.[19]

9.18 There is no comprehensive public record of which religious organisations have opted into same-sex weddings. However, some information can be gleaned from the data on registered places of worship. As of January 2020, there were a total of 22,527 places of worship registered for weddings.[20] Of those, 259 were registered for same-sex weddings, about 1.1% of the total. Buildings whose congregations identified as belonging to the Unitarian (87), United Reformed (67), and Spiritualist (63) denominations made up the majority of those registered for same-sex weddings. The Society of Friends, whose places of worship do not need to be registered, has opted into same-sex weddings,[21] as have Liberal and Reform Jewish groups.[22] The Chief Rabbi, who is the relevant governing authority for Orthodox synagogues, has not opted in.

9.19 The low number of places of worship that are registered for same-sex weddings is reflected in the fact that in 2017, only about 0.6% of same-sex weddings were

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16 Marriage Act 1949, s 26B(7); Marriage (Registrar General's Licence) Act 1970, s 1(4).

17 Marriage Act 1949, s 43A.

18 Marriage Act 1949, s 43B.

19 See further para 9.20 below.

20 General Register Office, *Places of worship registered for marriage* (February 2020), https://www.gov.uk/government/publications/places-of-worship-registered-for-marriage (last visited 1 May 2020).

21 Society of Friends, *Quaker same sex weddings: letter to superintendent registrars* (July 2015), https://quaker-prod.s3-eu-west-1.amazonaws.com/store/208204d083996fa7d55c29708ce07a1bde73e40f59d5965dfb90c75a64ff (last visited 1 May 2020).

22 For synagogues affiliated to Liberal Judaism, the relevant governing authority is the marriage secretary of the Liberal Jewish Synagogue, St John's Wood or those certified by it; for synagogues affiliated to the Movement for Reform Judaism the relevant governing authority is the marriage secretary of the West London Synagogue of British Jews or those certified by it: Marriage Act 1949, s 26B(5).

religious ceremonies, compared to about 22% of opposite-sex weddings which were religious ceremonies.[23]

Non-compulsion provisions

9.20 The Marriage (Same Sex Couples) Act 2013 ensures that no person may "be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement)" to conduct, be present at, carry out, otherwise participate in, or consent to a religious same-sex wedding, where the reason is that the wedding is of a same-sex couple.[24] That provision covers religious leaders who conduct wedding ceremonies, individuals who are responsible under the legislation for registering marriages, and other people involved in the religious element of weddings, like church organists.[25] Relevant governing authorities or owners of certified places of worship also cannot be compelled to opt into same-sex marriage.[26]

Exceptions to equality law

9.21 Separately from the general non-compulsion provisions described in paragraph 9.20 above, the Equality Act 2010 makes it clear that a person does not violate equality law by refusing to conduct, be present at, carry out, otherwise participate in, or consent to a religious same-sex marriage.[27]

Weddings involving transgender people

9.22 The Marriage Act 1949 provides that Anglican clergy are not obliged to conduct weddings involving people reasonably believed to have an acquired gender under the Gender Recognition Act 2004.[28] That provision is an exception to the generally accepted duty of the Church of England and Church in Wales to marry their parishioners.

9.23 There is no equivalent provision for other religious organisations, nor any requirement for religious organisations to formally opt into conducting weddings involving transgender people. The general rule is that religious organisations are free to refuse to conduct weddings of any people, including transgender people, unless there is a specific legal obligation to do so. For weddings in registered places of worship, that freedom is bolstered by the rule requiring the consent of "the minister or one of the trustees, owners, deacons or managers thereof".[29]

9.24 That freedom to refuse to conduct weddings is supported by exceptions to the Equality Act 2010, which mean that a person does not violate equality law by refusing

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23 Office for National Statistics, *Marriages in England and Wales: 2017* (14 April 2020). 2017 is the latest year for which data are available.

24 Marriage (Same Sex Couples) Act 2013, s 2(2).

25 See the explanatory notes to the Marriage (Same Sex Couples) Act 2013.

26 Marriage (Same Sex Couples) Act 2013, s 2(1).

27 Equality Act 2010, sch 3 para 25A.

28 Marriage Act 1949, s 5B.

29 Marriage Act 1949, s 44(1). In the case of a building of the Roman Catholic Church, the "officiating minister" must consent.

to conduct a wedding involving a person reasonably believed to have an acquired gender under the Gender Recognition Act 2004.[30]

SPECIAL PROVISIONS UNDER OUR PROPOSED SCHEME

Same-sex weddings

Anglican-specific provisions

9.25 Under our proposed scheme, the existing law as it relates specifically to Anglican weddings would remain unchanged. It would continue to be impossible for Anglican clergy to conduct same-sex weddings under the legislation. Any duty of the Church of England and the Church in Wales clergy to solemnize marriage, and any corresponding right to have an Anglican wedding, would not be extended to same-sex weddings. And Church of England canons would not be illegal because they provide that marriage is between a man and a woman.

Opting into same-sex marriage

9.26 Because the Church of England and Church in Wales would continue not to be included in provision for same-sex weddings under our proposed new scheme, they would continue not to be included in the rules about opting into same-sex weddings.

9.27 Other religious organisations would continue to be able to conduct same-sex weddings only if the organisation in question formally opts in by giving its consent to same-sex marriage. If a religious organisation did not opt in, the religious officiants authorised by it would not be able to officiate at same-sex weddings. Even if a religious organisation opted in, individual religious officiants nominated by that organisation would not be able to officiate at same-sex weddings unless they themselves opted-in.

9.28 We provisionally propose at paragraphs 5.112 and 5.151 above that the General Register Office should maintain a publicly available list of nominated religious officiants. That list would be divided into religious officiants who had opted into officiating at same-sex weddings, and those who had not. Having a divided list would ensure that couple would know whether a particular officiant was willing to officiate at a same-sex wedding.

9.29 For religious organisations, the decision whether to opt in would be taken by their relevant governing authorities, as under the current law. We describe at paragraphs 5.88 to 5.114 above how, under our proposed new scheme, relevant governing authorities would also be responsible for nominating religious officiants (other than Anglican clergy). As currently, religious organisations would self-identify their relevant governing authorities. The relevant governing authorities for the Society of Friends and for Jewish organisations would no longer be named in legislation. Instead, those organisations would self-identify their relevant governing authority, putting them on an equal footing with other religious organisations.

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[30] Equality Act 2010, sch 3 para 24.

9.30 The system just described would be similar to the system in Scotland, where religious organisations are able to choose whether to nominate celebrants to conduct same-sex weddings.[31] Our discussions with stakeholders in Scotland have not revealed any problems with the law there. Religious organisations in Scotland are free to choose whether or not they wish for their celebrants to be able to conduct same-sex weddings. And individual celebrants are free to choose whether to refuse to conduct same-sex weddings.

Owners of religious buildings

9.31 Under our proposed scheme, venues for religious weddings would no longer need to be registered. Therefore, no formal legal act would be necessary for the owners of religious buildings to opt into same-sex weddings. That would be a change from the current law for most religious groups, who must currently conduct weddings in registered buildings.

9.32 However, under general provisions of law, the owners of religious buildings would remain free to refuse to allow their buildings to be used for same-sex weddings, even if the relevant governing authority had opted into same-sex marriage. As explained at paragraph 9.37 below, there would be corresponding special provisions in equality law for the owners of religious buildings.

9.33 It is in theory possible to imagine a situation where a religious building is used for a same-sex wedding without the owner's consent. For example, a religious building hired out for community events might be used for a same-sex wedding without the owner knowing.[32] This risk could be minimised even further by the owner specifically providing in any hire agreement that the building must not be used for same-sex weddings.

9.34 We do not think this theoretical risk justifies attempting to maintain a requirement for owners of religious buildings to formally opt into same-sex weddings, in a system that does not require religious wedding venues to be registered. It is already the case that owners of Quaker and Jewish religious buildings do not have to formally opt into same-sex weddings. We have not been told of any problems with those buildings being used for same-sex weddings against their owners' wishes. Nor are we aware of problems in jurisdictions like Scotland, Ontario and Australia, where there is no requirement for the owners of religious buildings to opt into same-sex weddings.

9.35 There would be no opt-in requirements of any sort for civil same-sex weddings and (if they were enabled) non-religious belief same-sex weddings. In Chapter 7, we asked consultees whether the law should permit civil weddings and non-religious belief weddings to take place in religious venues. If the law did not permit such use of religious venues, it would be impossible for a civil or non-religious belief same-sex wedding to take place in a religious building, just as it would be impossible for a civil or non-religious belief opposite-sex wedding to take place in a religious building. On the other hand, if the law did permit such use of religious venues, it would not be contrary

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31 Marriage (Scotland) Act 1977, ss 8(1B)(a)(ii) and (1D)(b), and 9(1A).

32 This point was made to us by the Society of Friends, in relation to the use of religious buildings for civil weddings.

to equality law for the owners of religious buildings to refuse to allow their buildings to be used for same-sex weddings.[33]

Non-compulsion provisions

9.36 Under our proposed scheme, the law would continue to ensure that no person could be compelled to conduct, be present at, carry out, otherwise participate in, or consent to a religious same-sex wedding, where the reason was that the wedding was of a same-sex couple. That provision would mean that:

(1) religious organisations and their relevant governing authorities could not be compelled to opt into same-sex weddings;

(2) religious officiants could not be compelled to opt into officiating at, or to officiate at, same-sex weddings, even if the relevant governing authority by which they had been nominated had opted into same-sex weddings;

(3) other religious leaders who conduct wedding ceremonies, but who were not authorised officiants, could not be compelled to conduct same-sex weddings; and

(4) other people involved in the religious element of a wedding would continue to be protected against having to participate in same-sex weddings.

Exceptions to equality law

9.37 Under an amended weddings law, there would continue to be exceptions to equality law to allow religious organisations, authorised religious officiants, other religious leaders who conduct wedding ceremonies, and other people involved in the religious element of a wedding to refuse to conduct or participate in same-sex weddings. There would also be exceptions to ensure that the owners of religious buildings would be able to refuse to allow those buildings to be used for same-sex weddings.

Weddings involving transgender people

9.38 Under our proposed new scheme, it would remain clear that Anglican clergy are not obliged to conduct weddings involving people reasonably believed to have an acquired gender under the Gender Recognition Act 2004. There would continue to be no requirement for religious organisations to opt into conducting weddings involving transgender people. And there would also continue to be exceptions to equality law, ensuring that religious organisations and their officiants would not be acting illegally by refusing to officiate at weddings involving people reasonably believed to have an acquired gender under the Gender Recognition Act 2004.

SECULAR VENUES AND OTHER SERVICES

9.39 We have described in paragraphs 9.20 to 9.21 above that there are special provisions for people who do not wish to be involved in the religious element of a religious same-sex wedding. Those special provisions include exceptions to equality law.

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[33] See further para 9.37 below.

9.40 Those special provisions do not extend to people who provide secular venues for weddings, including religious weddings. Nor do they extend to people who provide services that are not part of the religious element of a wedding, like photography. The Equality Act 2010 makes it illegal for people who provide services to the public to discriminate in the provision of services on the grounds of certain protected characteristics, including sexual orientation and gender reassignment.[34] So, for example, it would be illegal for the owner of country house to hire out the venue for opposite-sex weddings, but not for same-sex weddings, even if the owner was motivated by their religious beliefs.[35]

9.41 The law in relation to secular venues and services will not change under our proposed scheme. That law applies not only in relation to weddings, but in relation to premises and services generally.

[34] Equality Act 2010, ss 4 and 29.

[35] See, for example, *Preddy v Bull* [2013] UKSC 73, [2013] 1 WLR 3741, where it was illegal for the owners of a hotel who were motivated by their religious beliefs to discriminate against same-sex couples.

Chapter 10: Validity and offences

INTRODUCTION

10.1 Our proposed scheme envisages a simple structure within which couples first give notice and are issued with a schedule authorising their marriage, and then exchange consent to marry in the presence of an officiant and two witnesses, following which they sign and return the schedule. In this chapter we consider which of these requirements should be essential to validity, whether an innocent failure to comply should be treated differently from a deliberate one, and when it should be presumed that the couple have gone through a valid marriage. Guided by our principles that the law should be simple, certain, fair and consistent, our view is that the minimum requirements for a valid marriage should be clear, and that the consequences of failing to comply should be consistent for all weddings.

10.2 In considering the impact of failures to comply with the scheme, we also address the question of when a ceremony should result in a void marriage, and when it should be classified as "non-qualifying".[1] The categorisation of a ceremony as non-qualifying as opposed to creating a void marriage has significant consequences. If a marriage is void, a court has the same powers to reallocate assets between the couple as when granting a divorce. In the case of a non-qualifying ceremony, in contrast, a court has no such powers and the couple are treated as if they were cohabitants. This can leave individuals vulnerable, particularly where they either did not realise that the ceremony they went through would not be legally recognised, expected that a legally recognised ceremony would follow, or acquiesced with some reluctance.[2] However, it is also important to take into account the interests of the state that certain formalities should be observed in order for a marriage to be valid, that there should be certainty as to whether a couple is married, and that some couples will wish to retain the option of a non-legally binding ceremony. Our view is that while some failures will result in a marriage being void, in some cases the interests of the state, or the couple's lack of consent to a legally binding marriage, should still result in a ceremony having no legal consequences.

10.3 As we explain in Chapter 9, the existing rule that the Church of England and Church in Wales are not able to solemnize same-sex weddings, and that other religious groups who wish to conduct same-sex weddings must specifically opt in, will be carried over into our proposed scheme. In this chapter we consider the impact of a same-sex wedding being conducted under the auspices of a religious group that has not opted in.

10.4 We also consider a specific point in relation to the time limit for bringing proceedings for nullity on the basis of lack of consent. We should note that questions about capacity to marry, or the classification of marriages entered into without consent as

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1 The Court of Appeal in *Attorney General v Akhter* [2020] EWCA Civ 122, [2020] 2 WLR 1183 used the term "non-qualifying ceremony" to refer to what had previously been described as "non-marriages".

2 While both men and women may choose to marry outside the legal framework to protect their assets in the event of separation, the consequences tend to bear more harshly on women.

voidable rather than void, fall outside our Terms of Reference. However, expressing consent is a formality that is required under our scheme. The consequences of a failure to express consent are therefore within the scope of our review. Our view is that removing the time limit would be of assistance in many cases of coerced marriages.

10.5 We then consider whether any offences are needed to underpin our proposed scheme. The Independent Review into the Application of Sharia Law in England and Wales recommended amendments to the Marriage Act 1949 so that celebrants of marriages would face penalties should they fail to ensure that the marriage is also civilly registered. Government is considering this recommendation as part of its integrated communities strategy.[3] We are therefore not considering it as part of our review.

10.6 The offence proposed by the Independent Review would prevent a couple from having a non-legally binding ceremony conducted by a religious celebrant, without the celebrant facing penalties. Our provisional proposals are concerned instead with the consequences, in terms of validity of the marriage, where a non-legally binding ceremony has taken place. We acknowledge the very significant harm done when – unknown to one or both of a couple – a religious wedding is non-legally binding. Our provisional proposals are intended to make it easier for couples of all faiths and none to combine what is required by law and what is significant to the couple, and so reduce the likelihood of a non-legally binding ceremony taking place. In addition, certain types of ceremonies that would currently be classified as non-qualifying would, under our provisional proposals, be classified as void marriages, giving more protection to the more financially vulnerable partner.

10.7 The offences that we propose are intended to further reduce the likelihood of a ceremony resulting in a void marriage rather than a valid one. To that end we provisionally propose that it should be an offence for any person to purport to be an officiant and deliberately or recklessly mislead either of the couple about their status or the effect of the ceremony, and for an officiant deliberately or recklessly to mislead either of the couple about the effect of the ceremony. We think that these offences balance the interests of the state in emphasising the importance of formalities with respect for the wishes and beliefs of couples.

10.8 At the end of this chapter, we consider the issue of religious-only weddings. Drawing together our discussions throughout the chapter in relation to validity and offences, we explain our provisional proposals specifically considering the important issue of religious-only weddings and the hardship that they cause.

VALIDITY

10.9 The general policy of the law in England and Wales has always been to uphold marriages wherever possible. This policy is reflected in a number of key features of the current law: first, in the fact that only a limited range of factors can render a marriage void; second, in the presumptions in favour of marriage; and, third, in the procedure for the validation of marriages of dubious validity. Nonetheless, there are

[3] HM Government, *Integrated Communities Strategy Green Paper* (March 2018) p 58.

some limits on what the law will recognise as a marriage, and in recent years some ceremonies have fallen outside the legal framework altogether and been relegated to the category of what are now termed "non-qualifying ceremonies".

10.10 Before explaining the circumstances in which a marriage may be classified as valid, void, or non-qualifying, it is important to set out the wider consequences of that classification.

10.11 If a marriage is valid, then it confers a number of rights and responsibilities upon the parties[4] and exists until brought to an end by death or divorce. In either case, the position of a spouse is protected. A surviving spouse has automatic entitlements under the intestacy rules and can challenge a will that fails to make reasonable financial provision for them.[5] Courts have wide powers to reallocate assets on divorce to ensure that the needs of both spouses are met and assets are shared fairly.[6]

10.12 If a marriage is void, then in the eyes of the law the couple were never married and there is no need to obtain a divorce to bring the marriage to an end. Nor is there any need to obtain a decree of nullity. However, if a decree of nullity is obtained then the court has the same powers to order financial provision as it does on divorce,[7] and the surviving "spouse" can apply for reasonable provision from the estate on the death of the other.[8] In addition, a person who in good faith entered into a void marriage with a person who then dies may apply to the court for reasonable provision out of the estate, in exactly the same way as if the marriage had been valid.[9]

10.13 These provisions apart, a void marriage does not have the same consequences as a valid marriage. The parties have no obligations to support one another, nor any automatic entitlements under the intestacy rules.[10] The pension rights and tax benefits to which spouses are entitled will similarly depend on the existence of a valid marriage. If a gift of property (such as a gift in a will) is dependent on the existence of a valid marriage, then no entitlement will arise if the marriage is void.[11] In other words, a void marriage confers fewer rights than a valid marriage.

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4 For an explanation of the rights and responsibilities that flow from marriage see N Lowe and G Douglas, *Bromley's Family Law* (11th ed 2015) ch 4.

5 Administration of Estates Act 1925, s 46; Inheritance (Provision for Family and Dependants) Act 1975, s 1(1)(a).

6 Matrimonial Causes Act 1973, s 25.

7 Matrimonial Causes Act 1973, ss 22 to 24.

8 Inheritance (Provision for Family and Dependants) Act 1975, s 25(1).

9 As long as the marriage has not been dissolved or annulled or the claimant remarried during the lifetime of the deceased: Inheritance (Provision for Family and Dependants) Act 1975, s 25(4).

10 Rights under the Domestic Proceedings and Magistrates' Courts Act 1978 and the Administration of Estates Act 1925, s 46 depend on the existence of a valid marriage.

11 For examples see N Lowe and G Douglas, *Bromley's Family Law* (11th ed 2015) p 67. However, if it is clear that a particular person was intended to benefit, the invalidity of the marriage would not prevent property passing: see R Probert, *The Changing Legal Regulation of Cohabitation* (2012) ch 3.

10.14 A non-qualifying ceremony has no legal consequences, in that no decree of nullity can be made and neither party would be able to apply for financial provision on the death of the other.

10.15 It should be noted that going through a ceremony that is void or non-qualifying is not illegal in the sense of exposing the parties to criminal sanctions. The Marriage Act 1949 does not prohibit couples from going through ceremonies outside the legal framework, it merely does not recognise them.

10.16 Only a "knowing and wilful" failure to comply with a limited range of key formalities can render a marriage void. These key formalities relate to the preliminaries, the place of marriage, and the presence of certain persons. However, what is regarded as key is not the same for each type of wedding. The details are set out in Chapter 2 and are summarised here.

10.17 A marriage will only be void if both parties "knowingly and wilfully:[12]

(1) Failed to comply with the required preliminaries:

(a) For an Anglican wedding, this might be marrying without banns being published, a common or special licence obtained, or certificates having been issued by a superintendent registrar, or if any of those forms of authority are void.[13]

(b) For all other weddings, this might be a failure to give notice to the superintendent registrar, or if the certificate has not been issued or has since lapsed.[14]

(2) Failed to marry in a particular place:

(a) For weddings preceded by civil preliminaries, if the ceremony does not take place in the building or other place specified by the parties when they gave notice.[15]

(b) For weddings purporting to be on approved premises, if the place was not in fact approved.

(c) For Anglican weddings, if the place is not one in which banns may be published, unless a special licence has been obtained.[16]

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12 See Marriage Act 1949, ss 25 (for Anglican marriages) and 49 (for all other marriages).

13 Marriage Act 1949, s 25(2)(b) to (c).

14 Marriage Act 1949, s 49(a), (b) and (d).

15 Marriage Act 1949, s 49(e).

16 Marriage Act 1949, ss 49(ee) and 25(2)(a).

(d) By contrast, the fact that a place of worship has not been registered for weddings – or even certified as such – will not invalidate the marriage.[17]

(3) Married in the absence of a particular person:

(a) For Anglican weddings, if the celebrant is not in Holy Orders.[18]

(b) For civil weddings, if either the superintendent registrar or a registrar of that registration district was absent.[19]

(c) For a wedding in a registered place of worship, if it is not attended by either a registrar or an authorised person.[20]

(d) By contrast, a Jewish or Quaker wedding will not be invalid on account of the absence of the secretary or registering officer.

10.18 In addition, a same-sex wedding will always be void if it is celebrated according to Anglican rites.[21] It will be void if both parties "knowingly and wilfully" marry according to the rites of other religious groups without the consent of the relevant governing authority.[22]

10.19 The condition that a marriage will only be void if the couple both "knowingly and wilfully" fail to comply with one of the key requirements provides further protection. It ensures that a marriage will not be void on account of an accidental failure to comply with a particular requirement and reduces the possibility of one of the couple tricking the other into a wedding that has no legal consequences. It follows that a marriage may be valid even if the couple have failed to comply with some of the legal requirements, as long as they did so innocently. Even if this failure was deliberate, the marriage will still be valid unless the requirement is one of those set out above.

10.20 However, there are limits on what the law will recognise as a marriage. If the couple have failed to comply with *any* of the required formalities, then the ceremony will fall outside the scope of the legislation altogether. This means that it will no longer be relevant whether they "knowingly and wilfully" failed to comply with the law or whether they simply did not know what was required for a legally binding marriage. In cases of such fundamental non-compliance the marriage will be a non-qualifying ceremony rather than a void marriage.

10.21 In some cases it may not be clear whether the couple have in fact complied with the requirements of the Marriage Act 1949. In such cases the presumption in favour of

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17 Marriage Act 1949, s 48(1)(c) and (2).

18 Marriage Act 1949, s 25(3).

19 Marriage Act 1949, s 49(g).

20 Marriage Act 1949, s 49(f).

21 Marriage Act 1949, s 25(4).

22 Marriage Act 1949, s 49A. See Ch 9 for discussion of whose consent is required.

marriage may play a role.[23] As long as a couple have gone through a ceremony in a form contemplated by the 1949 Act – for example in a place of worship or register office – then it can be presumed that they have done all that is necessary for a valid marriage, and the onus lies on the person challenging it to prove otherwise.[24]

10.22 The fact that a couple have cohabited for a long period of time and are believed to be married by friends and family can also raise a presumption that they are married. But what is being presumed here is that the couple have gone through a valid ceremony of marriage at some point. The presumption can therefore be rebutted by evidence showing that it is highly unlikely that they ever did go through a ceremony,[25] or that the ceremony they went through was in fact void or non-qualifying.

10.23 Rather than presuming a marriage to be valid where it was known not to have complied with certain requirements, Parliament has on occasion passed legislation validating marriages where there was doubt as to their status. Such legislation has been used to validate marriages in Anglican churches that have not been licensed for weddings or in other places of worship that have not been registered for weddings.[26] In 1905 a special procedure was put in place for the passage of such legislation, and since 1949 it has been possible for marriages to be validated by order without the need for confirmatory legislation.[27] We understand that it is now rare for such orders to be made.

Issues

Uncertainty as to the minimum needed for a valid marriage

10.24 There is no explicit statement in the Marriage Act 1949 as to the minimum needed for a valid marriage. At the same time, it is clear that couples must comply with at least some of the provisions of the Act in order for their marriage even to be void. In *Attorney General v Akhter* the Court of Appeal confirmed that "there is a threshold which has to be crossed before it can be said that the parties have intermarried under the provisions… of the 1949 Act".[28] Ceremonies that do not cross that threshold will

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23 See R Probert, "The Presumptions in Favour of Marriage" (2018) 77 *Cambridge Law Journal* 375.

24 Courts have, for example, presumed that sufficient notice has been given and that the wedding was conducted in the presence of a duly authorised person (*Russell v Russell* [1949] P 391), and that a place of worship has been registered for marriage (*Sichel v Lambert* (1864) 15 CB (NS) 781, 143 ER 992).

25 See eg *Martin v Myers* [2004] EWHC 1947 (Ch).

26 See eg Upton cum Chalvey Marriages Validity Act 1850, Marriages at St James's Chapel, Eastbury Act 1865, Cove Chapel, Tiverton, Marriages Legalization Act 1873, Wood Green Congregational Church Marriage Legalization Act 1884.

27 Under the Provisional Order (Marriages) Act 1905 a provisional order could be made regarding the validity of doubtful marriages. Such orders had to be confirmed by legislation. Under the Statutory Orders (Special Procedure) (Substitution) Order 1949 (SI 1949 No 2393) the need for confirming legislation was removed. Under the Transfer of Functions (Miscellaneous) Order 2001 (SI 2001 No 3500) the responsibility for making such orders passed to the Lord Chancellor.

28 [2020] EWCA Civ 122, [2020] 2 WLR 1183 at [45]. As they noted, the two annulling provisions in the Marriage Act 1949 both refer to a marriage taking place under the provisions of the Act: see ss 25 and 49.

be classified as non-qualifying. However, the threshold will differ according to the type of wedding.[29]

10.25 For civil weddings, which are a creation of statute, the issues would seem to be relatively clear-cut. Either the ceremony follows the form envisaged by the Marriage Act 1949, or it is not a civil wedding at all. Partial compliance is unlikely to be sufficient to bring a ceremony within the scope of the Act. For example, a superintendent registrar who conducted a ceremony in a place that could not be approved for civil weddings under the current law – for example on the top of a mountain – would be acting outside the scope of their authority. Similarly, the fact that a ceremony was conducted on approved premises would not bring it within the scope of the Act if it was not a civil wedding.[30] In the absence of any other formalities, such ceremonies are likely to be non-qualifying.

10.26 For religious marriages, the issues are more complex. Religious ceremonies exist independently of the legislative structure. A couple might well assume that a ceremony conducted according to the rites required by their religion will be recognised by the law as well as by their own religious community, or that they can rely on the knowledge and advice of the person conducting the ceremony. Others may deliberately choose not to observe the requirements for a legally recognised ceremony because they regard the religious ceremony as more important.

10.27 Nonetheless, whatever the couple's reasons, judges have held that a positive but mistaken belief in the legality of the ceremony cannot override a complete failure to comply with the necessary formalities. In *El Gamal v Al Maktoum* Mr Justice Bodey stated that

> It is not the law [that] where no or minimal steps are taken to comply with the Marriage Acts and so the marriage does not set out or purport to be a marriage under those Acts, that it nevertheless suffices if the participants hopefully intended, or believed, that the ceremony would create one.[31]

Given that the Marriage Act 1949 imposes different requirements on different religious groups, the steps that are regarded as necessary to comply with the Act are also likely to differ.

10.28 It is possible, for example, that the fact that a ceremony was conducted according to Jewish or Quaker usages would be sufficient to bring it within the scope of the Marriage Act 1949, given that it expressly refers to marrying according to such usages. In *Nathan v Woolf*[32] the couple had gone through a Jewish ceremony of marriage: the husband had failed to give notice but there was no evidence that the wife was aware of this. The marriage was upheld. Given that Jewish and Quaker weddings do not have to be celebrated in a specific building, or even attended by a person authorised to register the marriage, it is difficult to see what else could bring

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29 R Probert, "The evolving concept of non-marriage" [2013] *Child and Family Law Quarterly* 314.

30 For example, a religious or Humanist ceremony, or one conducted by an independent celebrant.

31 [2011] EWHC B27 (Fam), [2012] 2 FLR 387 at [86].

32 (1899) 15 TLR 250.

such ceremonies within the scope of the Act. This does not mean that any ceremony involving a Jewish or Quaker couple would be valid, since the governing authorities might give evidence that the ceremony was not in accordance with their usages.[33]

10.29 For Anglican weddings, it seems unlikely that simply using one of the Anglican wedding services would bring a ceremony within the scope of the Act. Whether the mere presence of an ordained member of the clergy would suffice, or whether the ceremony would also have to be in the kind of building where the Act contemplates an Anglican wedding taking place, remains untested.[34]

10.30 For other religious faiths and denominations, it is uncertain whether the presence of an authorised person would be sufficient by itself to bring a ceremony within the scope of the Act,[35] but it seems unlikely. By officiating at a ceremony outside the framework of the Act authorised persons would by definition be acting outside the scope of their authority.[36]

10.31 However, it seems clear that a ceremony will be within the scope of the Act if it was in a place of worship that has been registered for marriage. In *MA v JA*[37] the fact that the wedding happened to take place in a mosque that had been registered for weddings – and in the presence of an authorised person, although he did not act as such – was sufficient for it to be held to be valid, even though the couple had not given notice.

10.32 It is less certain whether it is sufficient for the wedding to take place in an *un*registered place of worship. The fact that a ceremony in an unregistered place of worship was held to be void in *Gereis v Yagoub*[38] suggests that such a ceremony is regarded as falling within the Act. On the other hand, *Gereis* was decided before the case law on the concept of a non-qualifying ceremony had developed, and the result might not be the same were the facts to recur today.[39]

10.33 These cases apart, those ceremonies that have not been recognised have not taken place in any place of worship or in the presence of any person authorised to register

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33 In *Nathan v Woolf* (1899) 15 TLR 250 the validity of the marriage was also challenged under Jewish law, as the bride's father had signed the certificate of marriage and expert evidence was given that a Jewish marriage would be invalid if the only witnesses were blood relatives.

34 In *Hudson v Leigh* [2009] EWHC 1306 (Fam), [2013] Fam 77 the ceremony was conducted by a minister in South Africa, but the couple did not intend it to be a legally binding marriage. In *Attorney General v Akhter* [2020] EWCA Civ 122, [2020] 2 WLR 1183 at [44] the Court of Appeal noted that "to 'intermarry according to the rites of the Church of England' requires a marriage that can, at least, be said to be according to those rites".

35 The presence of an authorised person does not necessarily mean that the place of worship is registered for weddings: while only registered places of worship can appoint authorised persons, authorised persons can register marriages in other places of worship within the registration district: Marriage Act 1949, s 44(2)(b).

36 R Probert, "The evolving concept of non-marriage" [2013] *Child and Family Law Quarterly* 314.

37 [2012] EWHC 2219 (Fam), [2013] Fam 51.

38 [1997] 1 FLR 854. The marriage was void because the couple knew that they needed to give notice but had failed to do so.

39 The judge also referred to the fact that the ceremony bore the "hallmarks of an ordinary Christian marriage" ([1997] 1 FLR 854, 858, by HHJ Aglionby) but no other cases have made explicit reference to the type of marriage.

the marriage. The question of whether partial compliance would be enough has not even arisen.[40]

10.34 Finally, there are some cases in which a positive intention not to marry has resulted in a ceremony not being recognised. In *Hudson v Leigh*[41] the couple were intending to marry in a civil ceremony in England but had a religious ceremony in South Africa for family and friends there. It was held to be what is now termed a non-qualifying ceremony, partly because the couple had not complied with the required formalities and partly because they had never intended to be married as a result of this particular ceremony. In *Galloway v Goldstein*[42] the couple went through a civil ceremony in England after they had already validly married in the US. The court held this civil ceremony to be of no effect, Mr Justice Mostyn noting that the couple must have known that it did not confer the legal status of marriage on them as they were already married. As one commentator has pointed out, these cases show that the intentions of the couple play a secondary role in determining the status of a marriage, the primary focus being on the form of the ceremony.[43]

Uncertainty as to the consequences of failing to comply with certain requirements

10.35 As noted above, the Marriage Act 1949 sets out clearly the circumstances in which a marriage will be void. It also sets out clearly certain factors that are irrelevant to the validity of a marriage and of which it is therefore not necessary or indeed possible to give evidence when challenging the validity of a marriage.[44] These two sets of lists do not, however, encompass all the requirements set out in the Act.

10.36 For example, the requirement for there to be two witnesses to the wedding applies to civil and Anglican weddings, as well as to those in registered places of worship. A certificate of a Jewish or Quaker wedding must also be signed by two witnesses. Yet there is nothing in the Marriage Act 1949 stating what the consequence is if there are

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40 See *A-M v A-M (Divorce: Jurisdiction: Validity of Marriage)* [2001] 2 FLR 6 (ceremony in the couple's flat); *Gandhi v Patel* [2002] 1 FLR 603 and *Attorney General v Akhter* [2020] EWCA Civ 122, [2020] 2 WLR 1183 (ceremonies in restaurants); *Sharbatly v Shagroon* [2012] EWCA Civ 1507, [2013] Fam 267 (religious ceremony in a hotel); *Dukali v Lamrani* [2012] EWHC 1748 (Fam), [2012] 2 FLR 1099 (ceremony in the Moroccan consulate). In *Al-Saedy v Musawi* [2010] EWHC 3293 (Fam), [2011] 2 FLR 287 and *El Gamal v Al Maktoum* [2011] EWHC B27 (Fam), [2012] 2 FLR 387 the very existence of the ceremony was disputed but the cases were decided on the basis that some ceremony had taken place in a private flat. In all these cases the couple had failed to give notice, the ceremony was not in a place of worship, and no-one present was authorised to register it.

41 [2009] EWHC 1306 (Fam), [2013] Fam 77. In this case a religious ceremony was deemed to be a non-marriage on the basis that the couple were intending to marry in a later civil ceremony.

42 [2012] EWHC 60 (Fam), [2012] Fam 129. In this case a civil ceremony was deemed to be a non-marriage on the basis that the couple had already gone through a legally recognised ceremony of marriage elsewhere.

43 C Bevan, "The role of intention in non-marriage cases post *Hudson v Leigh*" [2013] *Child and Family Law Quarterly* 80.

44 Marriage Act 1949, ss 24 (not necessary to give proof of residence where marriage has been solemnized after the calling of banns or on the authority of a licence) and 48 (not necessary to give proof of residence, or that the place of worship in which the marriage took place had been certified as such or was the usual place of worship of either of the couple, or that the required consents had been given either to that specific marriage or to same-sex marriages).

no witnesses to the wedding, and the assumption has always been that the marriage would still be valid. In *Wing v Taylor*[45] the court thought it was so obvious that the marriage would still be valid even though only one witness had been present that it refused even to hear argument on the point.

10.37 Similarly, despite the importance attached to registration, there is nothing in the Act stating what the consequence is if the marriage is not registered. There may of course be difficulties in proving that the marriage has taken place but the assumption has always been that it would nonetheless be valid.

10.38 The assumption that the absence of witnesses or a failure to register the marriage will not invalidate it rests on the general rule of interpretation that a marriage will only be void if there is an express provision invalidating it. As Mr Justice Ormrod noted in *Collett v Collett*,[46] the general principle that can be discerned from the legislation and the case-law

> is that if a ceremony of marriage has actually taken place which, as a ceremony, would be sufficient to constitute a valid marriage, the courts will hold the marriage valid unless constrained by express statutory enactment to hold otherwise.[47]

10.39 However, some situations raise more difficult questions. There is, for example, no provision in the Marriage Act 1949 stating that a marriage would be invalid if the prescribed words are not said. However, non-compliance with this particular requirement might take a number of different forms, potentially with very different consequences. If, for example, a couple stumbled over the words and made a slight mistake, there is no reason to think that the marriage would not be valid, although we have heard of registration officers asking the couple to say the words again in such cases. More difficult is the status of a marriage where the prescribed words were not included at all. Decisions such as *Hill v Hill*[48] and *MA v JA*[49] suggest that this would not affect the validity of the marriage, although the point was not explicitly considered in the latter case. However, if there was no expression of consent at all – as opposed to an apparent expression of consent that was vitiated by duress, mistake, or impaired mental capacity – then presumably there would not be even a void marriage, but only a non-qualifying ceremony.[50]

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45 (1861) 2 Sw & Tr 278, 164 ER 1002.

46 [1968] P 482.

47 [1968] P 482, 492. It should be noted that Ormrod J was not holding that a simple exchange of consent would constitute a marriage despite his widely quoted statement that "the essence of marriage is the formal exchange of voluntary consents to take one another for husband and wife". His use of the qualifying word "formal" is significant, as is his careful dissection of what was necessary under the Foreign Marriages Act 1892 that governed the validity of the marriage in dispute in that case.

48 [1959] 1 WLR 127. In this case it was clear that the declarations and vows prescribed by the Barbadian Marriage Act 1904-9 had not been said, but there was evidence that a marriage service had been used and the Privy Council was willing to presume that it had included similar declarations and vows.

49 [2012] EWHC 2219 (Fam), [2013] Fam 51. Since the imam thought that he was conducting a non-legally binding ceremony it is unlikely that the prescribed words were included.

50 R Probert, "A Uniform Marriage Law for England and Wales" [2018] *Child and Family Law Quarterly* 259.

Confusion as to when a marriage will be presumed

10.40 There has been considerable confusion between the circumstances in which a known ceremony will be presumed to be valid and the circumstances in which a couple who have lived together and been reputed to be married will be presumed to have married.[51]

10.41 The presumptions in favour of marriage have a long history and over time they have become detached from their original role. Properly understood, the presumptions arose because the existence of a valid marriage was the most likely inference to draw from the evidence that the couple had gone through a formal ceremony of marriage, on the basis that most couples would ensure that they did everything necessary for a valid marriage. Similarly, the existence of a valid marriage was the most likely inference to draw from the fact that a couple had lived together and been reputed to be married when the vast majority of couples in that situation had in fact married.[52]

10.42 The distinct elements and functions of these two presumptions were blurred by the suggestion in *Chief Adjudication Officer v Bath*[53] that

> Where there is an irregular ceremony which is followed by long cohabitation, it would be contrary to the general policy of the law to refuse to extend to the parties the benefit of a presumption which would apply to them if there were no evidence of any ceremony at all.[54]

This formulation gave the impression that the presumption could validate a ceremony that did not comply with the law if the relationship of the parties had subsisted for a considerable time. However, its main impact was not in converting "irregular" ceremonies into valid ones,[55] but in creating an expectation that the presumption would only apply if there had been a long period of cohabitation after the ceremony.[56]

10.43 However, in *Attorney General v Akhter* the Court of Appeal made it clear that there was no scope in English law for the effect of a ceremony to change over time. While it was not specifically addressing the presumption in favour of marriage, the reasons that it gives are equally applicable to that context. As it noted:

> Whether a ceremony created a valid marriage or a void marriage or was of no legal effect at all must be determined at the date of the ceremony. It would make no

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51 In both cases what is being presumed is that there was an actual marriage, rather than that the couple should be treated as if they had married. The presumption is therefore distinct from the mistaken assumption that living together gives rise to a "common law marriage".

52 R Probert, "The Presumptions in Favour of Marriage" (2018) 77 *Cambridge Law Journal* 375.

53 [2000] 1 FLR 8.

54 [2000] 1 FLR 8, 24.

55 In such cases the courts either held that the presumption did not arise where the ceremony was conducted outside the scope of the Marriage Act 1949 or that it was rebutted by such evidence, regardless of the length of the relationship.

56 *A v H* [2009] EWHC 636 (Fam), [2009] 4 All ER 641; *Dukali v Lamrani* [2012] EWHC 1748 (Fam), [2012] 2 FLR 1099; *MA v JA* [2012] EWHC 2219 (Fam), [2013] Fam 51; *Hayatleh v Modfy* [2017] EWCA Civ 70, [2017] Fam Law 394.

> sense for its legal effect to fluctuate depending … on future events such as whether the parties did or did not have children … . Further, to adopt this approach would also fundamentally undermine the need for the parties and the state to know, as from the date of the ceremony, whether the parties are or are not validly married.[57]

10.44 Despite this welcome clarification, in the light of past confusion we think that it would be helpful for the law to state explicitly when any presumptions should operate.

Differential treatment of different types of weddings

10.45 As our summary of the circumstances in which a marriage may be void indicates, there is no consistency across the different types of wedding in what is regarded as being essential to the validity of a marriage. The fact that the location has not been approved as approved premises may affect the validity of a civil wedding. However, the fact that a place of worship has not been registered for weddings does not. Any marriage that is preceded by a superintendent registrar's certificate may be void if it is celebrated in a place other than that specified. By contrast, an Anglican marriage is not invalidated by being celebrated in a church in which the banns were not published, although it may be void if it is celebrated in a church in which banns may not be called at all.

10.46 There is one specific invalidating provision that applies only to weddings conducted according to the usages of the Society of Friends. The Marriage Act 1949 states that a marriage solemnized according to such usages "shall not be valid" unless each of the couple either makes a declaration that they are a member of the Society, in profession with it, or of its persuasion, or produces a certificate from a Quaker registering officer authorising them to be married according to the Society's usages.[58] The Society of Friends told us that these alternative routes to eligibility sometimes caused difficulties, as superintendent registrars sometimes expect every person to have an authorising certificate from the Society when giving notice of a Quaker wedding.[59]

10.47 The fact that the Marriage Act 1949 refers specifically to weddings taking place according to Anglican "rites" and Quaker and Jewish "usages" also raises the question as to the consequence of a wedding not complying with those rites or usages, as we note in Chapter 6.

10.48 The Faculty Office advises that an Anglican wedding must be conducted according to one of the authorised forms of service.[60] However, there is nothing in the Marriage Act 1949 stating that a marriage will be void if an unauthorised form of service was used. If the wedding took place in a church following ecclesiastical preliminaries and was conducted by an ordained member of the clergy, it is difficult to imagine a court holding that it was not conducted "according to the rites of the Church of England" and

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57 [2020] EWCA Civ 122, [2020] 2 WLR 1183 at [124].

58 Marriage Act 1949, s 47.

59 There is no equivalent requirement for those giving notice of their intention to marry according to Jewish usages.

60 Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 16.2. See the Glossary for the meaning of "Faculty Office".

therefore fell outside the scope of the Marriage Act 1949 altogether simply because there had been some minor variation in the words.

10.49 There are cases in which Jewish marriages have been held to be void on the basis that they did not comply with the requirements of Jewish law.[61] However, these date from before 1836, when Jewish law was the only means of testing the validity of a Jewish marriage. Once such marriages were brought within the legislative framework the general principle that a marriage should only be found to be void where the legislation expressly states so should apply.

10.50 There are no cases in which Quaker marriages have been held to be void on account of a failure to comply with the usages of the Society of Friends. In the absence of any express annulling provision, our view is that such a marriage would be valid. However, the Society of Friends told us that if a purported Quaker wedding had followed proper preliminaries but was not conducted according to Quaker usages, the Society would not register the marriage.

10.51 It does not appear that this uncertainty as to the status of a marriage that does not comply with the relevant rites or usages has given rise to problems in practice. This may be because the religious groups involved make sure that everything needful is done, or because of the unlikelihood of a challenge being made within these particular groups,[62] or simply because the registration of the marriage will be taken as evidence that the relevant usages were observed.[63] Nonetheless, the potential for problems to arise provides further justification for our provisional proposal in Chapter 6 that there should be no special rules about the form of Anglican, Jewish or Quaker weddings in any future statute.

Options for reform

10.52 In thinking about which requirements should be essential to the validity of a marriage, and when it would be appropriate to attach legal consequences to a ceremony that does not comply with those requirements, we have been guided by our key principles.

(1) First, it should be clear what is needed for a valid marriage and what the consequences of failing to comply with different requirements are. Certainty should also be combined with fairness: the consequences of failing to comply should be consistent across all types of weddings.

(2) Second, the law should uphold marriages wherever possible, whether by presuming that the necessary formalities have been observed unless there is evidence to the contrary, minimizing the factors that potentially render a marriage void, or only holding marriages to be void where there has been a deliberate failure to comply with the law. This is a key part of respecting the

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61 *Lindo v Belisario* (1795) 1 Hag Con 216, 161 ER 530; *Goldsmid v Bromer* (1798) 1 Hag Con 324, 161 ER 568.

62 This was a suggestion made to us by the Board of Deputies in relation to Jewish marriages. The small number of Jewish and Quaker weddings also means that there are fewer opportunities for things to go wrong.

63 Under Marriage Act 1949, s 55(1)(b) the secretary or registering officer must be satisfied that the wedding was conformable to the relevant usages before registering the marriage.

wishes and beliefs of the individuals who have gone through a ceremony of marriage.

(3) Third, a balance needs to be struck between the wishes of the couple and the interests of the state. The law needs to reflect both the importance of consent and the right not to consent. At the same time, not every ceremony can or should be recognised as having legal consequences. Certain legal requirements reflect important policy decisions and should not be optional.

10.53 For ease of reference, we have compiled a table setting out what we think the consequence should be of failing to comply with different elements of our proposed scheme, whether individually or in combination with other requirements. This table can be found at paragraph 10.127 below.[64] In the sections that follow we set out the reasoning behind it.

Clarifying the minimum needed for a valid marriage

10.54 As we set out in our Terms of Reference, our review is guided by the principles of certainty and simplicity. Given the current uncertainty as to the minimum needed for a valid marriage, we think that it is important that this is made clear in any future scheme. As noted above, our proposed scheme envisages a simple structure within which couples give notice, exchange consent to marry in the presence of an officiant and two witnesses, and sign the schedule as evidence of that consent.

10.55 We provisionally propose that in order for the marriage to be valid:

(1) both of the couple must have given notice;

(2) both of the couple must have expressed consent; and

(3) at least one of the couple must have believed that the person officiating at the ceremony was authorised to do so.

However, we think a marriage could be valid even if the couple had not signed the schedule.

10.56 We also take the view that, as at present, the fact that a marriage is not registered should not affect its validity. The risk of a marriage being invalid on account of non-registration was a source of concern to some stakeholders. The representatives of the Church of England to whom we spoke emphasised that a failure to register the marriage should not invalidate it. The Marriage Foundation was similarly concerned that a schedule system would increase problems with religious-only marriage on the basis it would be up to the couple to return the schedule.[65] It was worried that one member of the couple might deliberately omit to return the schedule to the registrar, deceiving their partner into believing that they were married when in fact they were not. We agree that the non-return of the schedule should not invalidate the marriage.

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64 A flowchart, illustrating the same consequences in a different way, can also be found at Appendix 6.

65 See further Ch 8 for discussion of it being the responsibility of the couple to return the schedule.

10.57 In this section we deal first with the issue of giving notice, and why we think this should be an essential prerequisite to a valid marriage. We then explain why we think that the lack of authorisation of the person purporting to officiate should not affect the validity of the marriage unless both knew this to be the case. In this context we also consider the implications where a same-sex wedding is officiated by an officiant who is only authorised to conduct opposite-sex weddings. We then address the issues of consent and signing the schedule and discuss how signing the schedule may be evidence of consent, or a manifestation of consent, but would not be essential to validity if consent had already been given.

The necessity of giving notice

10.58 The requirement to give notice may strike some as an unduly bureaucratic exercise. Nonetheless, it is the most important part of the process in terms of providing an opportunity for impediments to the intended marriage to be discovered, objections to be made, and sham and forced marriages to be detected. If it were possible for a valid marriage to take place without these preliminaries being observed, these protections would be undermined.

10.59 At present, a marriage may be valid even if the couple have not given notice, as long as they did not "knowingly and wilfully" fail to do so. Our provisional proposal is that a marriage should be automatically void if no notice has been given, rather than resting on the knowledge and understanding of the couple. While this is more stringent than the current law, we have been guided by the more important role that notice plays within our provisionally proposed scheme by the importance of clarity, by the changed context of the requirement, and by the possibility that in some cases a void marriage may be preferable to the alternative of one that is not recognised at all.

10.60 First, giving notice would have an even more important role to play within our provisionally proposed scheme than it does within the current law. Having robust preliminaries ensures that the state's interest in marriage is protected. At the same time, it enables other elements of the process of getting married to be liberalised, allowing couples greater choice in where and how they can marry and therefore greater scope to make the process meaningful for them. A provision that makes giving notice essential to the validity of the marriage underlines the importance that we attach to both of these elements.

10.61 Second, making a marriage automatically void where no notice was given provides greater clarity, reducing the need for litigation about the couple's subjective state of mind. At present, a couple who go to the register office but are unable to give notice will find that their subsequent marriage is void, while a couple who never even check what they need to do as a matter of law may find that their marriage is valid.[66]

10.62 Third, the context has changed in terms of what couples are expected to do. In earlier decades only one member of the couple had to give notice. Making it clear that a

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66 Contrast the outcome in *Gereis v Yagoub* [1997] 1 FLR 854 with that in *MA v JA* [2012] EWHC 2219 (Fam), [2013] Fam 51. Even if the church in the former case had been registered for weddings, the marriage of the couple would still have been void on account of their failure to give notice after being told that it was necessary.

marriage would only be void if *both* of them knew that notice had not been given was an important part of protecting the one who was not involved in making arrangements for the marriage. Otherwise it would have been all too easy for the other to pretend that notice had been given and later rely on the fact that it had not been given to invalidate the marriage.[67] Today, of course, the requirement to give notice applies to both parties,[68] so the risk of one party being duped by the other claiming that everything has been done has gone. In addition, information about how to get married is readily available and couples can be expected to check what formalities are required.

10.63 Fourth, making the marriage void will offer more protection than the current law if the alternative is a non-qualifying ceremony. Our proposed approach would ensure that if a couple failed to give notice but consented to the marriage in the presence of an officiant[69] then their marriage would be void rather than non-qualifying.[70] This would go a long way towards addressing the key problem of religious-only marriages, where some individuals do not realise what is required and are left without any remedy at the end of a lengthy relationship.[71] If the marriage is void then the court would have the same power to make orders as it would on divorce.

10.64 If giving notice is to be essential to the validity of a marriage, then it is necessary to be clear about what this entails. Under the current law giving false information – for example as to name, age, father's details or address – does not invalidate the marriage, even where both are aware of the misstatement.[72] We are not proposing that that should change. First, the need to provide documentary evidence has reduced the scope for individuals to give false details, and far fewer people now lie about their age in order to marry. Second, those who do give false information already risk punishment for perjury.[73] Invalidating a marriage on the basis of false information given by one of the couple would be unfair to the other and would also undermine our principle of certainty. Third, if it turns out that the couple have gone through a ceremony when there was an impediment to the marriage, then the ceremony would be void anyway.

10.65 Under the current law, a marriage will be void if the couple marry without a certificate for marriage having been duly issued in respect of each of them.[74] The move to a single schedule will remove the need for separate certificates but questions may still

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67 The "knowingly and wilfully" requirement was first introduced in 1823, in the context of Anglican weddings, following a number of annulments based on false information given by just one of the couple: see R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009) ch 8.

68 With the current exception of marriages solemnized on the basis of a Registrar General's licence, and see paras 11.18 to 11.26 below for our provisional proposal that this exception should no longer apply.

69 Or a person whom one or both of the couple believed to be an officiant: see paras 10.72 to 10.77 below.

70 Ceremonies such as that in *Dukali v Lamrani* [2012] EWHC 1748 (Fam), [2012] 2 FLR 1099 would potentially be void rather than non-qualifying.

71 See further at para 10.171 and following below.

72 See eg *Re Rutter* [1907] 2 Ch 592; *Plummer v Plummer* [1917] P 163.

73 Perjury Act 1911, s 3.

74 Marriage Act 1949, s 49(b).

arise as to whether the schedule was "duly" issued. Due issue could be interpreted as requiring that the waiting period has expired and, where one of the couple is under 18, that no one has forbidden the issue of the certificate.[75]

10.66 However, our view is that if the schedule has been issued to the couple, then we think that it is reasonable for them to go ahead and marry. If it later transpires that the schedule was issued before the waiting period had expired, or after an objection has been made, this should not have any consequences for the validity of the marriage. Any consequences for the early issue of the schedule – or the fact that it is issued after an objection has been made – should fall on the person who issued it, not the couple.[76]

10.67 Under the current law, a marriage will also be void if the couple "knowingly and wilfully" marry on the authority of certificates which have expired.[77] Our view is similarly that a marriage should be void if the couple marry after the schedule has expired. Our provisional proposal is that a schedule should be valid for a year,[78] and this should be clear on the document. The couple should be responsible for ensuring that the wedding takes place within that period. The alternative would be to allow a schedule to be open-ended, but this would risk crucial factors changing between the checks that were carried out before the schedule was issued and the wedding taking place.[79]

10.68 The discussion above is premised on the assumption that there is a single set of preliminaries that apply to all weddings. If separate Anglican preliminaries are to be retained, should a marriage be automatically void if it is not preceded by banns or a licence?

10.69 When we spoke to representatives of the Church of England, they took the view that the subjective element helps to protect the parties when there are errors in the publication of banns of which they are unaware. We agree that there should be no risk of a marriage being invalid because of some error by third parties. However, this does not mean that a marriage should be valid where the couple have taken no steps for their banns to be called, or have not obtained a licence. We provisionally propose that a marriage would be void in such cases, but that the validity of the marriage would not be affected by mistakes in the calling of the banns or granting of a licence. Once the marriage document has been issued, the couple should be able to assume that everything has been done, and any errors in the calling of banns should not invalidate the marriage.

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75 There is no case law on this particular provision, but a superintendent registrar may face penalties for issuing a certificate if these conditions are not fulfilled: Marriage Act 1949, s 75(3)(a) and (c). In addition, where the person whose consent is required has forbidden the issue of a certificate, the notice of marriage is void: s 30.

76 Given that parental or other consent to the marriage of a person under 18 is now required to be in writing (see further Ch 2 n 19), this is only likely to arise where the person whose consent is required changes their mind.

77 Marriage Act 1949, s 49(d).

78 See further Ch 4.

79 For example, one of the couple might have lost capacity, or even married someone else.

10.70 However, one key difference between civil and Anglican preliminaries is that while both of the couple have to give notice, at present just one of the couple can instigate the calling of the banns or obtain a licence. This raises the possibility that one of the couple would be able to deceive the other into a void marriage by pretending that they had obtained the necessary authority for the wedding to go ahead. We think that this is a remote risk, since clergy should know not to go ahead without the necessary authority. We also note that in Chapter 4 we ask consultees, if Anglican preliminaries are retained, whether it should no longer be possible for one of the couple to obtain the authorisation for the wedding to go ahead unilaterally.

10.71 Similarly, we think that a marriage should be void if it is celebrated after the marriage document is no longer valid. The Church in Wales raised the issue of the duration of banns and noted that since certificates of banns are very clear about the period for which they are valid, couples are on notice regarding the importance of compliance. While these comments should be viewed in the context of the Church in Wales's general view that the law should take a generous view on validity and only invalidate marriages where the parties had "knowingly and wilfully" failed to comply, we think that they point more generally in favour of holding a marriage to be void if the couple marry outside the period of validity specified in the official documentation.

Officiant's lack of authorisation only to affect validity if known to both of the couple

10.72 We provisionally propose that, in order for the marriage to be valid, at least one of the couple must have believed that the person officiating at the ceremony was authorised to do so. If both knew that no officiant was present, or that the person purporting to be an officiant was not authorised to act, then the marriage would be void.[80]

10.73 In focussing on what was known to the couple, rather than whether as a matter of fact the person officiating was authorised to do so, we have been guided by the problems that arose in earlier centuries when a marriage was only valid if it was celebrated by an ordained Anglican clergyman. The fake priest deployed to bring about a marriage that would have no legal standing was a staple of Restoration plays and early 18th-century novels for good reason.[81] Unlike giving notice or consenting to the marriage, whether the person officiating has the authority to do so is not necessarily within the couple's knowledge. While many of the problems that arose then could be avoided if there is a list of officiants online, it is possible to imagine situations where the list is not up-to-date, or where one of the couple wrongly tells the other that their chosen officiant is on the list.

10.74 We note that in Jersey a marriage solemnized other than by an authorised celebrant would be void. We were told that, in practice, a marriage would not be solemnized by a celebrant who was not authorised, because at the preliminaries stage the couple would have to nominate a celebrant who had been authorised by the Office of the Superintendent Registrar. We would advocate similar checks being carried out as part of the preliminaries of our proposed scheme. Even so, given the possibility of innocent

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80 Assuming that this was the only defect in the marriage. We consider what the position would be if notice or consent had not been given at para 10.109 below.

81 R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009); G S Alleman, *Matrimonial Law and the Materials of Restoration Comedy* (1942).

mistakes, we think that there is still good reason not to invalidate the marriage where at least one of the couple believed the officiant to be authorised.

10.75 Nonetheless, as set out above, we think that the marriage should be void if the couple knowingly marry in the absence of an authorised officiant. This policy is intended to cover two separate situations.

10.76 The first is where no person is officiating at all. This would clarify the position under the current law. As noted above, it is uncertain whether the couple need to know that the presence of a particular person is necessary, or whether they simply need to know that they did not marry in the presence of a particular person.

10.77 The second is where the couple know that the person officiating at the wedding is not authorised to act. What we have in mind here is that the person is not authorised at all. We do not consider that a marriage should be invalid simply because it is officiated by an officiant other than the one named in the schedule.[82]

Lack of authorisation to officiate same-sex weddings only to affect validity if known to the couple

10.78 We provisionally propose that a lack of authorisation to officiate same-sex weddings should only invalidate a marriage if both of the couple were aware that the officiant was only authorised to conduct opposite-sex weddings.

10.79 Under our provisionally proposed scheme this is only of relevance to officiants nominated by religious groups.[83] Registration officers are authorised (and required) to conduct both opposite-sex and same-sex weddings. The same would apply to officiants nominated by non-religious belief organisations and to independent celebrants, should Government decide to include them. Anglican clergy cannot conduct same-sex weddings and a Church of England marriage between two persons of the same sex is automatically void.[84]

10.80 Under the current law, religious organisations are able to opt into conducting same-sex weddings. The consent of the relevant governing authority is required. [85] Such consent may be to same-sex weddings being conducted according to their religious usages (in the case of Jewish or Quaker weddings) or to a same-sex wedding being conducted in a specific place of worship that has been registered for weddings (in the case of other non-Anglican groups). A marriage is void if a same-sex couple knowingly and wilfully marry without consent having been given by the relevant governing body.[86]

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82 See further our discussion at paras 4.89 to 4.90 above of the circumstances in which we propose that a substitute officiant should be able to act.

83 See further Ch 5.

84 Marriage Act 1949, s 25(4).

85 See further Ch 9 for an explanation of who is the relevant governing authority for different types of weddings.

86 Marriage Act 1949, s 49A(1).

10.81 As we explain in Chapter 9, under our provisionally proposed scheme consent would relate to the officiant rather than the location or religious usages. Each governing authority would have to give written consent to same-sex marriage before the officiants nominated by them could conduct same-sex weddings. Since we envisage that each religious organisation should be able to determine its own governing structures,[87] exactly who or what will be identified as the governing authority for each religious group may well be different than under the current law. For most religious organisations, the governing authority is likely to be at a higher level of the organisation than under the current buildings-based model.

10.82 Given that different views may exist within religious organisations as to whether they should conduct same-sex weddings, those who have already opted in to conducting same-sex weddings in their place of worship may need to establish their own governing authority in order to be able to nominate officiants to conduct same-sex weddings under our provisionally proposed scheme. Any group that already has a place of worship that is registered for weddings should be able to satisfy the definition of a religious organisation and be able to nominate officiants in its own right.

10.83 Similarly, views within religious organisations may change over time. If a particular religious organisation had initially nominated officiants to conduct opposite-sex weddings only, and a sub-group within that organisation then decided that it wanted to conduct same-sex weddings as well, it would be open to that group to establish itself as a separate group with its own governing authority. In this case it would need to nominate its officiants afresh, rather than relying on the fact that they had been previously nominated to conduct opposite-sex weddings.

10.84 However, we envisage that most same-sex couples would likely be unaware of such reorganisations. In this case, as long as one or both believed the person officiating was authorised to officiate same-sex weddings, a lack of such authorisation would not invalidate the marriage. Again, this reflects the position under the current law, adapted to reflect the focus on the officiant rather than the place where the wedding is celebrated.

The requirement of consent

10.85 It is fundamental that a marriage should only be valid if both of the couple have expressed their consent. We explore the question of what is meant by consent in Chapter 6. Here we turn to the question of what the status of a marriage should be in the absence of consent, which will depend on whether there was an apparent expression of consent or no expression of consent at all.

10.86 As we set out in Chapter 6, we think that couples should be able to express their consent in whatever way is meaningful to them. We are therefore not proposing that consent would need to be given in a specific form, or that couples should have to formally express their consent to be legally married. In the vast majority of cases the fact that the couple have given notice, and expressed their consent to marry in the presence of an officiant will be sufficient evidence of their intention to be legally married.

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87 See further Ch 5.

10.87 However, we think that the law should also respect active dissent. For example, one of the couple may make their reluctance clear throughout the ceremony and refuse to do or say anything indicating consent. In such a case an officiant should of course stop the ceremony: it would be a breach of duty for them to continue if one of the couple was clearly not consenting to it. But if the ceremony did continue, our view is that no marriage would have been created, and that it would be appropriately classified as a non-qualifying ceremony, regardless of whether notice had been given or an officiant was present. We think this would be an important additional protection against forced marriage.

10.88 As we note in Chapter 6 it would remain open to either of the couple to prove that that they made it clear that they were not expressing consent to be legally married, and anything they said was not understood as such by the other party, officiant and witnesses. A clear indication that the ceremony is not intended to have legal effect – and which was understood by those present in those terms – should be as effective as a statement that the person is not consenting to be married, and the ceremony should similarly be classified as non-qualifying.

10.89 A number of our stakeholders told us that some couples might want to make a statement of their commitment to each other without expressing their consent to be legally married. Humanists UK has cautiously estimated that around 20% of couples who have a Humanist ceremony may not have a legally binding marriage ceremony as well. The Pagan Federation, in its 13th programme consultation response, noted that some couples will not necessarily want a legal ceremony, or to have the "terms of such a relationship … determined by the civil law". The Board of Deputies similarly told us that some Jewish couples currently opt for religious-only weddings.

10.90 The Muslim Council of Britain also told us that Muslim women might not want to express consent to a legally binding marriage where they had built up assets through work, inheritance, or financial settlement on divorce, and wanted to protect those assets in the event of any future separation. They also suggested that couples might not wish to express consent to a legally binding marriage where both wished to test their relationship first[88] or where both agreed to a polygamous union.[89]

10.91 As we note above, we are only envisaging that a non-qualifying ceremony would arise in cases of active dissent. If the person who refused to say or do anything expressive of consent or who declared that they were not consenting to a ceremony that had legal effect, subsequently signed the schedule then this would constitute an expression of consent to be legally married.[90] It would still be possible to argue that this consent had been vitiated by duress, mistake, impaired mental capacity or similar

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88 For some religiously observant couples a religious ceremony may be crucial in enabling them to cohabit, or even to have any kind of sexual relationship.

89 It should be noted that individuals will only face prosecution for bigamy where they go through a ceremony of marriage that could have created a valid marriage but for the fact that they are already validly married. If one of the couple goes through a religious-only ceremony, a later formal marriage with a third party will not be bigamous. Nor will a religious-only ceremony entered into with a third party after a formal marriage be bigamous.

90 As we provisionally propose in Ch 6, the schedule would contain a declaration in both the past tense and the present tense.

other factors. As at present, such factors would render the marriage voidable rather than non-qualifying.[91]

The signing of the schedule or the marriage document by the couple

10.92 Under our provisionally proposed scheme, if the couple have not given notice, or (if Anglican preliminaries are retained) have not taken steps to have their banns called or to obtain a licence, there will be no schedule or marriage document to be signed. In such cases our view is that the marriage will be void. But assuming that they have complied with the required preliminaries, that the relevant documentation has been issued, and consent has been given in the presence of a person who at least one of the couple believes to be an officiant, we do not think that the marriage should be invalidated by the fact that the schedule or marriage document is not signed.

10.93 We note that stakeholders expressed different views on whether signing a formal document should be essential to the validity of a marriage. The Marriage Foundation argued that the signing of a written declaration should be the part that is essential to validity. The Church of England, by contrast, emphasised that signing a marriage document or schedule should not be essential to validity.

10.94 As we set out in Chapter 6, our view is that a marriage is formed at the time that the parties exchange consent to marry. This is also the approach under the current law. Signing the marriage register has never been essential to the validity of a marriage, and we do not think that it should be.

10.95 Accordingly, we provisionally propose that a failure to sign the schedule or marriage document should not by itself affect the validity of the marriage, as long as there is other evidence that the parties expressed their consent to be married.[92]

10.96 Nonetheless, in the vast majority of cases we expect that the documentation would be signed as a matter of course. Signing the register has been part of the process of getting married for centuries and couples have complied with this requirement even though it does not affect the validity of their marriage. It has acquired considerable cultural significance, featuring in both artistic depictions and most photos of weddings. In any case, as we propose in Chapter 5, our scheme envisages that an officiant would have a legal responsibility to ensure that the relevant documentation was signed, which we think will be sufficient to ensure that this is done.[93]

10.97 There might, however, be occasional cases in which something happened to prevent the couple from signing it. For example, a fire alarm or similar emergency at the venue might result in the document being destroyed or lost, or one of the couple might be taken ill and the signing of the document might be overlooked. In such cases it would be a simple matter for the couple to request a replacement document, and to sign this with the officiant and two witnesses, if they wanted to secure legal proof of their

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91 Matrimonial Causes Act 1973, s 12.

92 If one of both of them had not expressed consent, then the ceremony would be non-qualifying as set out at paras 10.85 to 10.91 above.

93 See para 5.52 above. A failure to do so could be taken into account in determining whether that officiant should continue to be authorised.

wedding. The date of their marriage would be that on which they had expressed consent to marry.

10.98 Even more rarely, there might be cases in which one person refused to sign the document at all, or died before they were able to do so. The only case of which we are aware that deals with this specific issue is an Australian case from 1953,[94] which underlines the fact that this does not happen often. Such cases would continue to be decided according to whether there had been a prior expression of consent, with the onus being on the person seeking to establish the marriage.

Clarifying which factors do not affect the validity of the marriage

10.99 It is implicit in the discussion above that there are a number of factors that will not affect the validity of a marriage. The law governing weddings has always tried to strike a balance between the convenience and clarity of requiring weddings to take a particular form and the danger of invalidating marriages for minor failures to comply. The mere fact that a particular requirement is set out in statute has generally been sufficient to ensure that most people comply with it, even if the statute explicitly states that a failure to comply will not invalidate the marriage. And in the light of our principle that a reformed law should be clear, we think that it is important for the legislation to clarify which factors do not affect the validity of a marriage, rather than leaving this to be inferred.

10.100 Witnesses clearly play an important role in ensuring that a wedding is a public affair and potentially acting as a safeguard against forced marriages. Our provisional proposal that the officiant should have a duty to ensure that any requirements of the ceremony are met means that they would be expected to ensure that the wedding takes place in the presence of two witnesses who then sign the schedule. It would be a breach of that duty for the officiant to proceed in the absence of witnesses.[95]

10.101 However, the absence of witnesses has never been a factor rendering the marriage void, and we do not wish to multiply the circumstances in which a marriage might be invalidated for technical reasons. We therefore provisionally propose that if the wedding does go ahead without two witnesses,[96] this should not render the marriage void, and that this should be made clear in the legislation.

10.102 As we have discussed in Chapter 6, our view is that it should not be necessary for the wedding to be conducted in a particular form. The crucial issue is whether a couple consented, not how that consent was manifested. While our scheme envisages that every nominating organisation would either have a belief about marriage or a specific wedding service, with the option of lodging that service with the General Register Office, our view is that it should not be legally necessary for a couple to adhere to that particular service. Ever since weddings were first permitted in registered places of worship in 1837, the law has allowed considerable freedom as to the religious rites that can accompany such weddings and we think that this freedom

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94 *Quick v Quick* [1953] VR 224.

95 See further paras 5.52 and 6.115 and following above.

96 We have in mind here the case where the person purporting to officiate is not in fact authorised to do so and so not subject to the duties that apply to officiants.

should continue. It would of course be open to any religious or non-religious belief organisation to impose its own requirements as a precondition for the wedding to take place under its auspices, but these would not be a precondition for legal validity.

10.103 We also take the view that this freedom should apply equally to Anglican, Jewish and Quaker weddings. We provisionally propose in Chapter 6 that there should be no special rules about the form of such weddings, eliminating references to the "rites" or "usages" of any particular group in the legislation. It would still of course be open to these religious groups to require a ceremony to be performed in a particular form, just as it would be open to any other religious or non-religious belief organisation. The key point is that there should be no risk of a marriage being invalidated on account of a failure to comply with specific rites or usages.

10.104 Given that Quaker weddings would not have special treatment under our proposed scheme,[97] there would no longer be any need for those planning to marry according to Quaker usages to make any declaration as to their relationship with the Society of Friends. This would not have any consequences for the practices of the Society. As the Society pointed out, the restriction originated with the state rather than in any request from the Society. It took the view that as long as the Society could decide who could have a wedding under its auspices, a specific legal restriction was not needed.

Clarifying the circumstances in which a failure to comply with formalities results in a non-qualifying ceremony

10.105 We also think that it is important to clarify the circumstances in which the law will hold that there is a non-qualifying ceremony rather than leaving this to be worked out on a case-by-case basis.

10.106 We note that in *Attorney General v Akhter* the Court of Appeal decided not to set out when a marriage would be regarded as falling within the Marriage Act 1949, expressing its doubts as to whether it would be

> possible or, indeed, sensible, to seek to delineate when the cumulative effect of the failure to comply with the required formalities will result in a non-qualifying ceremony and when it will result in a void marriage.[98]

While we would agree as to the difficulty of determining the effect of cumulative failures under the current law, we think that the much simpler structure of our provisionally proposed scheme makes it easier to do so.

10.107 We also think that it is desirable to have clarity on this point. Of course, most couples who want a legally recognised marriage will comply with everything that is required of them. But greater clarity would be helpful in reducing the scope for accidental non-compliance. The Muslim Women's Network told us how religious-only marriages often arise because of a lack of awareness of the law and the rights that flow from legal marriage. The campaign group Register our Marriage similarly emphasised the lack of understanding of the current requirements.

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97 See paras 6.31 to 6.34 and 6.69 above.

98 [2020] EWCA Civ 122, [2020] 2 WLR 1183 at [66].

10.108 In seeking to clarify the circumstances in which there is a non-qualifying ceremony, our starting position is that expressed in *Attorney General v Akhter*: there is a threshold that needs to be crossed before a ceremony has any legal recognition.

10.109 We therefore provisionally propose that a ceremony should be non-qualifying where the couple have not given notice *and* they either know that the officiant is not authorised or there is no officiant at all.[99] In such cases there would be no schedule to be signed either, since it could only be issued where the couple had given notice.[100]

10.110 We acknowledge that in some cases this will result in a ceremony being classified as non-qualifying even though the couple mistakenly thought that they were going through a ceremony that had legal consequences. For example, a nikah that was conducted without prior notice having been given and either or both of the couple believing that an officiant was present, would be a non-qualifying ceremony. But given that under our provisionally proposed scheme all that is needed for the marriage to be classified as void is for one of the couple to believe that there was an officiant present, we think that the risk of a non-qualifying ceremony arising by accident is considerably reduced.[101]

10.111 We also note that some commentators have argued that the law should give greater weight to the couple's intentions to be married, regardless of whether they have complied with the necessary formalities. The problem is that intentions by themselves are rarely clear cut. If a couple have gone through a ceremony without complying with any of the required formalities, then this may be because both were mistaken, or because one or both did not intend that ceremony to have legal effect. In any case, proving what was intended may be difficult. By contrast, if a couple have complied with the formalities laid down by the law, then – cases of vitiated consent apart – this is an indication that they both intended their ceremony to have legal effect.

10.112 Short of the law attaching legal consequences to any exchange of consent,[102] there will always be some disjuncture between what is recognised as a marriage for the purposes of the law, and what individuals believe to be a marriage. Delegating the decision to religious groups would not solve this problem, since such groups may have their own views as to what constitutes a marriage and refuse to recognise a ceremony that does not comply with certain rites. The particular issues that arise in relation to religious-only marriages are considered further at paragraph 10.171 and following below.

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99 Either of these individual failures would render the marriage void: see paras 10.58 to 10.77 above.

100 If a schedule had been issued but was no longer valid, then we think that the marriage should be void rather than a non-qualifying ceremony, on the basis that this is a less serious failure than not giving notice at all.

101 For a person to show that they had a genuine belief that an officiant was present, they would need to show that they believed that the person purporting to officiate was legally authorised to do so and that the wedding would be legally recognised. They would not need to demonstrate specific knowledge of the concept of an officiant.

102 The issue here is not whether a ceremony should be valid, but whether it should be possible for a court to make a decree of nullity, with the concomitant power to make financial orders.

Clarifying the circumstances in which a marriage will be presumed to be valid

10.113 We provisionally propose that any future scheme should make it clear that the presumption in favour of a known ceremony of marriage only arises where that ceremony takes a certain form, but does not depend on the couple having lived together for any minimum period of time.

10.114 The comments of the Court of Appeal in *Attorney General v Akhter* make it clear that the passage of time does not change the status of a ceremony. Nonetheless, given the confusion that has arisen in this area, we think that it would be useful to make it clear that the presumption in favour of the validity of a known ceremony does not rest on that couple living together for any minimum period after the ceremony.

10.115 The more difficult question is what ceremonies will raise the presumption. As we note above, if a couple go through a ceremony in a form contemplated by the 1949 Act – for example in a place of worship or register office – then it is presumed that they have done all that is necessary for a valid marriage, and the onus lies on the person challenging it to prove otherwise. Given that our provisionally proposed scheme focusses on the officiant rather than the location, it might be less easy to discern whether the ceremony was in a form contemplated by the law.

10.116 In thinking about what should raise the presumption, we bear in mind that the presumption that a marriage is valid should only arise where this is the most likely inference to draw from the evidence. The fact that a couple have complied with certain requirements may justify an inference that they have complied with other requirements, but this will not necessarily be true of all elements of our scheme.

10.117 The easiest case is where the couple have signed the schedule. This would be evidence that they had given notice (as otherwise no schedule would have been issued). It would also contain a declaration of consent. On this basis it would also be reasonable to presume that the schedule was valid and that the ceremony had been conducted in the presence of a person who at least one of the couple believed to be an officiant (who should also have signed the schedule). The onus would be on the person challenging the marriage to prove the contrary.

10.118 The more difficult case is where no schedule has been signed. Given that our scheme allows for the possibility of non-legally binding ceremonies continuing to take place, the mere fact of a ceremony should not raise a presumption that a valid marriage has taken place, regardless of whether anyone purported to officiate at that ceremony.

10.119 Under our provisionally proposed scheme it is not the presence of a third person but whether at least one of the couple thought that person was an officiant that is crucial. Where a couple had given notice, it would be reasonable to assume that at least one of them believed the officiant to be authorised. Where they had not, such a belief would be less credible.

10.120 We therefore provisionally propose that a ceremony that is preceded by the couple giving notice and which involves a person acting as officiant, should be presumed to be valid. In other words, it would be presumed that both believed that person to be an

officiant and the onus would be on the person challenging the marriage to show that neither in fact believed this.

10.121 By contrast, if the couple have not given notice, then no presumption would arise from going through a ceremony in the presence of a person acting as an officiant. In such cases the onus would be on the person seeking to establish that there is at least a void marriage to show that one or both of them believed the officiant to be authorised.

Abolishing the presumption from cohabitation and reputation

10.122 In our view, the presumption from cohabitation and reputation was the product of historical circumstances that no longer prevail. In the 18th century, the presumption that a couple who had lived together and were reputed to be married had in fact gone through a valid ceremony of marriage was both necessary and appropriate. It was necessary because other evidence of a ceremony might not be forthcoming. Record-keeping was localised and often patchy. The greater risk of early and sudden death meant that there might be no-one still alive who had been present at the wedding who could come forward to prove it. Such challenges were even greater where descendants of the couple were trying to prove their legitimacy long after the wedding had taken place. And it was appropriate because only a tiny number of couples lived together without being married, and even fewer did so without their marital status being questioned.[103] The fact that a couple had lived together and that their family, friends and the wider community believed they were married was generally reliable evidence that they had in fact gone through a ceremony of marriage.[104]

10.123 Today, by contrast, the circumstances in which it will be appropriate to draw inferences from cohabitation and reputation are much reduced. With 3.4 million couples cohabiting in England and Wales,[105] it can no longer be presumed that a couple who are living together have gone through a ceremony of marriage. Nor, outside a very few communities that view cohabitation outside marriage as sinful, can any weight be attached to the way in which such a couple are treated by others. The only cases in which it would be appropriate to draw inferences from cohabitation and reputation are where the couple in question would not have lived together had they not been married, and their family and friends had some reason to believe that they had gone through a ceremony.[106]

10.124 However, the circumstances in which it will be *necessary* to draw inferences from cohabitation and reputation are also much reduced. It is difficult to envisage circumstances in which the cohabitation and reputation of the parties will be the only evidence available to the court today. If either of the couple are still alive, they can be expected to give evidence of where and when they married. Even if they are deceased, as long as the wedding took place in England and Wales after September 1837, a record of it should be available from the General Register Office. Only if the

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103 R Probert, *The Changing Legal Regulation of Cohabitation: From Fornicators to Family* (2012).

104 R Probert, "The Presumptions in Favour of Marriage" (2018) 77 *Cambridge Law Journal* 375.

105 Office for National Statistics, *Families and Households: 2018* (15 November 2019).

106 R Probert, "The Presumptions in Favour of Marriage" (2018) 77 *Cambridge Law Journal* 375.

wedding took place in a jurisdiction without reliable registration, the couple and all those present at the ceremony are now deceased, and there is no other external evidence of the ceremony such as photos or videos, might inferences need to be drawn from the fact that the couple lived together and were always thought to be married.[107] In our initial view, we do not think that it is necessary to retain a specific presumption to deal with this remote contingency.

10.125 We therefore provisionally propose that the presumption based on cohabitation and reputation should be formally abolished. This would not preclude evidence of cohabitation and reputation being taken into account by the court in deciding on the balance of probability whether a valid ceremony of marriage had taken place, but such evidence would no longer raise a presumption that had to be rebutted.

10.126 We should emphasise that abolishing this presumption has no consequences for cohabitants. The presumption was never designed to provide a solution for couples who were known to be cohabiting. The last reported case in which a marriage was presumed to have taken place in England and Wales on the basis of cohabitation and reputation alone was in 1961, and involved a couple who had lived together in the first decade of the 20th century.[108]

Consultation

10.127 We summarise what factors we provisionally propose should affect the validity of a marriage, and how they interact with one another, in the table below. We have also created a flowchart, at Appendix 6, which also illustrates validity under our proposals.

Notice given	Consent given	Authorised officiant present	Schedule signed	Status
Yes	Yes	Yes	Yes	Valid
Yes	Yes	Yes	No	Valid
Yes	Yes	One or both not aware officiant is not authorised	Yes	Valid
Yes	Yes	One or both not aware officiant is not authorised	No	Valid
Yes	Yes	No officiant or both know officiant is not authorised	Yes	Void
Yes	Yes	No officiant or both know officiant is not authorised	No	Void
Yes	Vitiated by duress etc	Yes	Yes	Voidable

[107] R Probert, "The Presumptions in Favour of Marriage" (2018) 77 *Cambridge Law Journal* 375.

[108] *Re Taylor (deceased)* [1961] 1 WLR 9. In this case the couple had lived together from 1908 to 1913, had said that they had got married, and were accepted by the small community in which they lived as a married couple. When the woman died in 1913 she was described as the man's wife.

Notice given	Consent given	Authorised officiant present	Schedule signed	Status
Yes	No	Yes	No	Non-qualifying
Yes	Vitiated by duress etc	One or both not aware officiant is not authorised	Yes	Voidable
Yes	No	One or both not aware officiant is not authorised	No	Non-qualifying
Yes	Vitiated by duress etc	No officiant or both know officiant is not authorised	Yes	Void
Yes	No	No officiant or both know officiant is not authorised	No	Non-qualifying
No	Yes	Yes	n/a	Void
No	Yes	One or both not aware officiant is not authorised	n/a	Void
No	Yes	No officiant or both know officiant is not authorised	n/a	Non-qualifying
No	No	Yes	n/a	Non-qualifying
No	No	One or both not aware officiant is not authorised	n/a	Non-qualifying
No	No	No officiant or both know officiant is not authorised	n/a	Non-qualifying

Consultation Question 57.

10.128 We provisionally propose that any one of the following factors on its own should render a marriage void:

(1) the failure of both or either party to give notice of the intended marriage to the registration service, or (if Anglican preliminaries are retained) the relevant Church authority;

(2) the wedding taking place after authority to marry had lapsed;

(3) the knowledge of both parties that the ceremony was not officiated by an authorised officiant; or

(4) the knowledge of both parties that the necessary opt into same-sex marriage had not been given by the relevant religious governing authority, in the case of same-sex marriages.

Do consultees agree?

10.129 We provisionally propose that the following factors should not render a marriage void:

(1) mistakes in the issuance of the schedule or (if Anglican preliminaries are retained) marriage document;

(2) the absence of witnesses; and

(3) a failure to sign the schedule or (if Anglican preliminaries are retained) marriage document, or to register the marriage.

Do consultees agree?

Consultation Question 58.

10.130 We provisionally propose that the following factors should result in a non-qualifying ceremony:

(1) both:

(a) failure of one or both parties to the marriage to give notice of the intended marriage, and

(b) either:

(i) the knowledge of both parties that the ceremony was not officiated by an authorised officiant, or

(ii) in the case of same-sex marriages the knowledge of both parties that the necessary opt into same-sex marriage had not been given by the relevant religious governing authority; or

(2) failure of one or both parties to express consent to the marriage.[109]

Do consultees agree?

[109] Noting that if the consent was not valid due to duress, mistake or incapacity, the marriage would be voidable: Matrimonial Causes Act 1973, s 12.

Consultation Question 59.

10.131 We provisionally propose that a presumption in favour of the validity of a marriage should arise where:

(1) the couple have signed the schedule or (if Anglican preliminaries are retained) marriage document, or

(2) the couple have given notice and gone through a ceremony with a person acting as officiant,

but should not require the couple to have cohabited for any period after its celebration.

Do consultees agree?

10.132 We provisionally propose that the presumption that a couple is married if they have cohabited for a long period of time and are believed to be married by friends and family should be abolished.

Do consultees agree?

THE TIME-LIMIT FOR PETITIONING FOR NULLITY

10.133 A marriage that is void because the couple have failed to comply with the required formalities can be challenged at any time. A marriage that is voidable on the basis of duress, mistake, or lack of mental capacity can only be challenged within the first three years of the marriage.[110] The only exception is where the person applying for the decree can establish that they have suffered from a mental disorder during the three years following the marriage and that it would be just to grant leave for proceedings to be brought after the three years have elapsed.[111]

10.134 This time limit is of relatively recent origin. It was introduced by the Nullity of Marriage Act 1971, on the recommendation of the Law Commission and with the support of a substantial majority of those who had responded to its earlier consultation paper.[112] The view of the Commission was that the case for imposing a time-limit on petitions for nullity

> Is strongest when the absence of consent is due to mistake or duress. A party to such a marriage should decide as soon as possible whether or avoid it or to accept it

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110 Matrimonial Causes Act 1973, s 13.

111 Matrimonial Causes Act 1973, s 13(4).

112 Family Law: Report on Nullity of Marriage (1970), Law Com No 33 (1970) para 85. Previously a one-year time limit had applied to proceedings for nullity on the basis of pregnancy by a third party, venereal disease or mental disorder.

as a valid marriage, and three years is more than sufficient in which to make such a decision.

We acknowledged that the time-limit might be more problematic in cases where consent had not been given because one of the couple lacked mental capacity, but thought that the potential for proceedings to be instigated on behalf of that person removed the difficulty. Provision was subsequently made for the time limit to be extended in such cases.[113]

10.135 However, in a number of cases claims of duress have been raised outside the three-year period. These cases have tended to follow a similar pattern: a ceremony entered into overseas, when the non-consenting party was still a teenager, and where the pressure to marry came from the family. It is understandable that the courts have been keen to find a solution. They have done so by simply side-stepping the statutory time limit and granting a declaration that there had never been a marriage capable of recognition – in other words, that it was a non-qualifying ceremony.[114]

Issues

10.136 The time-limit proposed by the Law Commission in 1970 reflected the concerns of the time. Cases involving forced marriages tended to involve threats that were either removed by the marriage or specific to the ceremony. More recent case law demonstrates that in many cases the pressure that forces someone to go through a ceremony does not simply disappear. Those who have reluctantly agreed to go through a ceremony on the basis that to do otherwise would bring dishonour to their family may well be subject to similar pressure to remain within the marriage, however unwanted.[115] In some cases the person who has been forced into the marriage may have been physically confined with no realistic prospect of bringing proceedings for nullity. The idea that three years "is more than sufficient" for an individual to decide whether to remain in a marriage that they entered into as a result of coercion is therefore now at odds with modern understandings of forced marriage.

10.137 The facts of *B v I*[116] graphically illustrate the challenges that an individual may face in these circumstances. The plaintiff had been forced to go through a ceremony at the age of 16, and for two years thereafter was effectively confined to her home. That she was eventually able to leave was only because she had the assistance of someone she had contacted online. As Mrs Justice Baron described:

> By so doing she has brought 'dishonour' on her family. Accordingly, she has had to assume a secret identity. She is now living at a secret address, unknown and separated from her birth family. I am clear that her actions will be regarded as having brought shame upon the family, with the result that in accordance with the

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113 Matrimonial Causes Act 1973, s 13(4).

114 See *SH v NB* [2009] EWHC 3274 (Fam), [2010] 1 FLR 1927; *Re P (Forced Marriage)* [2010] EWHC 3467 (Fam), [2011] 1 FLR 2060; *B v I* [2010] 1 FLR 1721.

115 See the discussion of this in *Re K (Forced Marriage: Passport Order)* [2020] EWCA Civ 190, [2020] WLR(D) 107 at [24].

116 [2010] 1 FLR 1721.

prevailing 'code of honour', she will risk serious injury and, potentially, death (if the family considered that that degree of punishment were merited).[117]

It was entirely understandable that this young woman was unable to bring herself to start formal proceedings for some time after making her escape. In the event it was four years after the marriage when she finally took action.

10.138 The solution devised by the court in that case – that of making a declaration that the marriage never existed – provided a means of freeing this young woman from a marriage to which she had not consented. But it leads to the conceptual absurdity that a marriage that is voidable within the first three years of its existence is treated as if it were a non-qualifying ceremony thereafter.[118]

10.139 Moreover, there is an important practical difference between granting a decree of nullity and granting a declaration that a marriage never existed. When granting a decree of nullity the court has the same powers to make financial orders as it does on divorce. When granting a declaration that no marriage ever existed it has no such power. In some cases the absence of any power to make financial orders will not matter, but in others it may well cause hardship.[119]

Options for reform

10.140 One solution might be simply to allow the court to extend the time limit. As we note above, it is possible to apply for leave to apply after the three years have elapsed in cases of mental illness. However, we are reluctant to place any greater obstacles than already exist in the way of a person who has been forced into a marriage.

10.141 A second, and, we think, preferable option would be to abolish any time limit where the marriage is voidable on account of lack of consent. While this might seem to create uncertainty, we note that there are some grounds for nullity to which no time limit applies. A marriage can be annulled at any time on the basis that the marriage has not been consummated owing to the inability or wilful refusal of one of the spouses. In any case it will be for the court to determine whether the ground of lack of consent is made out.

10.142 It should be borne in mind that a decree of nullity may still be barred if the person seeking such a decree has led the other to believe that they would not do so, and the court is satisfied that it would be unjust to the other person to grant the decree.[120] We are not proposing any change to this rule, but its existence means that the change we are proposing would only affect those cases where the coerced individual has never accepted the marriage. We do not think that they should be deprived of a remedy by the mere lapse of time.

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117 [2010] 1 FLR 1721 at [10].

118 R Probert, "The evolving concept of 'non-marriage'" [2013] *Child and Family Law Quarterly* 314.

119 Above, p 331.

120 Matrimonial Causes Act 1973, s 13(1). For this bar to apply, the petitioner must have been aware that they had the option of seeking a decree of nullity.

Consultation Question 60.

10.143 We provisionally propose that the three-year time limit on petitioning for nullity on the basis of lack of consent should be abolished.

Do consultees agree?

OFFENCES

10.144 The Marriage Act 1949 attaches criminal penalties to certain actions or failures to act, where the action or failure to act is "knowing and wilful".[121]

(1) Preliminaries: it is an offence under the current law for a superintendent registrar to issue a certificate either before the expiry of the waiting period, or after the expiration of the certificate's validity, or for any person to solemnize a marriage on the basis of such a certificate. It is also an offence for a superintendent registrar to issue a certificate when it has been forbidden by a person who is required to consent, but a person who solemnizes a marriage on the basis of such a certificate does not commit an offence. Nor is it an offence for a person to solemnize a marriage without any certificate at all, although it is an offence to solemnize a marriage according to Anglican rites without proper ecclesiastical notice or authority.

(2) Person: it is an offence for any person to solemnize a marriage according to Anglican rites falsely pretending to be in Holy Orders, but it is not an offence to pretend to be an authorised person or superintendent registrar. It is an offence to solemnize a housebound marriage, or a marriage in a register office or on approved premises, in the absence of a registrar. It is also an offence to do so in a registered place of worship, unless an authorised person is present.

(3) Place: it is an offence for any person to solemnize a marriage in any place other than a church or other building where Anglican weddings can take place[122] or that specified in the notice and certificates.[123] It is also an offence to solemnize a marriage purporting to be on approved premises if the venue has not in fact been approved. However, it is not an offence to solemnize a marriage in a place of worship that has not been registered for weddings.

10.145 There are also a number of offences relating specifically to registration that do not depend on whether the action or failure to act was "knowing and wilful".[124]

(1) It is an offence for the person who is required to register the marriage to refuse or fail to do so, or to carelessly lose or damage a marriage register book. It is

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121 Marriage Act 1949, s 75.

122 Unless the marriage is by special licence.

123 Unless the marriage is according to Quaker or Jewish usages.

124 Marriage Act 1949, s 76.

also an offence for the person who is required to make and deliver copies of entries made in the marriage register book to refuse or fail to do so (or to refuse or fail to deliver a certificate of no entries).

(2) It is an offence for a registrar to knowingly and wilfully register a marriage that is void under part III of the Act.

10.146 In addition, a superintendent registrar who knowingly and wilfully solemnizes a marriage that is void under part III of the Act (or permits such a marriage to be solemnized) is guilty of an offence. Authorised persons are subject to the most wide-ranging obligations, as it is an offence for them to refuse or fails to comply with any duties required by either the Act[125] or regulations made under the Act.[126]

Issues

10.147 As will be apparent from the discussion above, as well as being complex, the current law is inconsistent in the way that it applies to different types of wedding.

10.148 If the differences simply reflected the different elements that are required for different types of wedding, then this would be legitimate. However, there are some additional inconsistencies. For example, a marriage will be void if it is solemnized in any place other than that specified in the notice.[127] It is correspondingly an offence for any person to solemnize a marriage in any place other than that specified in the notice and certificates.[128] However, while Jewish and Quaker weddings are subject to the first of these provisions, they are explicitly exempted from the latter.

10.149 The current law is also inconsistent in that different sentences are attached to very similar offences. For example, the maximum penalty for knowingly and wilfully solemnizing an Anglican marriage in a place other than a church or building in which banns may be called is imprisonment for 14 years. The maximum penalty for knowingly and wilfully solemnizing a marriage in a place other than that specified in the notice is imprisonment for five years. The harsher penalties that apply to Anglican weddings are a legacy from the 18th century,[129] but while this explains the differences it cannot justify them.

10.150 A third level of inconsistency lies in the way that the scope of liability differs for different persons. The scope of liability for authorised persons is the widest, as they are required to comply with the whole Act as well as detailed regulations. This may be

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125 Duties under the Act include being present at the solemnization of a marriage in a registered building, registering such marriages, and keeping custody of the register books.

126 Duties under the Marriage (Authorised Persons) Regulations 1952 (SI 1952 No 1869) are prescribed in detail, including in relation to how to keep custody of register books, to use "ink of durable quality" in the books, to enter certain details on registration, and the correction of errors.

127 Marriage Act 1949, s 49(e).

128 Marriage Act 1949, s 76(2)(a).

129 Clergy who failed to comply with the requirements of the Clandestine Marriages Act 1753 risked transportation, and the death penalty applied to those who forged marriage registers. These harsh penalties were intended to stamp out the disreputable practices of Fleet parsons: see R Probert, *Marriage Law and Practice in the Long Eighteenth Century* (2009) chs 5 and 6.

because they are not subject to other legal sanctions. Superintendent registrars and registrars may be subject to other disciplinary sanctions as part of their employment and Anglican clergy may face ecclesiastical sanctions for failing to comply with canonical requirements. The scope of liability for Jewish secretaries and Quaker registering officers would seem to be the narrowest, as they only risk committing offences in relation to registration.

10.151 There are also some omissions that might seem surprising. There is, for example, no offence of conducting a marriage that is altogether outside the Marriage Act 1949, or (except for Anglican marriages) without notice having been given. The actions and failures to act broadly reflect the circumstances in which a marriage may be void, not when a ceremony may be classified as non-qualifying.[130]

10.152 Nor is there any specific offence of misleading the parties as to the effect of the ceremony, although this is implicit in relation to Anglican weddings in the offence of falsely pretending to be in Holy Orders.

10.153 In practice, convictions have been rare. This arguably shows that the criminal law is a blunt tool in this area. Most failures are not intentional, and there may be more appropriate ways to ensure that the requirements of the law governing weddings are complied with, such as training and monitoring of officiants.

10.154 On this point, we have considered the Law Commission's previous work on criminal liability in the regulatory context.[131] In that project, we explained our view that the criminal law should not be the primary means of promoting regulatory objectives, but should be reserved for the most serious cases of non-compliance. In part, our conclusion was based on the observation that, in a regulatory context

> reliance on the criminal law as the main means of deterring and punishing unwanted behaviour may prove to be an expensive, uncertain and ineffective strategy.[132]

We provisionally proposed guidelines about the principles to be followed when considering the creation of criminal offences to support a regulatory strategy.

10.155 Relying on our provisional proposals, the Ministry of Justice produced the *Criminal Offences Gateway Guidance*, to be used to assess new criminal offences. The Guidance includes assessment of

(1) "whether enforcement mechanisms are needed at all";

(2) "what effective alternatives to criminal offences are available …, for example … withdrawal of permissions within a permitting regime (eg withdrawing licences), disciplinary sanctions, stand-alone civil sanctions …";

(3) "whether the behaviour is sufficiently serious to merit the stigma associated with a criminal conviction";

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130 *R v Bham* [1966] 1 QB 159.

131 Criminal Liability in Regulatory Contexts (2010) Law Commission Consultation Paper No 195.

132 Criminal Liability in Regulatory Contexts (2010) Law Commission Consultation Paper No 195, para 1.8.

(4) "whether the behaviour is already caught by the existing criminal law"; and

(5) in considering re-enacting or replicating existing offences "whether they continue to be justified and proportionate – this is an opportunity to consider the offences afresh".[133]

Options for reform

Rationalisation

10.156 A number of stakeholders expressed the view that the current offences should be rationalised. The Church in Wales favoured rationalisation, and the Church of England similarly noted that the discrepancies in the potential sentences made little sense in terms of modern sentencing provision. Humanists UK made a slightly different point in favour of rationalisation in emphasising that any offences applicable to authorised Humanist officiants should apply to all authorised officiants.

10.157 We agree that there is no reason to have different offences – and different sentences – applying to different types of officiant. In seeking to rationalise the existing offences, one option would simply be to adapt the existing offences to our proposed scheme. An alternative option would be to question whether certain actions – or failures – need to be criminalised at all, and we set out our provisional proposals on an alternative approach below.

No longer needed: removing redundant offences

10.158 Some existing offences would become redundant under our proposed scheme as they are premised on compliance with a specific requirement that is no longer needed. For example, the provision that any person who knowingly and wilfully solemnizes a marriage in a place other than a church or the place specified in the notice[134] would no longer be needed if, as we provisionally propose, there were no longer any legal requirement for a wedding to take place in a particular location.[135]

10.159 Similarly, all the offences relating to the registration of marriages and care of the register books would become redundant under a schedule system that placed the responsibility for returning the schedule on the couple themselves.

Effective alternatives: re-classifying offences as a failure of duty

10.160 As we discuss in Chapter 5, we are provisionally proposing that officiants would have the role of ensuring that a couple and their witnesses signed the schedule. Rather than making it an offence to proceed without a schedule, or to fail to ensure that the schedule was signed, we suggest that it should be regarded as a failure of duty that could potentially result in the withdrawal of the officiant's authorisation. We therefore do not think that a separate offence on this point is necessary.

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133 Ministry of Justice, *Criminal Offences Gateway Guidance* (08.11) p 3.

134 Marriage Act 1949, s 75(2)(a) to (aa).

135 If the Church of England and the Church in Wales wished to penalize clergy who officiated at weddings in places other than churches (without the authority of a special licence) then this could be a matter for their own internal discipline.

10.161 Similarly, we do not think that it should be an offence for a superintendent registrar to issue a schedule before the notice period has elapsed, or after its issue has been forbidden, or when the schedule would be void because of the lapse of time. We think that registration services should be responsible for dealing with mistakes and failures by their employees.

Sufficiently serious: focussing on actions that mislead the couple

10.162 As we explain in paragraph 10.5 above, given the separate work being carried out by Government it is not within the scope of our review to consider whether it should be an offence to conduct a wedding outside our proposed scheme. Our provisional proposals in relation to validity in any case reduce the likelihood of a person being duped into a wedding ceremony that has no legal consequence. As long as at least one of the couple believes that the person purporting to officiate is authorised to do so, the marriage would be void even if notice had not been given.

10.163 Nonetheless, as we suggested in our Scoping Paper, there might still be scope for a more targeted offence focussing on actions that misled the couple. Given our provisional proposals on validity, such an offence would operate where one or both of the couple had been misled into a marriage that was void. While the classification of the marriage as void ensures protection for the financially weaker party, it is still not the same as a valid marriage.

10.164 There was strong support among our stakeholders for it to be an offence for the person officiating at the wedding to mislead people about the legal nature of the ceremony. The Church of England, the National Panel for Registration, the Board of Deputies and Humanists UK all said that it should be an offence for an officiant to mislead the parties as to the legal status of the ceremony. Humanists UK also thought that passing oneself off as an authorised officiant should be an offence. The Wedding Celebrancy Commission similarly said it should be an offence for anyone to pretend to conduct a legally binding ceremony.

10.165 Other stakeholders were more ambivalent. OneSpirit Interfaith Foundation said that misleading a couple would be contrary to its code of ethics and thought that it might not be necessary to have a criminal offence. The Muslim Council of Britain thought that there should be consequences for misleading a couple as to the effect of a ceremony and that officiants should make the status of the ceremony clear, but were concerned that imams might be deterred from officiating by the risk of criminalization.

10.166 As we note above, under the current law the actions and failures to act that may result in criminal sanctions broadly reflect the circumstances in which a marriage may be void. Our focus here is similarly on discouraging individuals – whether officiants or persons purporting to be officiants – from engaging in conduct that would result in a void marriage rather than a valid marriage.

10.167 We therefore provisionally propose that it should be an offence if any person purports to be an officiant and deliberately or recklessly misleads either of the couple about their status or the effect of the ceremony. As we note above, if at least one of the couple believes that person to be an officiant, then the marriage would be void rather than non-qualifying, even if the couple had not given notice. But it would still be an offence if the person purporting to be an officiant deliberately or recklessly misled

either or both of the couple into believing that the ceremony would be valid even though they had not given notice. We think that this behaviour is sufficiently serious to merit the stigma of criminalisation, considering the Ministry of Justice's criteria for new offences.[136]

10.168 We think that having such an offence would be an important protection against individuals being deceived into a void marriage. As we note above, this is likely to be a particular issue in the context of religious-only ceremonies where one of the couple did not realise that certain formalities needed to be observed in order for the ceremony to be valid. Cases where the purported officiant deceives both of the couple are likely to be less common than cases where one of the couple is a party to the deception.

10.169 We also think that being an officiant brings with it certain responsibilities. Bearing in mind the Ministry of Justice's *Criminal Offences Gateway Guidance* and the Law Commission's previous work on criminal offences in a regulatory context, we are not convinced of the case for criminalising an officiant who fails to comply with our proposed framework: there are other, more proportionate remedies, such as withdrawal of authorisation. However, we think that there is a good case for criminalising any officiant who deliberately or recklessly misleads the couple or either member of the couple about the effect of the ceremony, as falling within the category of behaviour that is so serious that it merits the stigma flowing from a criminal conviction. This could include pretending not to be authorised (and thereby potentially duping one of the couple into a ceremony with legal effects) or telling a couple that a schedule was not necessary to the validity of the marriage. We therefore provisionally propose that it should be an offence if an officiant deliberately or recklessly misleads either of the couple about the effect of the ceremony (including the effect of proceeding without a valid schedule).

Consultation

Consultation Question 61.

10.170 We provisionally propose that it should be an offence:

(1) for any person to purport to be an officiant and deliberately or recklessly mislead either of the couple about their status or the effect of the ceremony; or

(2) for an officiant deliberately or recklessly to mislead either of the couple about the effect of the ceremony.

Do consultees agree?

[136] See paras 10.154 and 10.155 above.

RELIGIOUS-ONLY WEDDINGS

10.171 Religious-only weddings are weddings that conform to the beliefs and practices of a religion but are conducted outside the legal framework. This means that they are recognised as valid weddings for the purposes of the religion, but are not recognised as a matter of law. The lack of legal recognition can result in hardship, particularly on the breakdown of the relationship, because there is no entitlement to financial support that would be available where a couple who are legally married divorce. That hardship is experienced disproportionality (though not invariably) by women who have been financially dependent on their partners for the duration of the religious-only marriage or where all of the assets are held in the man's name. In this part of the chapter we consider how our scheme would apply to these sorts of weddings.

Why do religious-only weddings arise?

10.172 While the legal framework that applies to Muslim, Hindu and Sikh weddings is the same as that which applies to all Christian weddings save those conducted according to Anglican rites and Quaker usages, there are some clear differences in practice. Historically, Non-conformist Christian groups only conducted weddings when permitted to do so by law, and so the form of their weddings was developed in light of what the law required.[137] Building in the prescribed words that the law requires weddings to contain was unproblematic. By contrast, Muslim, Hindu and Sikh and other groups have their own rich traditions and ways of conducting weddings that do not fit so easily into the form prescribed by the current law.

10.173 As a result, such groups are more likely to split the religious and legal elements of the wedding. Some will have a religious ceremony in a registered place of worship and repeat the prescribed words separately in that place of worship before an authorised person or registrar. Others will have a civil ceremony on approved premises, with a separate religious ceremony elsewhere on the premises. For others there may be a longer gap between the religious and civil elements, with a ceremony in the register office followed by a separate religious rite in a place of worship that is not registered for weddings or an alternative venue such as a restaurant, community centre or private home.

10.174 Any of those different combinations could result in a wedding that is legally recognised. But difficulties can arise where the religious rite takes place first and is not followed by a legally binding ceremony. The evidence suggests that this is a growing issue within Muslim communities in particular.[138] Southall Black Sisters and One Law for All told us that due to a resurgence of fundamentalism there is an increasing move away from civil marriage in some communities and this is depriving minority women of

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137 See R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009) ch 9.

138 See G Douglas, S Gilliat-Ray, R Sandberg and A Khan, *Social Cohesion and Religious Law: Marriage, Divorce and Religious Courts* (Cardiff Law School, 2011); S Bano, *Muslim Women and Shari'ah Councils: Transcending the Boundaries of Community and Law* (2012); R C Akhtar, "Unregistered Muslim Marriages: An Emerging Culture of Celebrating Rites and Compromising Rights" in J Miles, P Mody and R Probert (eds), *Marriage Rites and Rights* (2015); V Vora, "Unregistered Muslim Marriages in England and Wales: The Issue of Discrimination through 'Non-Marriage' Declaration" in Y Suleiman and P Anderson (eds), *Muslims in the UK and Europe II* (2016); R C Akhtar, P Nash and R Probert (eds), *Cohabitation and Religious Marriages: Status, Similarities and Solutions* (2020).

the rights and protections of family law, including financial provision on dissolution of the relationship.

10.175 The incidence of religious-only weddings is an area of some controversy, both in terms of the numbers involved and the reasons why couples go through the religious rite alone. The largest study to have been carried out to date is that commissioned by Channel 4 and True Vision Aire. Interviews were carried out with 923 women, 60% of whom had had a religious-only wedding.[139]

10.176 Of these, 28% did not realise that their wedding would not be legally recognised. Most, therefore, were aware of their lack of status. Around half said that they did not plan to have a legally recognised ceremony in the future, with the majority of them saying that the religious ceremony was more important to them, or that they were happy as they were.

10.177 The age profile of those who had a religious-only marriage was also significant. Among those aged under 25, only 20% had had a legally recognised wedding. Yet this should be seen in context. Across the population as a whole, only 3.2% of those aged under 25 are married.[140]

10.178 Research confirms that for some couples a religious marriage is consciously chosen as a form of trial marriage, or "halal cohabitation".[141] Undertaking a religious marriage enables couples to live together before making a legal commitment in religious communities where cohabitation would not be acceptable. In addition, some women whose religious-only marriages have ended have expressed relief that they did not have to obtain a civil divorce and that their own finances were protected.[142]

10.179 At the same time, significant concerns arise in relation to those for whom a religious-only wedding is not the result of a free and informed choice to opt out of legal protection. The Muslim Women's Network told us that religious-only marriages most commonly occurred as a result of pressure on the wife from the husband or husband's family, or because of a lack of awareness of the law and the rights that flow from legal marriage. The campaign group Register our Marriage emphasised the lack of understanding of the current requirements and the risk of exploitation where only one of the couple wanted a religious-only marriage. Southall Black Sisters and One Law for All told us that women in some communities have no control over the process of getting married, and some women in abusive relationships are being told that the only

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139 See https://truevisiontv.com/films/details/295/the-truth-about-muslim-marriage (last visited 1 May 2020).

140 Office for National Statistics, *Population estimates by marital status and living arrangements, England and Wales: 2018* (2019) fig 2.

141 R C Akhtar, "Religious-only marriages and cohabitation: deciphering difference" and V Vora "The Case for moving away from 'non-qualifying marriage' declarations" in R C Akhtar, P Nash and R Probert (eds), *Cohabitation and Religious Marriages: Status, Similarities and Solutions* (2020).

142 R Parveen, "Religious-Only Marriages in the UK: Legal Positionings and Muslim Women's Experiences" (2018) 6 *Sociology of Islam* 1; I Uddin, "Nikah-only marriages: Causes, Motivations and Their Impact on Dispute Resolution and Islamic Divorce Proceedings in England and Wales" (2018) 7 *Oxford Journal of Law and Religion* 401.

legitimate marriage is a religious marriage.[143] They said that some women were being deceived into a non-legally binding marriage while others were being coerced into having a religious-only ceremony rather than the legally recognised one they wanted. Researchers have similarly found examples of women who wanted a legally recognised marriage but whose partners refused to enter into one.[144]

The effect of our provisional proposals on religious-only weddings

10.180 The provisional proposals that we have made in this Consultation Paper should make it easier to have a religious wedding that is also a legally binding wedding. In devising these proposals we have listened to a range of different religious groups in order to understand how weddings are conducted within their particular tradition.

10.181 We are aware that religious-only weddings currently take place in a wide range of locations, including community centres, hotels, and private homes. Our provisional proposal that existing restrictions on where marriages can take place should be lifted would enable future weddings in such locations to be legally recognised and assist those whose faith does not see the place of worship as the obvious place to marry.[145]

10.182 We are also aware that some religious groups find it difficult to incorporate the legally prescribed words into their weddings; again, our provisional proposal would remove the necessity for this, removing the need for the content of a religious ceremony to be changed to accommodate prescribed words.[146] Our provisional proposal to focus on the officiant as the person who ensures that the legal requirements have been met would also ensure that different religious practices are accommodated.[147]

10.183 Together, our provisional proposals will enable couples to have a legally binding wedding at a venue that is meaningful to them and their faith, and the content of which reflects the tradition within their faith.

10.184 As well as making it easier for couples to do what is required for a legally recognised wedding, we have also thought very carefully about what the consequences should be if not all of those requirements are met. As we explain above, we think that the process of giving notice is an important means of protecting the interests of both the individuals and the state, and that it should not be possible to have a valid marriage without giving notice. But as long as the couple have given notice, and at least one of

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143 Their evidence to the Home Affairs Committee's inquiry into Sharia Councils also indicated that women were being told that a religious divorce was necessary, regardless of whether the marriage was legally recognised: https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2015/inquiry6/publications/ (last visited 1 May 2020).

144 V Vora, "The Case for moving away from 'non-qualifying marriage' declarations" in R C Akhtar, P Nash and R Probert (eds), *Cohabitation and Religious Marriages: Status, Similarities and Solutions* (2020); I Uddin, "Reformulation of Islamic Matrimonial Law: British Muslims, Contemporary Understandings and Normative Practices" (2020) 40 *Journal of Muslim Minority Affairs* 6.

145 See Ch 7.

146 See Ch 6.

147 For example, where there is no third party who conducts the wedding: see paras 5.45 to 5.50 above.

them believes that the person officiating at the ceremony is authorised to solemnize a legal marriage, our provisional proposal is that such a marriage should be valid.

10.185 Where a ceremony is not legally recognised, other reforms we propose would make it more likely that a marriage will be void, rather than non-qualifying.[148] Even where the couple have not given notice, as long as at least one of them believes that the person officiating at the ceremony is authorised by law to do so, the marriage will be void rather than non-qualifying. This difference is significant as the financial remedies available on divorce can be applied in the case of a void marriage, but not where a marriage is non-qualifying. Classifying such marriages as void will therefore provide some protection to those couples who share a mistaken belief that an authorised officiant is present at their religious ceremony, and to those individuals who are deceived into a ceremony conducted by someone who is not authorised.

10.186 To sum up, under our provisional proposals:

(1) a religious wedding will not need to take place in a place of worship that is registered for weddings; and

(2) there will be no prescribed words that have to be included in a ceremony.

10.187 In terms of the effect of a ceremony:

(1) a marriage will be valid if the couple give notice and consent to be married in the presence of an officiant, or a person whom at least one of them believes to be an officiant; and

(2) a marriage will be void if the couple do not give notice but still consent to be married in the presence of an officiant, or a person whom at least one of them believes to be an officiant.

10.188 In addition, the new criminal offences that we propose are intended to deter individuals from purporting to officiate at weddings when they are not authorised to do so. Under our provisionally proposed scheme, it would be an offence for any person to purport to be an officiant and deliberately or recklessly mislead either of the couple about their authorisation or the effect of the ceremony. Our hope is that this would reduce the likelihood of either of the couple being misled as to the nature of the ceremony.

The limits of our proposed reforms

10.189 The provisional proposals that we have made should therefore have a twofold effect on religious-only weddings. First, our proposals will make it easier for a religious wedding to be legally recognised. Second, where a religious wedding is not legally recognised, our proposals will increase the circumstances in which that wedding is considered to be void, rather than non-qualifying, with the result that financial relief can be provided on the breakdown of the marriage.

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[148] The significance of the distinction between a void marriage and non-qualifying ceremony is explained at paras 10.10 to 10.15 above.

10.190 There are, however, limits to our reforms. There are circumstances in which we think it is right that a religious wedding that has taken place is classed as non-qualifying, even though the financial relief that is available when a couple divorce would not be available on the breakdown of the relationship. In this final part of our discussion we explain when a ceremony will be non-qualifying, and why we think that it is not appropriate to attach legal consequences to such ceremonies in and of themselves. While we think that there are cases where a legal remedy would be appropriate, the need for a remedy in these cases derives from what has happened during the relationship rather than the ceremony itself, and so falls outside the scope of what can be achieved by reform to weddings law.

10.191 Under our provisionally proposed scheme a ceremony would be classified as non-qualifying where:

(1) the couple had not given notice and neither of them believed that the person celebrating the marriage was legally authorised to do so; or

(2) the couple had not given notice and no third party was purporting to officiate; or

(3) in the absence of consent, where there is no expression of consent at all or where either of the couple are expressly only consenting to a ceremony that would not be legally recognised.

10.192 Our provisional view is that it would be difficult to justify such ceremonies giving rise to a valid or void marriage.

10.193 In the first case we do not think that it is justifiable to attribute legal consequences to a ceremony that complied with none of the formalities for a legally recognised wedding and which both parties knew was not legally recognised. In our view, such an outcome could act as a disincentive to comply with wedding formalities. This would undermine the whole purpose of having a formal set of requirements for a legally recognised wedding, as well as the specific purposes that those formalities are intended to achieve, such as legal certainty.[149] Setting aside the specific issue of individuals who have been coerced into agreeing to a ceremony that does not comply with the legal requirements rather than their preferred option of a legally recognised ceremony, which we consider below, we think that attaching legal consequences to a ceremony that both of the couple know is not legally recognised would be contrary to the intentions of the couple. After all, formality requirements are not intended to be an obstacle to the recognition of a couple's intentions, but rather a way for them to clearly demonstrate their intentions.

10.194 In the second case, where the couple had not given notice and no third party was purporting to officiate, we do not think it is justifiable to attribute legal consequences to a bare exchange of consent. This would be to deregulate marriage altogether. The same concerns about undermining the formal requirements apply with equal force to this scenario.

10.195 In the third case, where there is no expression of consent at all or where either of the couple are expressly only consenting to a ceremony that would not be legally

[149] See paras 1.11 and 1.24 above.

recognised, we think that attaching legal consequences to the ceremony would be contrary to the intentions of the individuals involved. That is not to say that legal obligations should only ever be based on consent, but simply that any such obligations would need to be justified by something other than the ceremony.[150]

10.196 We have given careful consideration to whether special provision should be made as regards the legal recognition of ceremonies that conform to religious beliefs, in other words, whether the law could automatically treat all religious weddings or particular types of religious weddings as legal weddings. We have also considered whether some recognition could be achieved by providing that ceremonies that conform to a religious belief, but which are not legally binding, are void rather than non-qualifying so that financial relief is available on the breakdown of the marriage. However, we think it would be difficult to justify distinguishing between different forms of ceremony in this context. Under our provisionally proposed scheme, a person who believes in the authorisation of the person who officiates their wedding would be entitled to the same protection whether the wedding was religious or not. It is difficult to justify why someone who does not believe in the authorisation of the person who officiates at their religious wedding should be entitled to more protection than someone who does not believe in the authorisation of the person who officiates at their non-religious wedding.

10.197 Within some religious traditions, there is of course no need for any third party, or indeed any witnesses, to be present. Again, however, it would be difficult to justify attaching legal consequences to a ceremony where none of the legal requirements have been observed. It would also be difficult to justify differences in treatment between different religious groups depending on whether or not they recognised a simple exchange of consent as constituting a marriage, and between religious and non-religious ceremonies. Holding that a simple exchange of consent could generate legal consequences would also risk deregulating marriage entirely and would remove one of the incentives for both couples and religious leaders to comply with the requirements for a valid marriage. It also raises difficult questions of intention and proof.[151] If a simple exchange of consent were to generate legal consequences, should this be where both thought that it would be legally recognised, where one alone thought that it would be legally recognised, or where neither thought that it would be legally recognised but one or both saw it as binding in religious terms?

10.198 In any case, the boundary between what is religious and what is not religious is not a clear-cut one. Many ceremonies conducted by independent celebrants include religious elements.[152] A ceremony conducted without any person purporting to officiate might also include religious elements without being conducted according to the rites of any specific religious group. In addition, while in some cases it will be very obvious that a ceremony has taken place according to certain religious rites and is

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150 See para 10.201 and following below.

151 Even before the Clandestine Marriages Act 1753, a bare exchange of consent did not constitute a legally recognised marriage, as demonstrated by the numerous cases in which a couple were regarded as being married in the sight of God, but not in the sight of the law. See R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009) chs 2 and 4.

152 S Pywell, "The day of their dreams" [2020] *Child and Family Law Quarterly* 177.

regarded as a marriage within that particular religious group, in other cases it may not be so clear. It is worth noting that the leading case on the recognition of Jewish marriages was in fact a case of non-recognition, on the basis that the ceremony constituted a betrothal rather than a wedding.[153] Finally, if the decision is taken by Government to enable non-religious belief organisations to conduct legally binding weddings, it would be anomalous to attach legal recognition to religious wedding ceremonies that do not comply with the legal formalities but not to non-religious belief wedding ceremonies that do not so comply.

10.199 The law does of course recognise religious-only marriages in one particular context. Forcing someone into a religious-only marriage is potentially a criminal offence.[154] However, both the context and the consequences are very different. In the criminal context, the consequences fall on the person who has exercised coercion. There are no implications for the status of the marriage. In addition, what is regarded as a religious-only marriage may be narrowly defined (if there are concerns about extending the net of criminal liability too widely) or, alternatively, defined more broadly than even that religion would recognise (if the aim is to prevent individuals from being forced into ceremonies that they personally regard as binding upon them). The existence of this provision does not, therefore, provide much assistance in deciding when a religious-only ceremony should be recognised for the purpose of financial provision.

10.200 We have heard from Register our Marriage, Southall Black Sisters and One Law for All that there are cases where pressure is exerted on one of the couple to forego their preferred option of a legally binding wedding and agree to go through a religious ceremony that they know has no legal standing. In other cases, one of the couple may have been led to expect that a legally binding ceremony will follow. While we have not heard direct evidence of this happening in relation to non-religious ceremonies, it may equally be the case that one of the parties to such a ceremony would have preferred a legally binding wedding, or expect a legally binding wedding to follow. We do not think it can be assumed that pressure and differing expectations are confined to those who have a religious-only ceremony.

10.201 The evidence from Register our Marriage, Southall Black Sisters and One Law for All has led us to consider whether it would be possible to confer some status on a religious-only ceremony where one of the couple wanted a legally recognised ceremony but was pressured into accepting one conducted outside the legal framework because of the existence of a coercive and controlling relationship. Southall Black Sisters and One Law for All added that where women have no control over the marriage process and are subjected to coercion, there must be a solution based on the recognition of that context of coercive control, which could include rendering the marriage void. However, we consider that the real issue here is not the nature of the ceremony, but the attempts of one partner to deny the other legal protection. In that respect the same issues arise in relation to non-religious ceremonies, and in cohabiting relationships where there is no ceremony at all. Research has shown that there are many “uneven” couples among cohabitants where

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153 *Lindo v Belisario* (1795) 1 Hag Con 216, 161 ER 530, (1796) 1 Hag Con 7, 161 ER 636.

154 Anti-social Behaviour, Crime and Policing Act 2014, s 121.

one wants to marry and the other does not.[155] To that extent the law on the validity of marriage would be a blunt instrument for dealing with the issue.

10.202 Difficult questions would also arise as to when the coercive and controlling relationship developed. We know that it is not uncommon for a couple to go through a religious-only ceremony in the expectation that a legally recognised wedding will follow at some point, only for one of them subsequently to refuse to do so. In such cases, the law would be attributing consequences to a ceremony that neither of them expected to have legal consequences on the basis of subsequent developments. Again, a set of laws designed to ascertain the legal status of a ceremony are not necessarily the best vehicle for dealing with events that happen after the ceremony.

10.203 The issue can be tested another way. Arguments for the recognition of ceremonies that fall outside the legal framework tend to focus on the potential hardship that may result from non-recognition, highlighting those cases in which the relationship has lasted some time. But the same hardship may be experienced by those who have lived together without any ceremony at all. Recent research shows that almost half of the population still mistakenly believe that cohabitation results in a common-law marriage conferring the same rights as a legal marriage.[156] It seems anomalous to confer protection on those who know that they are not acquiring legal rights, but to deny them to those who erroneously believe that they have such rights.

10.204 For all of these reasons, we think that the law on when a particular ceremony of marriage is valid or void cannot solve all of the problems that may arise. Religious-only weddings are a specific instance of a wider difficulty that arises at the end of a relationship between a couple who were never married in the eyes of the law. Ultimately, we do not think that couples who have had a religious ceremony can be treated differently at the end of their relationship from couples who have had a non-religious, non-legally recognised ceremony, or who have had no ceremony at all. We consider that the correct approach in such cases is to focus on the consequences of the relationship coming to an end, rather than on the ceremony.

10.205 Reform of the law relating to cohabitation would be able to ensure protection of those whose religious ceremonies have no legal consequences, as well as those who have had a non-religious ceremony or have not had any ceremony at all, and we draw attention to our earlier recommendations for such reform.[157] We acknowledge that many of those who have had a religious wedding would not define themselves as cohabiting. However, the case for giving special recognition to those who know that they have not complied with the law seems less compelling than that for recognising those who genuinely but mistakenly believe that their cohabiting relationship has given rise to a common law marriage. Our earlier recommendations for conferring rights on cohabiting couples – which focussed on redressing advantages gained and

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155 A Barlow and J Smithson, "Legal assumptions, cohabitants' talk and the rocky road to reform" [2010] *Child and Family Law Quarterly* 328.

156 A Barlow, "Modern Marriage Myths – the dichotomy between expectations of legal rationality and lived law" in R C Akhtar, P Nash and R Probert (eds), *Cohabitation and Religious Marriages: Status, Similarities and Solutions* (2020).

157 See our recommendations in Cohabitation: the Financial Consequences of Relationship Breakdown (2007) Law Com No 307.

disadvantages suffered as a result of the relationship – provide a rationale for recognition that focusses on the relationship in a way that weddings law cannot.

Chapter 11: Special types of wedding

INTRODUCTION

11.1 In the preceding chapters, we make provisional proposals for a new scheme for weddings law that is simple, fair and consistent. It has been our aim that, so far as possible, a single set of rules should accommodate couples with a wide range of wishes and beliefs, to allow them to have the wedding that is meaningful to them. In this chapter, we discuss couples who get married in special circumstances, to which particular considerations apply. Some of these circumstances already receive special treatment under the current law, whereas others would require new rules to be devised.

11.2 The chapter considers a range of different cases. We first consider couples where one or both of the members has a terminal illness, is detained in prison or under mental health legislation in hospital, or is housebound. We look at the difficulties posed for those couples by the current law on preliminaries and locations, and the exceptions that the current law makes for them. The reforms that we provisionally propose elsewhere in this Consultation Paper mean that fewer special rules would be needed for people who are terminally ill, detained or housebound, in line with our guiding principle of certainty and simplicity. But some special provisions would continue to be required to ensure that the law is fair and equal. We make provisional proposals to that end.

11.3 We then consider the specific issue of weddings during a national emergency, such as the COVID-19 pandemic. After considering how our provisionally proposed scheme would operate during a national emergency, we go on to make a provisional proposal for specific provisions which would allow the rules governing weddings to be adapted to allow couples to get legally married during a national emergency.

11.4 We next consider the question of weddings on military sites. The structure of the existing legislation, and the need for a high degree of security on military sites, have posed difficulties for couples who wish to get married on such sites. In particular, the current law does not accommodate couples who wish to have certain religious weddings or civil weddings on a military site. Nor does it work well for most same-sex couples. The provisional proposals we have made in other chapters would result in a simpler system which respects individuals' wishes and beliefs, ultimately giving couples more choice. Under this system, it would no longer be necessary to have special rules for weddings on military sites, thereby reducing complexity in the law and unnecessary regulation. The Ministry of Defence would be able to open up military sites to a wider range of couples, while, at the same time, ensuring the security of those sites.

11.5 Finally, we consider weddings at sea. Weddings at sea are, for most groups, not possible under the current law. Our provisional proposals on locations would make weddings possible on inland waters like lakes and rivers. Wider reform to allow weddings at sea could allow couples greater choice, consistently with the principle of respecting individuals' wishes and beliefs. We provisionally propose that our general

scheme for weddings law should apply to weddings in the "territorial sea", meaning in the waters extending 12 nautical miles out to sea. In international waters, we provisionally propose a modified scheme for weddings on board ships registered with a port of choice in England or Wales.[1] By facilitating weddings on board vessels registered in England and Wales, reforms would have the potential to open new economic possibilities for shipowners, particularly for cruise companies. Reforms could also increase the size of the United Kingdom's shipping fleet, with corresponding fiscal and non-fiscal benefits.[2]

WEDDINGS INVOLVING PEOPLE WHO ARE TERMINALLY ILL, DETAINED, OR HOUSEBOUND

11.6 The current law about how couples give notice,[3] and where they can marry, pose difficulties for people who have a terminal illness, who are detained in a prison or hospital, or who are housebound. We explain in Chapter 2 that there are special rules in the current law to facilitate weddings involving such people.

11.7 The reforms we have provisionally proposed elsewhere in this Consultation Paper would make the law simpler, and mean that some of those special rules would no longer be needed. For example, our provisional proposals in Chapter 7 would mean that it would no longer be necessary to have special rules about where people who are terminally ill, detained or housebound can get married. But to ensure the law works fairly and compassionately, some special rules would continue to be needed, for example disapplying the waiting period for people who have a terminal illness.[4] We also make provisional proposals for reform in relation to the preliminaries to, and the documents that authorise, these special types of wedding.

Current law

People who have a terminal illness

11.8 The ordinary rules about civil preliminaries and the locations where weddings can take place do not work well for people who have a terminal illness.[5] Therefore, instead of being authorised by two certificates of a superintendent registrar, weddings involving people who have a terminal illness can be authorised by a Registrar General's licence. There are three main problems with the ordinary rules, that the Registrar General's licence seeks to address.

(1) Civil preliminaries usually require both parties to give notice of their intention to marry to the superintendent registrar of the district or districts in which they are resident.[6] Typically, this means giving notice in person at the register office,

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1 See n 92 below for the meaning of "port of choice".

2 See further paras 13.84 to 13.93 below.

3 See the Glossary for the meaning of "notice".

4 See the Glossary for the meaning of "waiting period".

5 We use this phrase to mean "seriously ill and not expected to recover", which is the wording used in the current legislation.

6 Marriage Act 1949, s 27(1).

which might be impossible or unduly onerous for a person who is terminally ill. For a Registrar General's licence, only one party needs to give notice, to the superintendent registrar of the district in which the wedding will take place.[7]

(2) Civil preliminaries usually involve a 28-day waiting period, which might be extended to 70 days for weddings involving those who are not relevant nationals.[8] A Registrar General's licence can be issued with no waiting period.

(3) Most weddings have to take place in particular civil or religious buildings.[9] A person who has a terminal illness might be unable to travel to one of those locations. A wedding authorised by a Registrar General's licence can take place anywhere.[10]

11.9 To obtain a Registrar General's licence, the couple must satisfy the Registrar General that one of the parties is seriously ill and not expected to recover, and cannot be moved to a place where the wedding could take place under the ordinary rules.[11] No particular form of evidence is required, but a doctor's certificate is sufficient proof,[12] and we understand that a doctor's certificate will usually be provided. If provided, the certificate must also state that the seriously ill person is able to and does understand "the nature and purport of the marriage ceremony".[13]

11.10 A Registrar General's licence is valid for one month, compared to 12 months for superintendent registrars' certificates.[14] This difference reflects the expectation that weddings conducted using a Registrar General's licence will take place quickly, given the urgency of the circumstances.

11.11 The Registrar General's licence is not available for Anglican weddings.[15] Instead, it has always been possible for an Anglican wedding to take place without any waiting period, and at any location, on the authority of an Archbishop's special licence.[16]

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7 Marriage (Registrar General's Licence) Act 1970, s 2(1).

8 Marriage Act 1949, ss 28H(9) and 31(1) to (2), and sch 3A para 3; see the Glossary for the meaning of "relevant national".

9 See further Ch 2.

10 Marriage (Registrar General's Licence) Act 1970, s 1(1).

11 Marriage (Registrar General's Licence) Act 1970, ss 1(2) and 3(d).

12 Marriage (Registrar General's Licence) Act 1970, s 3.

13 Marriage (Registrar General's Licence) Act 1970, s 3(d).

14 Marriage Act 1949, s 33; Marriage (Registrar General's Licence) Act 1970, s 8.

15 Marriage (Registrar General's Licence) Act 1970, s 1(1).

16 See further paras 2.83 to 2.91 above.

People who are detained or housebound

11.12 The ordinary rules also pose difficulties for people who are detained in prison or hospital, or are housebound.[17] There are two main problems with the ordinary rules, which are modified in cases involving people who are detained or housebound.

(1) Civil preliminaries usually require both parties to give notice of their intention to marry to the superintendent registrar of the district or districts in which they are resident.[18] Again, this means giving notice in person at the register office, which is unlikely to be possible for a housebound person. The right to marry in article 12 of the European Convention on Human Rights means that the state must allow people who are detained in prison or hospital to get married.[19] But facilitating travel to a register office might be logistically difficult for the prison or hospital at which a person is detained. Therefore, the superintendent registrar will travel to the place at which the person is detained or housebound to take notice.

(2) Most weddings have to take place in particular civil or religious buildings.[20] Travelling to one of those buildings is unlikely to be possible for a housebound person, and poses logistical difficulties for the prison or hospital at which a person is detained. Therefore, weddings involving people who are detained or housebound can take place at the location where that person usually resides.[21]

Because there are no restrictions on where Jewish and Quaker weddings can take place, there is no need for special location rules for such weddings if people are detained or housebound.[22] It is possible for an Anglican wedding to take place anywhere, on the authority of an Archbishop's special licence.[23] However, there is also provision for Anglican weddings involving people who are detained or housebound to take place at the location where they usually reside, on the authority of superintendent registrar's certificates. The Faculty Office advises that civil preliminaries should be used in preference to a special licence, where possible.[24]

11.13 Superintendent registrar's certificates issued for the wedding of a couple one or both of whom are detained or housebound are valid for three months, instead of the usual 12 months.[25]

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17 See para 2.173 for the definitions of "detained" and "housebound" and the evidence that the parties must provide.

18 Marriage Act 1949, s 27(1).

19 *Hamer v United Kingdom* [1982] 4 EHRR 139 (App No 7114/75) (Commission decision).

20 See further Ch 2.

21 Marriage Act 1949, ss 26(1)(dd) and (2), and 26B(6); Marriage Act 1983, s 1(1).

22 Marriage Act 1949, ss 26(2)(a), and 26B(8); Marriage Act 1983, s 1(6).

23 See further Ch 2.

24 Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 3.4. See the Glossary for the meaning of "Faculty Office".

25 Marriage Act 1949, s 33(3)(a).

Issues

11.14 In our discussions with stakeholders, we heard little information about problems in practice with the weddings law applicable to people who have a terminal illness, are detained in a prison or hospital, or are housebound. This may suggest that the current system works well in practice.

11.15 However, it was suggested to us by participants at the Local Registration Services Association Year Ahead Conference 2019 that notice of intention to marry should be taken from both parties before a Registrar General's licence is issued. Participants felt that there should be an opportunity for the registration officer to ensure that the person who is terminally ill has capacity to marry and wants the wedding to go ahead, before the day of the wedding when the person is likely to be surrounded by friends and family.

11.16 We have provisionally concluded that a new scheme should move away from the ability under the current law for one party to give notice. At paragraph 11.26 below, we provisionally propose that both parties should have to give notice for all weddings, including those involving a person who is terminally ill. We also welcome information from consultees about how the law works in practice, both in relation to the process of giving notice, and more generally.

Consultation Question 62.

11.17 We invite consultees' views as to whether there are any problems with the law governing weddings of persons who have a terminal illness, are detained in a prison or hospital, or are housebound.

Options for reform – people who have a terminal illness

Notice and interview

11.18 In Chapter 4, we provisionally propose that it should be possible for notice of intention to marry to be given remotely by post or using an online form. That option might be particularly helpful in allowing people with a terminal illness to give notice and suggests that there is no longer a need for a rule allowing notice to be given by one party alone. However, we also provisionally propose that it should remain necessary for both parties to attend the register office for an in-person interview, before the schedule authorising their wedding is issued. For many people with a terminal illness, it may be impossible, or unduly stressful, to attend the register office in person.

11.19 One solution would be for our proposed new scheme to retain a special rule for parties with a terminal illness, who would not be required to have an in-person interview prior to their wedding day. Several factors might be argued to support this solution.

11.20 It is already the case that registration officers question the parties on the day of the wedding. In our proposed new scheme, the wedding day would continue to present an opportunity for the officiant to ask questions to check that the parties freely consent to marry each other, that they have mental capacity to do so, and that there are no impediments to their marriage.

11.21 If there was only a short duration between the giving of notice and the wedding – say three days – it is less likely that the relevant circumstances would have changed in that time. In such a case, requiring a terminally ill person to be interviewed prior to the wedding day might be seen as an unnecessary duplication, which could be distressing for the parties and their friends and family. Moreover, under the provisional proposals made later in this chapter, there would continue to be a role for doctors to certify that a person's health was such as to justify them being able to get married after a reduced waiting period, and that they had mental capacity to marry. A doctor might be just as well placed as a registration officer to assess a person's mental capacity to marry.

11.22 Nevertheless, we think there are good reasons for requiring all parties to an intended marriage to be interviewed prior to the wedding day. Preliminaries protect not just the state's interest, but the interests of the parties. Interviews provide an opportunity to intervene in cases where a person is being coerced into marriage, or does not have the mental capacity to freely choose to marry. Interviews are also a chance to discover impediments to a marriage.

11.23 We think that there is a risk of unfairness and abuse if the protection provided by preliminaries is reduced for people with terminal illness. It might be that some people who have a terminal illness are particularly vulnerable to coercion, making it even more important to have robust preliminaries. Besides being a violation of individual autonomy, coercion can play a significant role in so-called "predatory marriages". Predatory marriages involve someone marrying a vulnerable individual to gain access to their finances, sometimes taking advantage of the rule that a marriage revokes an existing will.[26] We accept that some of the protective functions of preliminaries could be performed by officiants conducting interviews on the day of the wedding. But we think that it is preferable to have a separate interview at an earlier stage. By the wedding day, the schedule would have been issued and momentum built, and it may be more difficult to hold a relaxed, private conversation immediately before the ceremony. It would also be better for any potential impediments to be discovered at the earliest possible stage, leaving more time for investigations to be made, for example about the ending of a previous marriage.

11.24 We have described above how superintendent registrars currently travel to take notice from people who are detained or housebound. We consider that it would be possible for that practice to be extended to the small number of weddings involving people who have a terminal illness. A registration officer could travel to the place where a party who has a terminal illness is located to conduct an in-person interview. If notice had not already been given remotely, or if our provisional proposal to allow remote notice was not taken forward, notice could be given during the same visit. Unlike other officiants, registration officers would be experienced in conducting in-person interviews for all other weddings, and so would be best placed to conduct this task in relation to weddings involving people with a terminal illness. We discuss in Chapter 12 the fees that should be chargeable for the preliminaries process for weddings involving people who have a terminal illness.

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[26] Wills Act 1837, s 18. In Making a Will (2017) Law Commission Consultation Paper No 231, we asked whether the rule that a marriage revokes a previous will should be abolished.

11.25 We therefore provisionally propose that parties who have a terminal illness should be required to give notice of their intention to marry, and be interviewed prior to the schedule being issued.

Consultation Question 63.

11.26 We provisionally propose that parties who have a terminal illness should be required to give notice of their intention to marry and be interviewed by a registration officer prior to the schedule being issued.

Do consultees agree?

Waiting period

11.27 Under our provisionally proposed scheme, there would continue to be a 28-day waiting period between giving notice of intention to marry, and being able to marry. Weddings involving those who are not relevant nationals would continue to have a waiting period potentially extended to 70 days. It will remain important that people who are terminally ill are not prevented from marrying by the waiting period. It should therefore be possible for a marriage schedule to be issued without any waiting period.[27]

11.28 One option would be for the registration service to have a general discretion to reduce the waiting period. There would be no requirement for the couple to meet criteria specified in the legislation, but the terminal illness of one of the parties would be a compelling reason to exercise the discretion. Such a discretion already exists,[28] and we do not propose that it should be abolished.

11.29 However, we consider that the principle of certainty points towards a reduced waiting period applying as of right, where one of the parties is terminally ill. Including the criteria for the reduced waiting period in the legislation might also provide reassurance to some couples, as compared to relying on an open-ended discretion.

11.30 We therefore think that there should be no change to the rule that, where the registration officer is satisfied that a person has a terminal illness, there should be no waiting period for the document authorising the wedding to be issued.

Form of authority

11.31 In discussions with stakeholders, we have not heard of any reason why there needs to be a separate procedure for giving notice, with a separate type of authority to marry,

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27 In fact, at the time that the Marriage (Registrar General's Licence) Act 1970 was enacted, it was possible for couples to get married at one day's notice, on the authority of a superintendent registrar's certificate by licence: Marriage Act 1949, s 32 (now repealed). It was only in 1999 that the waiting period for civil preliminaries was increased (initially to 15 days).

28 Marriage Act 1949, s 31(5A).

for weddings involving people who are terminally ill. We think that the principle of simplicity points towards having a single form of civil preliminaries.

11.32 We have also not heard of any reason why the authority to marry in cases involving people with terminal illness needs to be issued by the Registrar General, instead of registration officers. During the debates on the Marriage (Registrar General's Licence) Act 1970, Parliamentarians appeared to regard the Registrar General as the natural equivalent to the Archbishop of Canterbury, who grants the special licences that are sometimes used for Anglican weddings involving people with terminal illness.[29] We do not think that that analogy provides sufficient reason to require the Registrar General to issue the authority to marry.

11.33 We understand that, because of the relatively rarity of Registrar General's licences, registration officers may find it useful to have the assistance of the General Register Office in cases involving people with terminal illness. We suggest that this assistance could continue to be provided, even if the document authorising the marriage were not issued by the Registrar General.

11.34 We therefore provisionally propose that the Registrar General's licence should be abolished, and there should be a single form of civil preliminaries, issued by registration officers.

Consultation Question 64.

11.35 We provisionally propose that the Registrar General's licence should be abolished, and that there should be a single form of civil authority to marry – a schedule – issued by registration officers.

Do consultees agree?

Period of the schedule's validity

11.36 In Chapter 4, we provisionally propose that marriage schedules should be valid for 12 months, the same period for which superintendent registrars' certificates are currently valid. That period of validity will provide flexibility to couples, many of whom will be planning their weddings far in advance. Although weddings involving a party with a terminal illness will not need that flexibility and are likely to take place very quickly, we do not think that it is necessary to limit the validity of the schedule to any shorter period. We think there is an advantage in maintaining simplicity by applying the same period of validity unless there is good reason to shorten it. We also think that the principles of fairness and equality point towards providing that schedules should be valid for the same period in all cases. We therefore provisionally propose that schedules issued to couples where one or both parties has a terminal illness should be valid for 12 months.

[29] *Hansard* (HL), 20 May 1970, vol 310, col 1132.

Consultation Question 65.

11.37 We provisionally propose that schedules issued to couples where one or both parties has a terminal illness should be valid for 12 months.

Do consultees agree?

Location

11.38 In Chapter 7, we provisionally propose that all weddings should be allowed to take place anywhere, so long as the officiant consents to the location, having ensured that it is safe and dignified. We do not think that any special rules would be needed for the location of weddings involving people with a terminal illness.

Anglican weddings

11.39 In Chapter 4, we ask whether Anglican preliminaries should be abolished in favour of universal civil preliminaries. If Archbishop's special licences could no longer provide legal authority for a wedding, any new scheme for people who are terminally ill would need to apply equally to Anglican weddings as it would to all other weddings.

Options for reform – people who are detained or housebound

Notice

11.40 Based on our provisional proposal in Chapter 4 that notice should be able to be given remotely by post or using an online form, it would no longer be necessary for registration officers to visit the place where a detained or housebound person resides for notice to be given. However, similar issues apply to interviews as discussed at paragraph 11.18 above: we have provisionally proposed that it should remain necessary for parties to have an in-person interview before the schedule authorising their wedding is issued. Moreover, we expect that some people who are detained or housebound may not be able to use the online system for giving notice remotely, or may prefer to complete the entire process, including giving notice, in person.

11.41 For those reasons, it will remain necessary for registration officers to travel to the place where the person is detained or housebound, to conduct in-person interviews, and in some cases to take notice. Registration officers would also need to travel to take notice in the event that our provisional proposal to enable notice to be given remotely is not taken forward. We discuss in Chapter 12 the fees that should be chargeable for the preliminaries process for weddings involving people who are detained or housebound.

Location

11.42 Under our proposed scheme, all weddings would be allowed to take place anywhere. As is already the case for Jewish and Quaker weddings, there would therefore be no need for special rules to allow people who are detained or housebound to get married at the place where they reside.

Period of the schedule's validity

11.43 Because weddings involving people who are detained or housebound would no longer be treated as a special category, we see no reason why the schedule authorising such weddings should be valid for a different period than for all other weddings. The principles of fairness and equality, and certainty and simplicity, point towards a universal rule that applies to all. We therefore think that the ordinary 12-month period of validity should apply to schedules authorising weddings involving people who are detained or housebound.[30]

Consultation Question 66.

11.44 We provisionally propose that schedules issued to couples where one or both parties are detained in prison or hospital or are housebound should be valid for 12 months.

Do consultees agree?

WEDDINGS IN NATIONAL EMERGENCIES

11.45 The COVID-19 pandemic has had a wide-ranging effect, and its full impact is not yet known. Thousands have died as a result of the pandemic, and many people have seen their plans for the future put on hold. Weddings have also been severely affected.[31]

11.46 The need to minimise social contact has meant that, for a period of time, places of worship and other buildings were closed, and restrictions were placed on individuals preventing them from leaving their homes and congregating together except in specific circumstances.[32] Therefore, although wedding ceremonies were not specifically banned in England and Wales during the pandemic, the emergency restrictions meant that, in practice, it was not possible to hold a wedding in compliance

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30 See para 2.22 above.

31 The text in this section of the Consultation Paper, dealing with weddings in national emergencies, was finalised on 3 August 2020, and so does not take into account any developments in relation to the COVID-19 pandemic since that date.

32 The restrictions came into force on 26 March 2020: Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020 No 350); Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (WSI 2020 No 80). Some businesses were closed earlier, in England on 21 March 2020 (Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (SI 2020 No 327)) and in Wales on 21 March 2020 (Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020 (WSI 2020 No 74)) and on 24 March 2020 (Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020 (WSI 2020 No 76)). Although there might have been some variation among local authorities, other than facilitating some weddings of terminally ill individuals, register offices were closed and registration officers were not taking notices of marriage, or solemnizing or attending weddings.

with the requirements of the Marriage Act 1949, because notice could not be given and wedding venues and services were closed.[33]

11.47 Many couples will have had the experience of not being able to go ahead with their planned wedding during the pandemic. Other couples will have pressed ahead with celebrations in some form to mark their expected wedding day, even though they could not have a legally recognised wedding.

11.48 In Chapter 1, we invite consultees to tell us about their experiences with weddings law during the pandemic. We suspect that the worst of these experiences will be those who were unable to marry, and whose partner has died before a wedding could take place, either from COVID-19, or from unrelated causes.[34] Many more couples will have had to postpone their weddings, to reschedule them to take place when the restrictions designed to halt the spread of COVID-19 were lifted, causing distress and in many cases financial hardship.[35] As we explain in Chapter 1, given the scope of this project, we are unable to make recommendations for how disputes that may have arisen between couples and venues or other service providers should be resolved, or to consider the consequences of weddings being cancelled in any future emergency from an insurance, contract or consumer protection point of view.[36]

11.49 However, the impact that the pandemic has had on weddings, and the significant personal consequences that it has had for couples, has prompted us to consider how the law could facilitate weddings during any future national emergency. That could take the form of another national public health emergency arising from a pandemic, or there could be a different type of emergency which necessitates similar restrictions being imposed. A system that would allow weddings to take place safely in such circumstances will make us better prepared for an uncertain future.

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33 Some weddings involving a person who was terminally ill were able to take place, whether by Registrar General's licence or the Archbishop's special licence. See R Probert, "Love in a COVID-19 climate" (5 May 2020) *Law & Religion UK*, https://www.lawandreligionuk.com/2020/05/05/love-in-a-covid-19-climate/ (last visited 22 May 2020).

34 See eg "Coronavirus doctor's diary: the patient who married hours before dying" (21 April 2020) *BBC News* (online), https://www.bbc.co.uk/news/health-52358078 (last visited 22 May 2020).

35 See eg H Osborne, "Weddings and coronavirus: couples forced to cancel but face massive bills" (9 May 2020) *The Guardian* (online), https://www.theguardian.com/money/2020/may/09/weddings-coronavirus-cancel-bills-insurance (last visited 22 May 2020). Since the legal restrictions which prevented legal weddings from taking place have been lifted, Government has issued guidance about holding a wedding safely, specifying that only small and short ceremonies take place: see Ministry of Housing, Communities and Local Government, *COVID-19: Guidance for small marriages and civil partnerships* (29 June 2020, updated 3 August 2020); Welsh Government, *Guidance to local authorities and places of worship on marriages and civil partnerships: coronavirus* (7 July 2020); Welsh Government, *Guidance to members of the public on marriage and civil partnership ceremonies: coronavirus* (9 July 2020); and Welsh Government, *Coronavirus regulations: frequently asked questions* (27 March 2020, updated 3 August 2020). Couples may have postponed their weddings until they can safely celebrate in the way that they would wish.

36 But these issues are being investigated by the Competition Markets Authority: see *Competition and Markets Authority, Press Release: COVID-19: CMA to investigate cancellation policy concerns* (30 April 2020), https://www.gov.uk/government/news/covid-19-cma-to-investigate-cancellation-policy-concerns (last visited 22 May 2020).

Current law

11.50 The current law was not designed to allow weddings to take place during a national emergency in which there is major disruption to public life, including the closure of places of worship and many other buildings, and restrictions on travel and gatherings among the population at large.

11.51 As we explain in Chapter 10, if a wedding does not comply with the formality requirements, the couple's marriage may be void or non-qualifying. In that event, it would be necessary for the couple to have another wedding. This may not be an option for all couples, however, particularly in cases where one of the couple has since died.

11.52 If a couple had a wedding that did not comply with the required formalities, and their marriage was void, it would be possible for the Lord Chancellor retrospectively to validate the marriage by making an order under the Provisional Order (Marriages) Act 1905. However, that Act is not designed to apply in a situation in which all couples are unable to comply with the required formalities for a valid wedding. Further, it is a discretionary and retrospective procedure, which does not give couples certainty as to the validity of their wedding at the time of the ceremony. Therefore, it is not a solution to the problem created by the COVID-19 pandemic.

Issues

11.53 As we explain above, wedding ceremonies were generally unable to take place during the first months of the COVID-19 pandemic: for approximately three months, the emergency measures brought into force to prevent the spread of the virus made it impossible to comply with the requirements of the Marriage Act 1949.[37] Government explored potential changes to marriage formalities,[38] but no changes to weddings law were made during the emergency period. Instead, public health restrictions were eased, allowing legal wedding ceremonies to resume in accordance with public health guidance.[39]

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37 See R Probert, "Love in a COVID-19 climate" (5 May 2020) *Law & Religion UK*, https://www.lawandreligionuk.com/2020/05/05/love-in-a-covid-19-climate/ (last visited 22 May 2020). However, some weddings involving a person who was terminally ill were able to take place, whether by Registrar General's licence or the Archbishop's special licence.

38 Ministry of Justice: Marriage: Coronavirus: Written Answer (HC) 53651 (8 June 2020) (Alex Chalk).

39 In Wales on 1 June 2020, places of worship were permitted to be opened for deathbed weddings and civil partnerships (Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020 (WSI 2020 No 129)). In Wales from 22 June 2020, places of worship were permitted generally to host weddings and civil partnerships, subject to social distancing requirements (Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 6) Regulations (WSI 2020 No 141)), with civil weddings in register offices also able to take place. The Welsh Government gave guidance on the safe conduct of weddings in these locations (*Guidance to local authorities and places of worship on marriages and civil partnerships: coronavirus* (7 July 2020)). Restrictions requiring most types of approved premises to close were lifted in Wales from 3 August 2020, permitting weddings to go ahead in those locations (Health Protection (Coronavirus Restrictions (No 2) (Wales) (Amendment) (No 3) Regulations 2020 (WSI 2020 No 180) and Welsh Government, *Coronavirus regulations: frequently asked questions* (27 March 2020, updated 3 August 2020). In England from 4 July 2020, restrictions on most indoor venues which can legally host weddings were removed, permitting civil and religious weddings to go ahead (Health Protection (Coronavirus, Restrictions) (No 2) (England) Regulations 2020 (SI 2020 No 684)), with Government giving guidance that

11.54 Pandemics, whether of influenza or another infectious disease, remain a risk in the future. Pandemics are a clear example of a sudden emergency that affects a large number of people over a large geographic area, potentially the whole or most of England and Wales, which would prevent couples from being able to marry in accordance with the legal formalities. However, future public emergencies might take a different form. There might be other national emergencies which would similarly impact daily life, in ways that would make it difficult or impossible to comply with the formalities for getting married.[40]

11.55 As we have seen earlier in this chapter, the law already makes some special provision for individual circumstances, such as weddings of people who are terminally ill, housebound or detained. These provisions may not be sufficient in a pandemic. That is because individuals are still required to meet in person, both at the stage of undertaking civil preliminaries and during the ceremony itself.[41]

11.56 Moreover, these provisions do not provide a solution when all couples are affected in a pandemic. There will be many couples where neither of the parties are terminally ill, housebound or detained, but who will nevertheless suffer hardship if unable to marry, particularly if the period of emergency spans a long period of time. A couple may need to marry if one of the couple is at risk of losing the mental capacity required to get married. A couple might prioritise getting married if one or both are facing an increased risk of infection and death, for example, doctors, nurses or carers. One of the couple's right to remain in the country may depend on the marriage, such as those with a relevant visa.[42] The ability to marry might also be particularly important to couples whose beliefs prevent them from cohabiting until they marry or from having children until they marry. A couple might also wish to marry on a specific date that holds meaning for them, or urgently if a family member or friend is terminally ill and wants to see them married.

11.57 Compared to the current law, the scheme that we provisionally propose in this Consultation Paper offers advantages in terms of responding to a public emergency where buildings are closed and travel and gatherings are restricted.

(1) Under the current law, civil preliminaries generally require both members of the couple to go to a register office in person, to give notice and attend interviews.[43] We provisionally propose in Chapter 4 that the first stage of civil preliminaries – giving notice – should be able to take place online or by post. We further consider whether the second stage – the in-person interview – should also be

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no more than 30 people should attend (Ministry of Housing, Communities and Local Government, *COVID-19: Guidance for small marriages and civil partnerships* (29 June 2020, updated 3 August 2020)).

40 Possible emergencies, their likelihood of occurring and responses to them are identified in Cabinet Office, *National Risk Register of Civil Emergencies* (2017).

41 Under our provisional proposals, there would continue to be special provision for weddings of people who have a terminal illness, but both parties would be required to have an in-person interview with a registration officer: see para 11.22 and following above.

42 See the Glossary for the meaning of "relevant visa".

43 Anglican preliminaries only require one of the couple to apply in person: see Ch 4. Moreover, the Faculty Office was quick to respond to the circumstances of the pandemic, allowing special licences to be issued via an online application form: see R Probert, "Love in a COVID-19 climate" (5 May 2020) *Law & Religion UK*, https://www.lawandreligionuk.com/2020/05/05/love-in-a-covid-19-climate/ (last visited 22 May 2020).

able to take place remotely in the future. Allowing civil preliminaries to be completed remotely would allow couples to give notice of their wedding in the context of social distancing or a lockdown, while also ensuring that both registration officers and couples remain safe.

(2) Under the current law, most weddings have to take place in designated public buildings, to which the couple, the witnesses, the person who registers the marriage, and anyone else involved in the wedding must travel. We provisionally propose in Chapter 7 that all weddings should be able to take place anywhere. This approach would give couples many more options as to where to marry, including at home and in open spaces. Under the current law, marrying at home (or where the person is resident) is only available to couples if one of the parties is terminally ill or is housebound or detained.[44] Under our proposed scheme, marrying at home would be an option for all couples. During a national emergency when wedding venues and religious places of worship are closed and social distancing rules are in effect, or when an emergency requires individuals to shelter in place, the ability to marry at home could be the safest option. Under our proposed scheme, couples will also have the option of marrying outdoors. In the current COVID-19 pandemic, outdoor spaces pose a lower risk of airborne transmission of the virus. Outdoor weddings may therefore also be an important aspect of a regime that would allow weddings to go ahead during a similar emergency.

(3) We provisionally propose in Chapter 5 that only one registration officer should be required to be present at a civil wedding, a change from the current requirement for two registration officers to attend. During a public health emergency, this proposal would reduce the number of local authority staff who would need to take the risk of exposure to an infectious disease to attend a wedding; in any other situation in which health and safety might be affected by venturing outside one's home or being in the company of others, it would similarly reduce the number of staff required to take the risk. It will also reduce the number of local authority staff that the couple would be required to see in person, reducing their risk as well as the risk to witnesses.

(4) The current law requires that civil weddings and weddings in registered buildings be open to the public. We provisionally propose in Chapter 6 that it should not be a requirement that any wedding takes place with "open doors". Limiting the number of people entitled to attend a wedding may also help weddings to go ahead, particularly during a pandemic when transmission of a virus between individuals poses a serious risk to community health.[45]

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44 See paras 11.8 and 11.12 above. Or, for an Anglican wedding, on the authority of a special licence: see paras 2.98 and 11.11 to 11.12 above. The law also permits Jewish and Quaker weddings to take place anywhere: see paras 2.112, 2.127, and 11.12 above.

45 When legal weddings were able to resume during the COVID-19 pandemic, public health restrictions have prevented uninvited members of the public from attending weddings in Wales: see Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (WSI 2020 No 80), as amended by the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020 (WSI 2020 No 129) and the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 6) Regulations (WSI 2020 No 141).

(5) Under the current law, registration of marriages involves paper documents which must be brought from place to place. We provisionally propose in Chapter 8 that an option for electronic registration should be introduced at a later date, when infrastructure is in place to provide a high level of security. We envision a system under which the schedule is an electronic document, which is signed electronically, and then transmitted to the registration service electronically. Such a fully electronic system would be invaluable during a time of social distancing and when people are required to remain in their homes as much as possible.

11.58 The benefits of our provisionally proposed scheme in better facilitating weddings can be demonstrated by the experience of COVID-19 in other jurisdictions, whose laws are similar to aspects of our proposed scheme. In those countries, as here, restrictions to control the spread of COVID-19 have prevented many couples from celebrating their wedding in the way they wished to. However, in some jurisdictions which have flexibility in how notice can be given and which allow wedding ceremonies to take place in a wide range of locations (often together with less restrictive emergency public health measures), legal wedding ceremonies could still take place, or were only prevented for a short period of time.

(1) For example, in New Zealand, wedding ceremonies were only discouraged from taking place for one month, during Alert Level 4, which prohibited individuals from interacting with anyone outside their household (with exceptions for essential businesses). Couples were advised that if they believed that they must get married during this time, they should use a celebrant who was within their "bubble" or who lived very near to them. Once the country transitioned to Alert Level 3, wedding ceremonies with up to 10 people in attendance were permitted to take place.[46]

(2) Similarly, in British Columbia, Canada, weddings could continue to take place despite restrictions on gatherings. The provincial authority gave marriage commissioners guidance about how weddings could take place safely, for example, by taking place with only the required five individuals attending, and holding weddings in gardens or fields as a way to ensure distance could be maintained between individuals.[47]

11.59 Our provisional proposals still require that at least five people – the officiant, the couple, and two witnesses – be present together at the wedding ceremony. The ceremony would therefore not be possible at a time when people are not permitted to gather together in groups of five people or more. Moreover, reforms to allow remote

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46 New Zealand Government, *Gatherings and Events*, https://covid19.govt.nz/communities/gatherings-and-events/#gatherings-and-events-at-alert-level-4 (last visited 22 May 2020).

47 British Columbia, *Marriage Commissioners*, https://www2.gov.bc.ca/gov/content/life-events/marriage/marriage-commissioners (last visited 22 May 2020). For further examples, see eg New South Wales Government, *Exemptions for funerals, weddings and other gatherings*, https://www.health.nsw.gov.au/Infectious/covid-19/Pages/gathering-exemptions.aspx (last visited 22 May 2020); Victoria State Government, *Getting married in Victoria*, https://www.bdm.vic.gov.au/marriages-and-relationships/getting-married-in-victoria (last visited 22 May 2020); and States of Jersey, *Covid-19: guidance on planning weddings* (23 March 2020), https://www.gov.je/news/2020/pages/WeddingPlanning.aspx (last visited 22 May 2020).

interviews and fully electronic registration are only intended to come into effect in the future, when technology and infrastructure is available which would ensure a high level of safeguarding and security. And as we provisionally propose in Chapter 10, it will remain the case that a failure to comply with the formalities may result in the marriage being void.

11.60 We therefore think it is necessary to consider whether specific provision should be made to allow weddings to take place during a national emergency which prevents couples from following the ordinary requirements.

Options for reform

11.61 In formulating special provisions which would allow weddings to take place during a national emergency, we have identified three issues that need to be considered. The first issue is the substance of the emergency provisions, that is, which modifications of the ordinary requirements would be necessary to allow weddings to go ahead, with a focus on the formalities which require individuals to meet in person. The second issue is who should be able to marry under these modified requirements, considering whether the provisions should only facilitate emergency weddings in certain circumstances, for example, terminal illness, or whether all couples should be able to marry under them. The final issue is when, and how, should the emergency provisions be able to be brought into force. We consider each in turn below.

What should the emergency provisions be?

Extending the validity of schedules

11.62 A sudden national emergency like a pandemic will prevent many couples from having the wedding that they had planned. This will be true even if there are emergency provisions which would allow a wedding ceremony to take place. Many couples will want to host guests at their weddings, which will be impossible if gatherings are not permitted. Many couples will therefore want to postpone their wedding, until they can marry in the way that they had planned.

11.63 However, couples who had already given notice may have their authority to marry expire.

11.64 Under our proposed scheme, a schedule will be valid for 12 months. There are existing processes for fees to be waived and the waiting period to be reduced,[48] an option used by some local authorities during the recent emergency period.[49] Anglican preliminaries also offer flexibility. Usually, they authorise a wedding for a period of

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48 See para 2.17 above. This was noted by Government: Home Office: Civil Partnerships and Marriage: Coronavirus: Written Answer (HC) 41927 (11 May 2020) (Kevin Foster); Ministry of Justice: Marriage: Coronavirus: Written Answer (HC) 43181 (12 May 2020) (Alex Chalk); Ministry of Justice: Registration of Births, Deaths, Marriages and Civil Partnerships: Coronavirus: Written Answer (HC) 43830 (6 May 2020) (Alex Chalk).

49 See eg Suffolk, *Marriages and civil partnerships*, https://www.suffolk.gov.uk/births-deaths-and-ceremonies/ceremonies/marriages-and-civil-partnerships/ (last visited 6 July 2020); Rhondda Cynon Taf, *Registration and Bereavement services*, https://www.rctcbc.gov.uk/EN/Resident/EmergenciesSafetyandCrime/InformationforResidentsCoronavirus/RegistrationandBereavementservices.aspx (last visited 6 July 2020).

three months; however, the Archbishop has discretion over the period of validity of special licences.[50] During the COVID-pandemic special licences were granted with a 12-month validity to allow couples to postpone their weddings.

11.65 Despite this existing flexibility, we prefer a consistent approach which would not just spare couples who had already given notice the additional fee and waiting period, but would spare them from having to give notice again. We therefore think that the emergency scheme should allow the validity of schedules, and of authority to marry based on banns and common licences (should Anglican preliminaries continue as legal preliminaries), to be extended, for a period determined by the Secretary of State in the particular circumstances.

Allowing preliminaries to be completed remotely

11.66 In an emergency where it is not possible for people to travel to a register office, the entire process of civil preliminaries would need to be able to take place remotely. Our proposed scheme contemplates this possibility in the future, when technology can satisfy concerns about safeguarding, to maintain protections against forced marriage.[51] But in a national emergency, the balance between protecting against forced marriage and allowing couples to marry, particularly where one of the couple is ill, may need to be struck differently from ordinary times. It might be justified to allow interviews to take place remotely, based on current technology, for the duration of the national emergency. The states of New York, Colorado and Illinois made special provision to allow preliminaries to marriage to be completed remotely during the COVID-19 pandemic.[52]

11.67 That is not to say that protections against forced marriage would be abandoned. Registration officers conducting remote interviews would do their best to ensure that each of the couple was spoken to separately and was free from duress, and would provide information about resources available if the person was at risk. But this would be a more difficult, and more imprecise task in the context of a remote interview.

Allowing proxy weddings

11.68 The requirement for a ceremony at which the couple, the officiant, and two witnesses gather together might present various challenges in a national emergency. In the context of an infectious disease pandemic, it may be unsafe for people to be close to a member of the couple who is ill. A solution in that scenario might be to allow proxy weddings. In a proxy wedding, the proxy takes the place of one of the couple, conveying that person's consent to be married on their behalf. But proxy weddings

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50 See paras 2.83 and following above.

51 See para 4.65 and following above.

52 See Executive Order 2020 No 202, Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (New York), https://www.governor.ny.gov/news/no-20220-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency (last visited 22 May 2020); Executive Order 2020 No 36, Executive Order in Response to COVID-19 (COVID-19 Executive Order No 34) (Illinois), https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-36.aspx (last visited 22 May 2020); Executive Order D 2020 014, Ordering the Temporary Suspension of Certain Requirements Preventing Issuance of Marriage Licenses due to the Presence of COVID-19 (Colorado), https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20014%20Marriage%20Licenses_0.pdf (last visited 22 May 2020).

would not be a solution in an emergency like the COVID-19 pandemic, or in another pandemic which necessitates more general restrictions on people gathering together. Nor would it be of assistance in an emergency which impacts upon people's ability to travel, preventing them from reaching the same single location as each other. Our provisional view is that provision for proxy weddings would not be of assistance.

Allowing ceremonies to take place remotely

11.69 A better solution would be to allow for a wedding ceremony to take place without those required to attend being physically present at the same location. It seems to us that it would need to be possible for each person to attend remotely. In some cases, the couple might be able to be in the same place, for example, couples living together. Perhaps the witnesses could also attend in person. For example, a couple could exchange consent together in their back garden, with two neighbours witnessing the ceremony from a safe distance over a fence, and only the officiant attending remotely, by video conference. Or if it was not possible to get neighbours to witness the ceremony, then the officiant and witnesses could each attend by a video conference. However, in other cases, even the couple might need to be physically separate, for example, where one is in isolation in hospital or where they are living apart at the time of the wedding and unable to be together because of travel restrictions. Each person required to be present could log onto an audio-visual call: each of the couple would give their consent, which the officiant and witnesses would hear and observe remotely.

11.70 A number of jurisdictions have made special provision to modify weddings law during the course of the pandemic to allow weddings to take place remotely. For example, New York has permitted wedding ceremonies to take place using audio-visual technology: couples were required to be physically present in the state of New York, show valid photo identification, and directly interact with the witnesses and the person solemnizing the wedding.[53] The United Arab Emirates and the state of Illinois also made special provision to allow wedding ceremonies to take place remotely.[54]

Eliminating the requirement for witnesses

11.71 Another possibility to enable weddings during an emergency period would be to eliminate the requirement for two witnesses. But our provisional view is that this option is not a good one. Under our provisional scheme, the failure to have two witnesses would not render a marriage void, just as under the current law.[55] Nevertheless, in our view, witnesses play an important role in making a wedding ceremony a public

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53 Executive Order 2020 No 202, Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (New York), https://www.governor.ny.gov/news/no-20220-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency (last visited 22 May 2020).

54 See M M Al Serkal, "COVID-19: UAE Ministry now provides online services to hold Muslim weddings" (12 April 2020) *Gulf News* (online), https://gulfnews.com/uae/government/covid-19-uae-ministry-now-provides-online-services-to-hold-muslim-weddings-1.1586671705026 (last visited 22 May 2020); Executive Order 2020 No 36, Executive Order in Response to COVID-19 (COVID-19 Executive Order No 34) (Illinois), https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-36.aspx (last visited 22 May 2020). See also R Probert, "Love in a COVID-19 climate" (5 May 2020) *Law & Religion UK*, https://www.lawandreligionuk.com/2020/05/05/love-in-a-covid-19-climate/ (last visited 22 May 2020).

55 See para 10.101 above.

ceremony. Moreover, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, to which the United Kingdom is a party, requires witnesses to a wedding.[56]

11.72 In our view, facilitating weddings in a situation in which people cannot gather together is better achieved by enabling witnesses to attend remotely.

Allowing registration to take place by post or electronically

11.73 Without the officiant, couple and witnesses being physically together, special provision would be needed to allow each to sign the schedule. Two options to address this seem possible. If the General Register Office did not have an electronic system of registration in place, a copy of the same schedule could be sent to each person, with each person signing their copy and returning it to the registration service, which in turn would compile the different copies for registration. Or, if possible given the technology and systems put in place by the General Register Office, the law could allow the schedule to be signed electronically by each person.[57]

Conclusion

11.74 Our provisional conclusion, therefore, is that the law should make specific provision for weddings to take place during a national public emergency. We provisionally suggest that in such circumstances it should be possible for notice to be given entirely remotely; for the officiant, couple, and witnesses to attend the wedding ceremony remotely; and for provision to be made for each to sign a different copy of the schedule, or to sign the schedule electronically.

11.75 We finally consider who should be able to get married under these emergency provisions, and when they should apply.

Who should be able to marry under the emergency provisions?

11.76 Our provisional view is that the emergency provisions should apply to all couples. We have described at paragraph 11.56 above how couples might have various reasons for not wanting to delay their wedding. In an emergency situation, many people may be re-assessing what is important to them, or may be considering their own mortality; these reflections may lead some to want to ensure that they or their partner have the protections of legal marriage, should one of them die. And a public health emergency could conceivably last for an extended period of time. In such a circumstance, it seems right that couples should be permitted to get married.

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56 (New York, 1962), art 1.

57 Note that the Coronavirus Act 2020 anticipates electronic death registration, stating that "Any relevant document may be delivered by any electronic or other means specified in guidance issued by the Registrar General": sch 13 para 5. Electronic execution and registration of marriage has been permitted in other jurisdictions during the pandemic, including the United Arab Emirates and New York: see R Probert, "Love in a COVID-19 climate" (5 May 2020) *Law & Religion UK*, https://www.lawandreligionuk.com/2020/05/05/love-in-a-covid-19-climate/ (last visited 22 May 2020). For our conclusions on electronic execution of documents generally, see Electronic Execution of Documents (2019) Law Com No 386.

11.77 While it should be available to everyone, the proposed emergency framework could be particularly important for couples who would otherwise not be able to get married, because one or both of them is expected not to survive the national emergency.

11.78 It will continue to be necessary for someone who is terminally ill to marry quickly, without being subject to a waiting period. Further, in an emergency period, the category of those who are considered to be terminally ill may need to be broadened, or assessed more generously.[58] In a pandemic from a novel and swiftly progressing infectious disease, it might not be feasible to identify who is likely to die soon: people might be becoming ill and dying quickly. It might also not be sensible to require NHS or other medical professionals to provide a doctor's certificate (the standard of evidence currently provided) as evidence of terminal illness during a time when health services are stretched to or beyond their capacity. In such a situation, we would expect that the General Register Office would issue guidance to registration officers as to the type of evidence necessary, bearing in mind the existing knowledge of the disease and how quickly it progresses, and the capacity of medical service personnel to provide certificates when care must be prioritised.

When should the emergency provisions apply?

11.79 We envisage this framework as only applying during an emergency. In a national emergency, the balance shifts between the need for formalities which identify legal impediments to marriage and protect against forced and sham marriages versus the need to facilitate weddings. But it is difficult to say in the abstract when that balance shifts: it is impossible to predict the exact circumstances when emergency provisions might be necessary, and when the public interest requires that couples should be able to marry, without the same degree of oversight that the law usually provides.

11.80 The function of the emergency framework that we propose is to overcome barriers that arise from a national emergency affecting a large geographic area that prevent couples from complying with the formalities for a period of time. Although another pandemic poses the most apparent risk, we suspect that similar circumstances could arise from other types of emergencies. Rather than attempting to anticipate and list specific circumstances that could prevent compliance with the formalities for getting married, we think a better approach would be to have a generally worded power that could be used in a variety of circumstances.[59]

11.81 Therefore, in our initial view, the emergency framework should not just apply to pandemics, but in any circumstance when the Secretary of State determines that there is a national emergency which prevents couples from complying with the formalities of getting married. We provisionally propose that the emergency provisions should come into force by way of secondary legislation, which would continue in force for the duration of the emergency.

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[58] See the Glossary for the meaning of "terminally ill".

[59] We recommended a similarly broad approach in relation to the power to postpone polling in an emergency: Electoral Law: A Joint Final Report (2020) Law Com No 389; Scot Law Com No 256, paras 8.81 and 8.82.

Consultation

Consultation Question 67.

11.82 We provisionally propose that weddings legislation should contain a power for secondary legislation to make emergency provisions that would permit:

(1) the validity of schedules and other forms of authority to marry to be extended until after a national emergency;

(2) both stages of civil preliminaries to take place entirely remotely;

(3) the officiant, the couple, and the witnesses to each attend the wedding ceremony remotely; and

(4) the schedule to be signed by each of the officiant, the couple, and the witnesses remotely, or for each to sign a different copy of the schedule.

Do consultees agree?

11.83 We provisionally propose that the emergency provisions should be able to apply to all couples, depending on the nature and length of the emergency.

Do consultees agree?

11.84 We provisionally propose that the emergency provisions should facilitate weddings of those who might be at risk of death, rather than requiring evidence that the person is seriously ill and is unlikely to recover.

Do consultees agree?

WEDDINGS ON MILITARY SITES

11.85 For couples with a professional, personal or family connection to the armed forces, a military site may be the most meaningful place to get married – or it may be the most convenient and affordable option. As part of the Terms of Reference for the weddings project, the Law Commission has been asked to consider how the law should be reformed to enable weddings to take place in a wider range of venues, specifically including military sites.

11.86 We have concluded that it is not necessary to make any provisional proposals for reform specifically in relation to military sites. The scheme that we have provisionally proposed elsewhere in this Consultation Paper would make the law simpler, and give couples more choice about where to get married. In particular, they would allow a wider range of religious weddings, and civil weddings including same-sex civil weddings, to take place on military sites. Our proposed scheme therefore makes the specific regulation that currently governs weddings on military sites redundant. In eliminating that regulation, the Ministry of Defence will be given more freedom to

determine for itself how its sites can be used: it will be able to open up military sites to a greater range of couples, while still protecting the security of military sites.

Current law

11.87 The current legislation contains special provision for weddings on military sites. Weddings can take place in certified naval, military and air force chapels, collectively known as "armed forces chapels".[60] One of the parties to a wedding in an armed forces chapel must be a "qualified person", essentially a current or former member of the armed forces, or the child of such a person.[61]

11.88 On the application of the Secretary of State, armed forces chapels can be licensed by an Anglican bishop for Anglican weddings of opposite-sex couples, or registered by the Registrar General for other types of weddings of either or both opposite-sex and same-sex couples.[62]

11.89 Weddings in armed forces chapels licensed for Anglican weddings are solemnized according to Anglican rites. The Secretary of State must appoint a member of the clergy to register such marriages.[63] Weddings in armed forces chapels registered for other types of weddings must comply with the rules applicable to weddings in registered places of worship.[64] Those rules include that the marriage may be solemnized according to the form and ceremony the parties choose, and that the ceremony must include certain prescribed words.[65] The Secretary of State can appoint an authorised person to register the marriages.[66]

11.90 Before applying for a chapel to be registered for same-sex weddings, the Secretary of State must consult with the relevant governing authority of any religious organisation which in his or her opinion makes significant regular use of the chapel.[67] But unlike with registered places of worship, there is no legal requirement for the Secretary of State to obtain the consent of any of the religious organisations that use the chapel before applying for it to be registered for same-sex weddings.

Issues

Religious weddings

11.91 According to the legislation, weddings in armed forces chapels registered for non-Anglican weddings can follow any form and ceremony. But the policy adopted by the Ministry of Defence is that armed forces chapels are for Christian worship and

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60 See paras 2.181 to 2.192 above for more detail about the current law.

61 Marriage Act 1949, s 68(2).

62 Marriage Act 1949, ss 69 to 70A. But as explained at para 11.91 below, Ministry of Defence policy is that armed forces chapels can be used only for religious weddings according to Christian rites.

63 Marriage Act 1949, s 69(4).

64 Marriage Act 1949, ss 70(1)(b) and 70A(3).

65 Marriage Act 1949, s 44.

66 Marriage Act 1949, ss 43, 43B, 70(1)(b), and 70A(3).

67 Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2014 (SI 2014 No 815), reg 3.

Christian weddings only.[68] Weddings must be conducted by a Christian chaplain belonging to one of the denominations that provide military chaplains.[69]

11.92 For other religious groups, the Ministry of Defence's policy means that it is not possible to have a legally binding religious wedding on a military site.[70] If Government decides to enable non-religious belief groups to solemnize marriage, the current policy would also exclude those groups from making use of armed forces chapels.[71]

11.93 The law is also relatively restrictive in terms of who may have an Anglican wedding in a licensed armed forces chapel. At least one of the parties must be resident in the parish in which the chapel is located, although that need not be the same party who is a qualified person in the sense described at paragraph 11.87 above. Unlike for other Anglican weddings, it does not suffice that the chapel is the usual place of worship of one of the parties,[72] or that one of the parties has a qualifying connection with the parish.[73] If neither party is resident in the parish, the only way they can have an Anglican wedding in the chapel is if it is authorised by an Archbishop's special licence. As the Faculty Office explains, that rule

> may well prevent the chapel being used by personnel of the establishment which it serves if they do not themselves live in the establishment or if a parish boundary lies between their quarters and the chapel.[74]

Civil weddings

11.94 Although there is no special provision for civil weddings on military sites, the Marriages and Civil Partnerships (Approved Premises) Regulations 2005[75] would in principle allow a building or other structure on a military site to be approved as premises for civil weddings. However, as we explain in Chapter 2, approved premises are required to have free public access during the wedding ceremony, and to be regularly available to the public for weddings. When the Ministry of Defence ran a pilot

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68 BRd2: Queen's Regulations for the Royal Navy (April 2017) para J6102(16); Queen's Regulations for the Army 1975 (amendment 37, May 2019) ch 7 annex C(J) para J17.

69 BRd2: Queen's Regulations for the Royal Navy (April 2017) paras J6102(8) and J6102(11); Queen's Regulations for the Army 1975 (amendment 37, May 2019) ch 7 annex C(J) paras J9 and J12.

70 Because there are no legal restrictions on where Jewish and Quaker weddings can take place, they could in theory happen on parts of military sites other than armed forces chapels. But we are not aware of that happening.

71 In Ch 7 we ask an open question about whether the law should permit non-religious belief weddings to take place in religious venues.

72 Marriage Act 1949, s 69(1) and sch 4 pt 1.

73 See paras 2.72 and 2.96 above for the meaning of "qualifying connection".

74 Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 4.9. See the Glossary for the meaning of "Faculty Office".

75 SI 2005 No 3168.

project in 2016, it found that those requirements caused security concerns.[76] As a consequence, there is therefore no option for civil weddings on military sites.

Same-sex weddings

11.95 We explain at paragraph 11.90 above that the law requires the Secretary of State to consult with, but not necessarily to obtain consent from, religious organisations before applying for an armed forces chapel to be registered for same-sex weddings. However, the Ministry of Defence's policy is that an application for a chapel to be registered for same-sex weddings will not be made unless a military chaplain belonging to a Christian denomination that has consented to same-sex marriage can be appointed as an authorised person.[77]

11.96 Relatively few Christian denominations have given their consent to same-sex marriage. We understand that of those which provide military chaplains, only the United Reformed Church and the Baptist Union of Great Britain have consented. In consequence, only one chapel has been registered for same-sex weddings, where only one same-sex wedding has happened since the possibility was introduced in 2014. However, we understand that further chapels are in the process of being registered.

11.97 Considering that civil weddings are not available on military sites, it is therefore almost impossible for same-sex couples to get married on a military site. The Ministry of Defence has stated that the legislation should be changed to facilitate same-sex weddings.[78] In February 2019, the then-Secretary of State for Defence wrote to Cabinet colleagues to press for reform.[79]

Discussion

11.98 In Chapter 7, we provisionally propose that all weddings should be able to take place anywhere. That reform would enable weddings of any type to take place on military sites. We also provisionally propose in Chapter 7 that civil wedding locations should not have to be publicly accessible or regularly available to the public; and we provisionally propose in Chapter 6 that civil and religious weddings should not have to take place with open doors.

11.99 We believe that these provisional proposals address the problems that currently exist in relation to weddings on military sites. Ministry of Defence policy could continue to be that armed forces chapels are reserved for Anglican and other Christian weddings. But our proposals would make it possible for the Ministry of Defence to allow other religious weddings, civil weddings, and (if enabled) non-religious belief weddings to

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76 Ministry of Defence: Civil Partnerships and Marriage: Written Answer (HC) 222595 (26 February 2019) (Gavin Williamson).

77 BRd2: Queen's Regulations for the Royal Navy (April 2017) annex 61A para 10(a); Queen's Regulations for the Army 1975 (amendment 37, May 2019) ch 7 annex C(J) appendix 1(J) para J10(a).

78 Ministry of Defence: Civil Partnerships and Marriage: Written Answer (HC) 222595 (26 February 2019) (Gavin Williamson).

79 S Swinford, "Exclusive: Gay members of armed forces should be able to marry on military bases, Gavin Williamson says" (13 February 2019) *Daily Telegraph*, https://www.telegraph.co.uk/politics/2019/02/13/exclusive-gay-members-armed-forces-should-able-marry-military/ (last visited 1 May 2020).

take place elsewhere on military sites. That might be in a building – for example a mess room or a ceremonial room – or outside.

11.100 The law would no longer require whatever location that was chosen to be publicly accessible. The Ministry of Defence would therefore be able to use its powers as a property owner to restrict who used its facilities to get married, and who attended weddings on those facilities.[80] As currently, there could be restrictions based on having a connection with the armed forces, and on being locally resident.

11.101 The availability of civil weddings on military sites would provide an avenue for same-sex weddings involving service personnel who would like to marry at a military site that is meaningful to them. Accordingly, we do not think that any special rules would be needed.

WEDDINGS AT SEA

11.102 Our Terms of Reference expressly require us to consider the possibility of weddings at sea.[81] Currently, the law does not provide for, nor even contemplate, weddings taking place at sea. In devising potential solutions, we consider three areas of water on which a wedding might take place.

(1) Rivers and lakes, which we call "inland waters".

(2) The territorial sea and other coastal waters adjacent to England and Wales. Territorial seas are the areas of water next to the coast, over which states' sovereignty extends.[82] Territorial seas are measured from a line drawn around the coast called the baseline, and extend 12 nautical miles outwards from the baseline.[83] In this category we include coastal waters that are not part of the territorial sea, but to which we consider the same policy considerations apply.[84]

(3) International waters. By "international waters" we mean those parts of the sea that are outside of the internal waters and territorial sea of any nation.[85]

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80 Constrained only by public law rules against discrimination.

81 See Appendix 1 for our full Terms of Reference.

82 United Nations Convention on the Law of the Sea (1982), art 2.

83 United Nations Convention on the Law of the Sea (1982), art 3.

84 Although the baseline generally follows the low water line, in places the baseline deviates from the low water line, for example across the mouths of some bays: United Nations Convention on the Law of the Sea (1982), arts 5 and 10; Territorial Sea (Baselines) Order 2014 (SI 2014 No 1353). That deviation means that some coastal waters that might be thought of as part of the sea are in fact within the baseline, and so classified as internal waters, not territorial sea. In England and Wales, for example, Morecambe Bay, Cardigan Bay, the Severn Estuary, The Solent, and The Wash are all internal waters.

85 International waters also exclude archipelagic waters, which are located between the islands of archipelagic nations, and have a status similar to territorial seas: United Nations Convention on the Law of the Sea (1982), pt IV. But "international waters" in this sense includes exclusive economic zones: areas of water extending 200 nautical miles from the baseline, over which states have the right to exploration and economic exploitation of natural resources: United Nations Convention on the Law of the Sea (1982), pt V.

International waters are at least 12 nautical miles away from the coast of any nation.

11.103 Our provisional proposals would allow couples to get married in each of these three areas, thereby promoting choice and respecting individuals' wishes and beliefs.

Current law

11.104 The existing structure of weddings law is not compatible with weddings at sea. The main reason is that most types of wedding are tied to particular buildings on land.[86]

(1) Civil weddings take place in register offices or approved premises. Register offices are located in buildings on land, and for premises to be approved, they must be "a permanently immovable structure comprising at least a room, or any boat or other vessel which is permanently moored".[87]

(2) Most Anglican weddings must take place in a parish church or authorised chapel. Anglican weddings authorised by special licence can in theory take place anywhere, but special licences will in practice be granted only for weddings in buildings "customarily used for Anglican worship".[88]

(3) Most other religious weddings must take place in registered buildings.

11.105 Other features of the current law provide further obstacles to weddings at sea. The law requires that weddings other than Anglican, Quaker and Jewish weddings must take place with open doors, or that the public be able to access the building. Depending on how those requirements are interpreted, they might exclude weddings at sea. So might the requirement for couples to identify the location at which they will get married, when giving notice to the superintendent registrar.[89]

Issues

11.106 It is a specific objective of this project to consider enabling weddings at sea. Some couples from England and Wales choose to get married at sea. Cruise companies offer weddings in international waters, on board ships registered in countries where the law provides for weddings at sea: principally the Bahamas, Bermuda, and Malta.[90] Weddings are also possible when a ship is at port in countries where weddings are

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86 See further Ch 2.

87 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 3168), reg 2(1).

88 Faculty Office, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* (3rd ed 2010 (supplemented in 2013 and 2015)) para 3.8.

89 For weddings in international waters, there is also a question about the circumstances in which the validity of a wedding is governed by English and Welsh weddings law.

90 Princess Cruises, *Memories for a lifetime*, https://princess.eweddingcalendar.com/Wedding-Calendar-Home (last visited 1 May 2020); P&O Cruises, *This is the Life: Weddings at Sea 2017 – 2018*, http://images.pocruises.com/Global/Weddings/Wedding-Brochure-July-2017.pdf (last visited 1 May 2020); Royal Caribbean International, *Royal Weddings*, https://www.royalcaribbean.com/content/dam/royal/resources/pdf/royal-weddings-brochure.pdf (last visited 1 May 2020); Norwegian Cruise Lines, *Dream Wedding Planner*, https://ncl.eweddingcalendar.com/Wedding-Calendar-Home (last visited 1 May 2020).

allowed in a wider range of locations, like Italy, Australia, and New Zealand.[91] For British-registered ships with a port of choice in England or Wales,[92] ceremonies that take place in international waters will not currently be legally binding.[93]

11.107 We have been told that enabling legally binding weddings to take place in international waters on board ships with a port of choice in England or Wales would provide an incentive for owners of cruise ships to register their vessels in this jurisdiction. We discuss at paragraphs 13.84 to 13.93 the potential benefits, fiscal and non-fiscal, to the United Kingdom of an enlarged shipping fleet. For owners of ships that are already registered in the United Kingdom, reform would have the potential to open up new economic opportunities. More generally, reforms that enabled weddings at sea would promote choice for couples, and be consistent with the principle of respecting individuals' wishes and beliefs.

Options for reform

11.108 Under the provisional proposals we discuss in Chapter 7, weddings would be able to take place at any location in England and Wales. Further, there would be no requirement for weddings to be accessible to the public. The two main legal barriers to weddings at sea under the current law would therefore disappear. However, specific considerations arise in relation to weddings in the territorial sea and coastal waters, and weddings in international waters.

Inland waters

11.109 As we explain in Chapter 7, our provisional proposals that weddings should be able to take place anywhere, with the agreement of the officiant, would allow weddings to take place on inland waters like rivers and lakes. Weddings in those places would be treated the same as other locations like woodland and moorlands, and would be possible only with the agreement of the officiant, who would be responsible to ensure the dignity and safety of the location.

The territorial sea and other coastal waters

11.110 Our provisional proposals about where weddings should be able to take place could also allow weddings to take place in the territorial sea and other coastal waters adjacent to England and Wales.

11.111 Getting married in the territorial sea or other coastal waters might be an attractive option for some couples. Enabling weddings in those places would be consistent with the principles of allowing for greater choice and respecting individuals' wishes and beliefs. For example, couples might want to get married on a sailing yacht, because

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91 Princess Cruises, *Event locations*, https://princess.eweddingcalendar.com/calendar/weddingOptionsEdit/productId/1183/ (last visited 1 May 2020).

92 Prior to 1994, ships were registered on registers held at individual ports around the United Kingdom, and the port at which a ship was registered was called its port of registry: Merchant Shipping Act 1894, s 13. The Merchant Shipping (Registration etc) Act 1993 introduced a central register of ships, but applicants for registration continue to be required to nominate a port of choice, and the ship must be marked with the name of that port: Merchant Shipping (Registration of Ships) Regulations 1993 (SI 1993 No 3138), regs 31 and 122, and sch 3 para 3.

93 Unless the ship is permanently moored and has been approved as premises for civil weddings.

sailing is a shared passion. It could also be an opportunity to get married in picturesque surroundings, or at a location with which the parties have a personal connection.

11.112 Against those benefits, we have considered whether there are reasons that mean weddings in the territorial sea and other coastal waters should not be allowed, or should be treated differently to weddings on land and on inland waters.

11.113 The first issue is the potential remoteness of weddings in the territorial sea or other coastal waters. The wedding party, including the officiant, may be out of communication with the registration service. That lack of communication would mean that an officiant would not be able to contact the General Register Office for guidance should a potential impediment become apparent at the last minute. Nor would a registration officer be able to inform the officiant that a potentially valid objection to the wedding had been made at the last minute.

11.114 However, the scheme that we have provisionally proposed for weddings on land does not depend on the officiant being contactable immediately before or during the wedding. It would be possible for a wedding to take place in a remote location like a forest or a hilltop, where no telecommunication is possible. Even some buildings that are currently used for weddings might lack a telephone landline or mobile telephone reception. Instead, we favour a system of robust preliminaries that, so far as is possible, will uncover any problems well in advance of the wedding day. For the same reason, we do not consider that the potential inability to communicate with the officiant is a sufficient reason not to enable weddings in the territorial sea or other coastal waters.

11.115 Second is the issue of safety and dignity. In our initial view, we do not think that issues about safety and dignity would justify a different treatment of weddings in the territorial sea and other coastal waters. In relation to safety, we accept that the maritime environment poses particular hazards that must be mitigated against carefully. But the need for a high degree of safety precautions is common to all activities at sea, not just weddings. To that end, there is a large body of law regulating sea-going vessels and their use.[94]

11.116 As with all weddings under our proposed scheme, it would be the responsibility of the officiant to ensure that a proposed location in the territorial sea or other coastal waters is safe.[95] In discharging that responsibility, the officiant should ensure that the vessel on which the wedding was proposed to take place conformed with safety regulations. Changeable weather conditions can impact many weddings, but may be especially relevant to weddings at sea. Officiants would act on advice from ships' captains about whether conditions make it necessary to postpone or relocate the ceremony. And ships' captains themselves are responsible for the safety of those on board.

11.117 We have also provisionally proposed that officiants would be responsible to ensure that any proposed wedding location is dignified. We do not foresee any reason why a

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94 For just one example, see the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 (SI 1998 No 2771).

95 See paras 7.168 to 7.180) above.

different approach would be required for weddings located in the territorial sea or other coastal waters.

11.118 We therefore provisionally propose that weddings should be able to take place in the territorial sea, and in bays and other coastal waters, adjacent to England and Wales.

11.119 Just as for other weddings, civil weddings in the territorial sea could be officiated by registration officers and (if they were enabled) independent officiants.[96] Religious and (if they were enabled) non-religious belief weddings could be officiated by officiants belonging to those groups, if they chose to do so.

International waters

11.120 Weddings in international waters raise specific considerations. As a starting point, the rules applicable on land could not simply be extended to international waters, without modification. Not every wedding in international waters could be governed by the law of England and Wales: there would need to be a factor connecting the vessel to England and Wales for the domestic law to apply.

11.121 Further, weddings in international waters would potentially take place at a great distance from England and Wales, in different time zones. Ships may be away from the United Kingdom for many weeks. Although cruise ships generally maintain telecommunication with operators' headquarters, there may be situations in which contact is not possible. Below, we consider whether special rules about preliminaries, officiants, and registration are therefore necessary for weddings in international waters.

11.122 But there are clear benefits to enabling weddings in international waters. The objective of promoting choice and the principle of respecting individuals' wishes and beliefs are strong reasons to enable weddings in international waters, just as for weddings in the territorial sea and other coastal waters. Further, the benefits to the United Kingdom described at paragraph 11.107 would be realised only if weddings were possible under the law of England and Wales in international waters. We therefore initially think that weddings should be enabled in international waters.

Connection with England and Wales

11.123 We are concerned in this project only with weddings under the law of England and Wales. In relation to international waters, therefore, we limit our discussion to weddings on board ships that have a sufficient connecting factor with England and Wales, so that the law of England and Wales could apply: British ships that are registered with a port of choice in England or Wales.[97]

11.124 It would also be necessary to limit weddings in international waters to couples who had boarded the ship in the United Kingdom. This is because the rules designed to protect against sham marriage are intertwined with immigration law. Those rules would be undermined if couples were able to marry under the law of England and Wales in international waters, without ever coming to the United Kingdom. That could

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96 As we discuss in Ch 12, under our provisional proposals registration officers would be able to charge a fee that covered the costs associated with any extra time needed to get from and to shore.

97 See n 92 above for the meaning of "port of choice".

in theory happen if a British-registered ship with a port of choice in England and Wales was based, say, in the Caribbean, and never sailed to British ports. It would also be difficult to see how the requirement to have an in-person meeting with a registration officer, a necessary protection against forced marriage, could apply to couples who board a ship outside the United Kingdom, particularly if they are not resident in the United Kingdom. But we understand that the commercial interest for offering weddings in international waters under the law of England and Wales is centred on voyages beginning and ending in the United Kingdom.

Types of ship

11.125 Our proposals focus on enabling weddings to take place on cruise ships. So far as we are aware, weddings in international waters (under other countries' laws) currently take place only on board large cruise ships, as part of a longer international voyage. A useful example of a definition of "cruise ship" is found in the Merchant Shipping (Officer Nationality) Regulations 1995.[98] Simplified, it means a ship certified to carry over 200 passengers, and which is engaged on international voyages of over 600 nautical miles. With this definition in mind, we provisionally propose that weddings should be able to take place in international waters under the law of England and Wales, on board cruise ships registered in the United Kingdom with a port of choice in England or Wales.

11.126 We have not heard of demand for weddings in international waters on board vessels other than large cruise ships. Further, as we explain at paragraphs 11.137 to 11.139 below, we provisionally propose that weddings in international waters should be officiated only by members of a ship's crew, so that they are part of the chain-of-command of the organisation that operates the ship. That proposal would be inconsistent with wedding in international waters taking place on small private vessels. One possibility would be to allow weddings in international waters on board any passenger vessel, generally defined as a vessel carrying more than 12 passengers.[99] We welcome consultees' views about any such demand, and ask a consultation question about that below.

Preliminaries

11.127 In Chapter 4 we provisionally propose that couples should give notice of their officiant's name, so that the registration service could contact the officiant, should the need arise prior to the ceremony. Under our provisional proposals it would not be necessary to give notice of the wedding location. However, for weddings in international waters, we think two factors point to taking a different approach, by requiring the ship but not the officiant to be identified at the time of giving notice.

11.128 First, supplying the identity of the ship would allow the registration officer to verify that the ship was registered in the United Kingdom with a port of choice in England or

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98 SI 1995 No 1427.

99 For example, International Convention for the Safety of Life at Sea (1974), ch I reg 2(f); Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998 (SI 1998 No 2514), reg 2(2); Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998 (SI 1998 No 2515), reg 2(2).

Wales, and so capable of holding a legally binding wedding under the law of England and Wales.

11.129 Second, the identity of the ship would be an important link between the registration service and the officiant, allowing contact to be established. This might be important if an impediment to the wedding were identified to the registration service in the days before the wedding.

11.130 On the other hand, for the reasons we explain at paragraphs 11.137 to 11.139 below, we think that only members of crew should be allowed to act as officiants in international waters. Cruise ship operators require the flexibility to change their crew rosters ahead of a sailing. We think that it would therefore be impractical to require couples to name the crew member who will officiate at their wedding, up to 12 months in advance, because that person may not eventually be assigned to the crew of their cruise.

11.131 Based on our provisional proposals in Chapter 4, it would be possible for the couple to request an amended schedule to be issued, naming a different crew member as officiant. However, we consider that that solution would be unnecessarily contrived, requiring the parties to give notice in the knowledge that they may have to request a new schedule before their cruise begins. Instead, we think that identifying the ship at the notice stage would provide sufficient information about the officiant, because the officiant would necessarily be a member of that ship's crew.

11.132 We therefore provisionally propose that couples should be required to give the name and registration number of the ship on which they intend to marry in international waters as a part of giving notice, but should not be required to identify the officiant by name.

11.133 We explain at paragraph 10.77 above that under our proposed scheme, if a couple were married by an authorised officiant other than the person named as officiant in the schedule, the marriage would nevertheless be valid. We think that, by analogy, there should be no negative consequences if a couple marry on a ship other than that named in the schedule, provided the ship that was in fact used met the criteria discussed above.

11.134 We have also provisionally proposed that parties should be required to attend the register office for an in-person interview, before the schedule authorising their wedding is issued. We do not anticipate that this requirement will present a problem. As we explain at paragraph 11.124 above, all couples marrying in international waters under the law of England and Wales will have to board the ship in the United Kingdom.

Officiants

11.135 Under the provisional proposals made in Chapter 5, there would potentially be four categories of people who could officiate at weddings: registration officers, Anglican clergy, nominated religious and non-religious belief officiants and independent officiants. For each category of officiant, we anticipate that it would often be impractical (or prohibitively costly) to expect them to be aboard a ship for an extended period, to officiate at a wedding in international waters. We therefore think it would be

necessary for existing members of the ship's crew to be able to officiate at weddings on board the ship.

11.136 Crew members could apply to the Registrar General to be authorised as a special category of maritime officiants. Maritime officiants would be acting on a commercial basis, not belonging to a religious or non-religious belief organisation, and not being employed as a registration officer. Consequently, we think that maritime officiants should be subject to the same rules that we have provisionally proposed should apply to independent officiants,[100] who would also be acting on a commercial basis. Those rules would mean that maritime officiants would have to undertake relevant training, and would not be subject to the rule against making a business of officiating at weddings, which would apply to officiants nominated by religious (or non-religious belief) organisations. Imposing that condition would not seem to serve any purpose when the cruise itself is being operated commercially.

11.137 Not only (as we explain above) would it be logistically impractical and prohibitively costly for individuals who were not crew members to officiate at weddings in international waters, we think there are good reasons to allow *only* crew members to do so.

11.138 First, as we explain above, there must be a connection between the vessel and England and Wales for the law to apply. We think it is logical to require that the officiant also have a link with the ship, so that they too have a connection with the domestic law of England and Wales.

11.139 Second, requiring the officiant to be a crew member would ensure that the officiant is part of the ship's chain-of-command, and that the ship's operator can regulate the officiant, to ensure that the law is complied with. It would also ensure that the officiant will have access to the ship's communication equipment, should it be necessary to contact or be contacted by the registration service or the ship's operator.

11.140 We provisionally propose that only deck officers should be able to become maritime officiants. Deck officers are the captain, chief mate, and other officers who take charge of a navigational watch on board a ship.[101] Limiting maritime officiants to deck officers would narrow the range of people able to perform this important role to those who already carry positions of high responsibility on board ships.

11.141 If Government chooses to enable independent officiants to conduct legally binding weddings, we think that other members of the crew who become authorised independent officiants should be able to officiate at weddings in international waters. But because we see it as important for there to be a link between the ship and the officiant, in our view independent officiants who are not crew members should not be permitted to officiate.

11.142 Because of the importance of the link between the ship and the officiant, we provisionally propose that a wedding should be void if it is officiated in international

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[100] See paras 5.177 to 5.180 above.

[101] International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1978) (as amended), reg I/1(1.5) and ch II.

waters by someone other than a maritime officiant who is a deck officer on board the ship or (if Government enables independent officiants) an independent officiant who is a member of the ship's crew. We expect that such cases would be extremely rare. Weddings would invariably be arranged via the operator of the ship, which would ensure that only an appropriately qualified officiant would act.

11.143 Our provisional proposals would mean that religious and (if they were enabled) non-religious belief officiants would not be able to officiate at weddings in international waters. Only civil weddings would be allowed.[102] We have not heard of any demand for religious or non-religious belief weddings to take place in international waters. For example, the Board of Deputies told us that although a wedding on moving transport is in theory possible under Jewish law, it was not aware of any current demand. We invite consultees to let us know if there is any demand for religious or non-religious belief weddings in international waters.

Registration

11.144 In Chapter 8 we explain that couples will be required to return the completed schedule to registration service within a fixed period after their wedding, possibly seven days. In the context of weddings in international waters, that requirement may be logistically very difficult or impossible for couples to satisfy. We therefore provisionally propose that instead of having a fixed time limit, couples should be required to return the schedule as soon as reasonably possible after a wedding in international waters.

Consultation

Consultation Question 68.

11.145 We provisionally propose that weddings should be able to take place in the territorial sea, and in bays and other coastal waters, adjacent to England and Wales.

Do consultees agree?

Consultation Question 69.

11.146 We provisionally propose that weddings should be able to take place in international waters under the law of England and Wales, on board cruise ships registered in the United Kingdom with a port of choice in England or Wales.

Do consultees agree?

[102] However, under our provisional proposal in Ch 6 religious content would be permitted in civil wedding ceremonies, provided it is identifiable as a civil ceremony rather than a religious service.

Consultation Question 70.

11.147 We invite consultees' views as to whether weddings should be able to take place in international waters under the law of England and Wales, on board vessels other than cruise ships, and if so, which types of vessel.

Consultation Question 71.

11.148 We provisionally propose that couples should be required to give the name and registration number of the ship on which they intend to marry in international waters, when giving notice of their intention to marry, but should not be required to give the name of the officiant.

Do consultees agree?

Consultation Question 72.

11.149 We provisionally propose that weddings on ships in international waters should be officiated by:

(1) deck officers who have been authorised by the Registrar General as maritime officiants; and

(2) (if independent officiants are enabled by Government to officiate at weddings) other members of the ship's crew who have been authorised as independent officiants.

Do consultees agree?

11.150 We provisionally propose that maritime officiants should be subject to the same rules as we have provisionally proposed should apply to independent officiants.

Do consultees agree?

11.151 We provisionally propose that weddings on ships in international waters should be void if they are not officiated by a maritime officiant or a member of crew who is an independent officiant.

Do consultees agree?

Consultation Question 73.

11.152 We invite consultees' views about whether there is any demand for religious or non-religious belief weddings in international waters.

Consultation Question 74.

11.153 We provisionally propose that any fixed time limit for couples to return the schedule after their wedding should not apply to weddings in international waters, but instead couples should be required to return the schedule as soon as is reasonably possible.

Do consultees agree?

Chapter 12: Fees

INTRODUCTION

12.1 In this chapter, we consider the fees charged under the Marriage Act 1949 for weddings. We focus on how the different types of fee would need to change as a consequence of the changes to the law that we provisionally propose throughout this Consultation Paper.

12.2 One of the five principles underlying our recommendations is to remove unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples. As a part of this aim, throughout this Consultation Paper, we consider the costs that flow from the legal regulation of weddings, proposing changes when we do not think the costs are justified. The scheme that we propose would eliminate some of the existing regulations, and as a consequence, some of the current fees would become redundant.

(1) To solemnize marriages, a religious organisation (or non-religious belief organisation) would not be required to apply for certification of their place of worship, and then apply to register the place of worship for marriages, eliminating those fees.[1]

(2) A civil wedding would only be required to be attended by one registration officer, eliminating the legal requirement that couples pay for the attendance of both the registrar and superintendent registrar. This proposal would also eliminate any staffing or other costs borne by local authorities in providing two registration officers (particularly during busy periods, such as weekends in the summer) that they do not recover.

(3) To host legal weddings, businesses and other venues would not need to obtain the approval of the local authority. This proposal would eliminate the fees venues must pay when applying for and renewing approval under the Marriages and Civil Partnerships (Approved Premises) Regulations 2005[2] ("Approved Premises Regulations") and any costs that venues need to incur to comply with the requirements of the Regulations or the conditions of approval. This proposal might also benefit local authorities, by eliminating any costs they incur in providing this service that they do not recover.

12.3 The focus of this chapter is on the fees that will continue to be necessary under our proposed scheme. In particular, we consider the fees charged by Government and local authorities (and, in relation to Anglican preliminaries, the Church of England). Our provisionally proposed scheme moves the focus of regulation from buildings to officiants, with all weddings being attended by an authorised officiant. We anticipate

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1 For the purposes of weddings law. There would continue to be other benefits for certification of a place of worship, for example, to be exempt from liability to pay non-domestic rates: Local Government Finance Act 1988, s 51 and sch 5 para 11.

2 SI 2005 No 3168.

that there would therefore be a new fee to apply for the General Register Office to authorise an officiant nominated by a religious or (if enabled by Government) non-religious belief organisation. There would also be a fee for a maritime officiant or (if enabled by Government) independent officiant to apply for authorisation.

12.4 See Appendix 7 for a table comparing the fees under the current law and the fees under our proposed scheme.

12.5 In this chapter, we do not focus on fees that religious bodies (including the Church of England) charge to conduct a wedding, which is a matter for them.[3] It will remain the case under our provisional scheme that religious officiants, and if they are enabled to conduct weddings, non-religious belief officiants, will be free to set their own fees. Those fees will be subject to the rule outlined in Chapter 5, which will prevent officiants of religious and non-religious belief organisations from making a business of officiating at weddings, by elevating the making of profits above the expression of their beliefs. Maritime officiants will be subject to a rule preventing them from acting in a conflict of interest, but will otherwise be entitled to set their own fees. And should Government allow independent celebrants to conduct weddings, they will also be entitled to set their own fees, only constrained by a rule against acting in a conflict of interest.

12.6 We focus on the types of fees that can be charged rather than the level at which the fees are set. The level at which fees are set is determined by the General Register Office and local authorities based on the costs to authorities for providing these services.

12.7 The general rule, both nationally and for local authorities, requires fees to be set at a level that allows the cost of providing the service to be recovered. The law of local government, and in particular, the general powers of local authorities to charge fees to recover the costs that they incur in providing services, is outside the scope of project.

12.8 Moreover, we do not think that the general approach to the recovery of fees specific to weddings law should change. Local authorities need to be able to recover the costs of the weddings services that they provide. Given the demands on councils' expenditure, it is important that they are not put in the position of being required to subsidise weddings. This would be a particular worry for areas that are popular choices for weddings: those local authorities would be particularly disadvantaged by any fee scheme which resulted in losses from conducting weddings. Therefore, in our view the regulation that allows local authorities to recover their costs in relation to weddings cannot be described as unnecessary.

12.9 Therefore, the specific proposals about fees that we make in this chapter could fairly be described as modest. In themselves, they would not dramatically reduce the cost a couple spends on their wedding, or the costs a religious (or non-religious belief) group spends to host a wedding.

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[3] Under our provisional proposals, the law will only regulate the fees nominated officiants charge to the degree that it will prevent them from making a business of officiating at weddings for profit or gain, a point we discuss at paras 5.173 to 5.176 above.

12.10 However, as we explore in Chapter 13, the scheme that we are putting forward as a whole will eliminate unnecessary red tape, to increase the choice and reduce the costs of weddings. It is our provisional proposals about the law as a whole, rather than any changes to the approach to fees, that will have the most significant impact for couples, businesses and local government.

OVERVIEW OF THE FEES UNDER THE MARRIAGE ACT 1949

12.11 Fees under the Marriage Act 1949 are set in one of two ways: nationally by regulation, or locally by each local authority.

(1) The fees set nationally are currently prescribed in schedule 1 to the Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016.[4] These fees include the fees for civil preliminaries; the fee for the attendance of the registrar at a wedding in the register office; the fees for the certification of places of worship and their registration for marriage; the fee for the attendance of the registrar at weddings at registered buildings; and the fees for a marriage certificate and for searches and copies of entries in the register. Fees for the publication of banns in Church of England churches and chapels are prescribed in the Parochial Fees and Scheduled Matters Amending Order 2019.[5]

(2) The fees set by local authorities are based on the power granted to authorities under regulation 12 of the Approved Premises Regulations.[6] Under the Regulations, authorities can set the fees for applications for approval of premises, renewals of approvals, reviews of an application outcome, and the attendance of the superintendent registrar and registrar at a wedding on approved premises. These fees are required to be determined on a cost-recovery basis, meaning an amount that reasonably represents the average costs borne by the authority for the particular service. Outside these specific functions, local authorities are generally able to charge fees for discretionary services, again on a cost-recovery basis.[7]

12.12 The fees set nationally are considerably lower than the fees set locally. One reason for this may be that the national fees, which must be prescribed in regulations by the Secretary of State,[8] have not been reviewed recently; if and when they are reviewed, they may increase in order to reflect any rising costs to local authorities and the General Register Office in providing the services.

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4 SI 2016 No 911, under powers conferred by the Marriage Act 1949, ss 43D, 71A and 74(3).

5 Parochial Fees and Scheduled Matters Amending Order 2019 (SI 2019 No 752).

6 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), under powers conferred by the Marriage Act 1949, ss 46A(f), 46B(2) and 51(1A)(b).

7 Local Government Act 2003, s 93(3).

8 Marriage Act 1949, s 71A.

PRELIMINARIES

Civil preliminaries

Fees for giving notice

12.13 Fees for giving notice for civil preliminaries are currently set by the Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016.[9] There are two different fees, depending on the nationality and immigration status of the parties:

(1) if both parties are exempt persons (meaning both are relevant nationals, or have the appropriate immigration status or hold a relevant visa in respect of the proposed marriage or civil partnership[10]): £35 per person; and

(2) in every other case: £47 per person.

12.14 Additional fees for giving notice apply where the circumstances of the party require that the superintendent registrar travel to them to take notice:

(1) a person who is housebound: £47; and

(2) a person who is detained: £68.

12.15 One global fee of £18 applies in the case of a couple giving notice for a wedding involving a person who is terminally ill.[11]

12.16 A fee is also prescribed for an application to reduce the 28-day waiting period, at £60 per person, and for consideration of foreign evidence of a divorce or the dissolution of a civil partnership, at £75.[12]

12.17 Under our provisional proposals, most of the above categories of fee will remain: because of the additional time registration officers and other Government officials will need to spend assessing the notice in these cases, it will continue to be necessary to have different fees for exempt persons on one hand and persons subject to immigration control on the other, and for a separate fee to expedite the notice process.[13] We are therefore not consulting on these points.

12.18 Because weddings will be able to take place anywhere, including within private homes, it will no longer be necessary for parties to get specific permission to marry at home or in a hospital, for example. However, the registration officer will need to continue their current practice of travelling to the person who is housebound or

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9 SI 2016 No 911.

10 See the Glossary for the meaning of "relevant national", "appropriate immigration status" and "relevant visa". See also Immigration Act 2014, s 49.

11 Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1.

12 Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1.

13 See para 4.73 above. See the Glossary for the meaning of "exempt person".

detained to complete the notice process by meeting the party in person.[14] Where a person is not housebound or detained, the in-person meeting with the registration officer would take place in the register office. In order for local authorities to recover the cost of the additional time taken by the registration officer, it will be necessary to charge a higher fee in these cases.

12.19 One option would be to have a separate, higher fee, prescribed by regulations, for all cases in which the registration officer must travel to a person in order for them to give notice, reflecting the average cost to local authorities in such cases. It appears that the fees for giving notice by a housebound and detained person were originally intended to be the same.[15] However, the current fee for notice of a wedding involving a person who is detained is higher compared to the fee for a person who is housebound; we understand that this reflects the greater time and cost incurred by local authorities. The difference in time taken to access certain types of location would militate against setting a standard fee to be charged in all cases where the registration officer must travel to the person giving notice.

12.20 Another option would be to charge an hourly rate, or a rate based on distance travelled, in addition to the standard notice fee, to reflect the additional time taken by the registration officer in travelling to and from the location of the person giving notice. The rate could be subject to a cap to prevent excessive fees in exceptional cases. However, a clear downside of this approach is that the fee for giving notice would vary person to person, and indeed a person would not know before giving notice what the fee would be in their case. The fee might also be contingent on factors outside the person's control, for example, the efficiency of the facility where they are detained in allowing visitors onto the premises. We therefore provisionally propose that, following the approach of the current fees, there should be a separate, standard fee for all cases in which the registration officer must travel to take notice from a person, whether the person is housebound or detained.

12.21 In our view, preliminaries to a wedding involving a person who is terminally ill deserve special treatment. We explain our provisional proposal in Chapter 11 that under our scheme there is no need for a special form of notice – currently a Registrar General's licence – for a wedding of a person who is terminally ill. We also provisionally propose that the law should be amended so that a person who is terminally ill should be required to give notice themselves. Therefore, under our provisional proposals, the registration officer will have to travel to the person giving notice for the in-person interview. If the person who is terminally ill does not give notice remotely, the registration officer will take their notice at the same time. This visit is not one that registration officers need to make under the current law, because the person does not need to give notice at all. But we think that there are compassionate grounds for keeping the fee for this form of notice separate from other forms of notice, so that it may remain low and below cost-recovery, as it is now. We are interested in consultees' views.

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14 See paras 11.40 to 11.41 above

15 *Hansard* (HL), 28 January 1983, vol 438, col 485.

Consultation Question 75.

12.22 We provisionally propose that there should be an additional, standard fee charged in cases where the registration officer must travel to one of the persons giving notice because that person is housebound or detained. The fee should be set nationally on a cost-recovery basis.

Do consultees agree?

Consultation Question 76.

12.23 We invite consultees' views as to whether the fee for both parties to give notice of a wedding involving a person who is terminally ill should be:

(1) the same fee as other cases in which the registration officer must travel to the person giving notice, set nationally on a cost-recovery basis; or

(2) a separate fee from other forms of giving notice, set nationally on compassionate grounds at below cost level.

Booking fees

12.24 Some local authorities charge parties giving notice a booking fee, which must be paid in order to book an appointment to give notice. In some cases, booking fees are only required for online bookings or for appointments outside regular office hours. In other cases, it appears that anyone giving notice of their intended wedding in the district must pay a booking fee.[16]

12.25 If a person must book an appointment as part of giving notice, and the fee charged for booking the appointment does not contribute towards the statutory fee of giving notice, this fee is not discretionary, but mandatory. Any cost of booking that is a required part of giving notice on a working day[17] should be included within and reflected by the prescribed fee, not added as an additional fee by local authorities.

Anglican preliminaries

12.26 Fees for the publication of banns by the Church of England are set nationally by the Archbishops' Council, in the Parochial Fees and Scheduled Matters Amending Order 2019.[18] The fee for each set of banns (called on three Sundays within any given church) is £31, and a certificate of publication of banns is £14. The total fee paid by

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16 S Pywell, "2 + 2 = £127, if you're lucky" (3 March 2020) *Law Gazette*, https://www.lawgazette.co.uk/practice-points/2--2--127-if-youre-lucky/5103309.article (last visited 1 May 2020).

17 See the Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), reg 2.

18 SI 2019 No 752, sch 1, in accordance with the Ecclesiastical Fees Measure 1986.

any one couple depends on whether they live in the same parish, and whether they are marrying in a parish where they reside. For example, if they reside in different parishes, and are marrying in a church with which one has a qualifying connection, they will require three sets of banns and two certificates. Conversely, where a couple live in the same parish and are marrying in their parish church, the cost will only be £31, a lower fee than couples marrying on the authority of two certificates of a superintendent registrar will pay.

12.27 The Church of England sets the fees for common licences and special licences outside regulation: online it states that common licences are "around £200"[19]; and special licences are £325.[20]

12.28 Fees for Anglican preliminaries in the Church in Wales are set by the Church, and published online.[21]

12.29 In Chapter 4, we ask an open question as to whether Anglican preliminaries should be retained as a form of legal authority for a wedding. If Anglican preliminaries are retained, fees for each type will continue to be determined by the Church of England and the Church in Wales.

CEREMONY AND LOCATION

"Statutory" weddings in the register office

12.30 Under the current law, one affordable option for couples wanting a civil ceremony is the low-cost, so-called "statutory" ceremony in a register office. A register office is the office of the superintendent registrar of each district, required to be provided to the superintendent registrar by each council.[22]

12.31 The fee for the statutory ceremony is set by regulation, as a fee for the attendance of the registrar, at £46;[23] there is no fee prescribed for the attendance of the superintendent registrar, who is also required to attend.

12.32 For this fee, local authorities generally offer a wedding ceremony in a register office, with two witnesses but no other guests, and no personalisation of the short ceremony. Some local authorities may allow more than two guests and offer choices about the content of the ceremony, and some may also allow the wedding to take place in

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19 Your Church Wedding, *Common licences*, https://www.yourchurchwedding.org/article/common-licences/ (last visited 1 May 2020).

20 Faculty Office, *Fees for Special Marriage Licences*, http://www.facultyoffice.org.uk/fees-special-marriage-licence/ (last visited 1 May 2020).

21 The Church in Wales, *Marriage Fees – Table of Fees (from 1 January 2020)*, https://www.churchinwales.org.uk/en/life-events/weddings/marriage-fees/ (last visited 1 May 2020).

22 Marriage Act 1949, s 45(1) and Registration Service Act 1953, s 10.

23 Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1.

another, grander room owned by the local authority, but we understand that this is rare.[24]

12.33 As marriage has significant legal advantages and consequences, it is an important function of Government to provide couples with a low-cost way of getting married.[25] The financial barrier should be as low as possible. Accordingly, we think that the option of a register office wedding should remain available in a reformed system.

12.34 In contrast with the current law, the location of the wedding is not the focus of our proposed scheme. Nevertheless, we think that local authorities should continue to provide couples with the option of a low-cost wedding on the premises of the local authority. Given that register offices will continue to exist for other purposes, our initial view is that local authorities should continue to offer register office weddings, and that the fee for such weddings should continue to be prescribed by regulation.

12.35 Local authorities will, of course, be entitled to charge couples higher fees for weddings in rooms other than the register office, to reflect the cost of the use of that room. Local authorities will also be able to charge for other services. Below, we consider the fees that local authorities should more generally be able to charge, in relation to fees for weddings outside the register office.

12.36 However, as we said above in relation to preliminaries, we do not think that local authorities should be permitted by the law to charge additional, mandatory booking fees which are not deducted from the prescribed ceremony fee, or which are more than the prescribed fee. Such a fee undermines the policy of a prescribed fee. We also do not think local authorities should be able to require couples to purchase a marriage certificate.

Consultation Question 77.

12.37 We provisionally propose that it should continue to be possible for couples to have a civil wedding in a register office, for a fee prescribed by regulation.

Do consultees agree?

Civil weddings in locations other than the register office

12.38 Currently, there are two separate types of fees for civil weddings outside the register office,[26] on approved premises. The first type of fees are those for approval of the premises (and renewal of approval), paid by the venue as part of the approval

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24 See eg S Pywell, "2 + 2 = £127, if you're lucky" (3 March 2020) *Law Gazette*, https://www.lawgazette.co.uk/practice-points/2--2--127-if-youre-lucky/5103309.article (last visited 1 May 2020).

25 We note that many religious groups also provide couples with low-cost options for marrying, as a part of their service to their communities.

26 And excluding weddings taking place where someone who is housebound, detained or terminally ill resides: see paras 12.57 to 12.60 below.

application. The second type of fees are those for the attendance of the superintendent registrar and registrar at the wedding, paid by the couple. Both fees are determined by the local authority as an amount that reasonably represents the costs in respect of either the approval or the attendance.[27]

Fees in relation to location

12.39 As we explain in detail in Chapter 7, fees for the approval of premises are set by each local authority, so they vary. Our initial research suggests that the median application fee is £1,500, but it ranges from £51 to £3,210; fees may also vary depending on whether the local authority charges additional fees based on the number of rooms for which approval is sought. In addition to these direct fees, venues may also be meeting costs in order to make any changes to the premises necessary to comply with the conditions of approval, for example, to get planning permission to build a structure in a garden that meets the requirements in the Approved Premises Regulations for a room. We note in Chapter 7 that, because venues are operating on a commercial basis, these costs will inevitably be passed onto couples.

12.40 In furtherance of the principle of removing unnecessary regulation, to increase the choice and lower the cost of wedding venues for couples, we provisionally propose in Chapter 7 that there should be no formal pre-approval process for locations for weddings, including civil weddings. Instead, all officiants, including registration officers who officiate at civil weddings, will need to agree to the location. Officiants will be responsible for ensuring that location is safe and dignified, following guidance published by the General Register Office.

12.41 In our initial view, when a registration officer officiates a wedding outside the register office, local authorities should be able to charge a fee for any time spent by registration officers ensuring that locations are safe and dignified. The fee should be determined by local authorities, on a cost-recovery basis. Compared to the current process for approving premises, we anticipate that the registration officer's task under our proposed scheme would be relatively streamlined and informal, and so the cost to the local authority would be low. In many cases, we expect that there would be no cost at all, for example, for a wedding in a room owned by the local authority or at a hotel or stately home which regularly hosts weddings. Some locations could be presumed to be safe and dignified, or could be assessed as safe and dignified relatively quickly, for example, by speaking to the venue's proprietor or operator. Fees charged to couples for making a decision about a venue would therefore be low, or zero.

12.42 Guidance could be had from the experiences of registrars in Scotland. For example, it appears that some authorities in Scotland do not charge a separate fee for assessing the venue in advance of a civil wedding taking place outside the authority's own venues. Instead, they have flat fees for the registrar's attendance, based on the day of the week and time of day, and in some cases also a rate for the registrar's travel costs. Guidance could also be had from local authorities' experience in "duo" ceremonies currently taking place outside approved premises.[28]

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27 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 12.

28 See para 7.29 above.

Consultation Question 78.

12.43 We provisionally propose that if any fee is charged for registration officers to ensure that a location is safe and dignified, that fee should be set by the local authority on a cost-recovery basis.

Do consultees agree?

12.44 We ask in Chapter 7 for consultees' thoughts in relation to having an optional pre-approval process for wedding venues that regularly host weddings, so that officiants would not each have to take their own view as to its safety and dignity. In these cases, couples would be spared this potential cost, a point pre-approved venues could use as a marketing advantage.

12.45 Whether a system for frequently used venues would be formal or informal, the costs of it would have to be recovered by the body responsible for it, whether the General Register Office or local authorities.

Consultation Question 79.

12.46 We provisionally propose that if there is an optional pre-approval process for wedding locations that regularly host weddings, any fee for pre-approval should be set by the local authority or Government body responsible for it, on a cost-recovery basis.

Do consultees agree?

Fees for the attendance of the registration officer

12.47 As we explain in Chapter 5, a marriage solemnized on approved premises currently must be attended by a superintendent registrar and a registrar.[29] Under the Approved Premises Regulations, local authorities can charge a fee that reasonably represents the costs of the attendance of the superintendent registrar and registrar.[30]

12.48 Our initial research revealed that most, if not all, local authorities charge different attendance fees for different days of the week. Generally, local authorities use an ascending scale of fees for Monday to Thursday, Friday, Saturday, Sunday, and bank holidays and national holidays, but the scale of the differences varies. For example, Oxfordshire charged £600 on a Thursday and £650 on a Sunday; by comparison East Riding of Yorkshire charged £150 on a Thursday and £370 on a Sunday. Several authorities also charge increased fees for attendance in the late afternoon or evening. At least one local authority charges higher fees during the summer. When we compared the fees for a wedding at 2pm on a Saturday in summer, the median

[29] Marriage Act 1949, s 46B(1)(b).

[30] Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 12(6).

attendance fee was £488. There was some regional variation, with the lowest median attendance fee in Wales, at £440, and the highest in South East England, at £595.

12.49 In Chapter 5, we outline what we propose should be the legal duties of an officiant: these duties focus on ensuring that the parties freely express consent to marry one another, ensure other requirements of the ceremony are met, and that the schedule is signed.

12.50 Because every registration officer officiating at a civil wedding ceremony will be performing this same core function, our initial view is that there is merit in a prescribed fee being set by regulation. In our view, this fee should be set in the same way as other national fees, to reflect the average costs across England and Wales of providing the particular service.

12.51 For weddings outside the register office, the registration officer may have to travel to officiate the ceremony. It seems justifiable therefore that this fee should be higher than the fee prescribed for weddings in the register office. However, how far the registration officer must travel to reach the wedding location, or how much time the registration officer may take to access it, particularly for weddings that can only be reached on foot, such as the top of a hill, will vary. This category will include weddings within the local authority's own premises, which are not the register office (including grand rooms within the town hall, for example), to weddings on coastal paths. It may therefore be difficult to set one fee that reflects the variation in time the registration officer will spend to officiate the wedding.

12.52 A solution would be to apply the same fee that is prescribed for register office weddings, with an additional fee, set at an hourly rate, to reflect the registration officer's travel time to and from the venue (whether travelling a long distance by car or travelling a short distance by foot, for example, down a coastal path). Although this approach would make fees variable, it would offer transparency about the fee charged, addressing some criticism of the current fees. We expect that the local authority would provide an estimate in advance of the wedding of how long it would take the registration officer to reach the venue, and so of the fee for the wedding. Local authorities might then prefer simply to base the fee on the estimate, as we understand that many currently require the couple to pay all outstanding fees in advance of the wedding; to continue to do so, they would need to determine the fee in advance. We make a provisional proposal along these lines.

12.53 Under our proposed scheme, officiants, including registration officers, will not need to conduct the ceremony as a matter of the law; however, they will be able to do so in practice. Similarly, the law will only require one registration officer to attend a civil ceremony; but again, should the local authority think appropriate, and the couple agree, more than one registration officer may in practice attend. For registration officers performing other functions, including conducting the wedding, local authorities would be able to charge for those discretionary services. The general principle that governs the fees that local authorities can charge for discretionary services should

apply, meaning that the fee should be set by each local authority on a cost-recovery basis for that particular service.[31]

12.54 Local authorities already offer a wide variety of wedding services, beyond the requirement for the attendance of the superintendent registrar and the registrar and registration of the marriage. The best example is the "duo" service offered by many local authorities, in which registration officers will conduct a personalised ceremony at a location of the couple's choosing in addition to the legal ceremony. Under our provisional scheme, local authorities will continue to be able to offer additional, discretionary services.

Consultation Question 80.

12.55 We provisionally propose that there should be an additional fee for a registration officer to officiate at a civil wedding outside the register office, which should be a standardised hourly rate to reflect the cost of the registration officer's time in travelling to and from the wedding, prescribed by regulations to apply across England and Wales.

Do consultees agree?

Consultation Question 81.

12.56 We provisionally propose that the principle that fees for discretionary services should be determined on a cost-recovery basis should continue to apply to additional services that local authorities provide, including for services registration officers provide beyond officiating at a civil ceremony.

Do consultees agree?

Weddings of people who are housebound, detained or terminally ill

12.57 As we explain in Chapter 11, the law currently provides for weddings to take place at the location of a person who is housebound, detained, or terminally ill. If the wedding is a civil ceremony, then a superintendent registrar and a registrar is required to attend.[32]

12.58 The fees for the attendance of each is prescribed in the Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016:

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31 Specifically, the Local Government Act 2003, s 93(3) provides that the power to charge a fee "is subject to a duty to secure that, taking one financial year with another, the income from such charges does not exceed the costs of provision".

32 Marriage Act 1949, s 45A(2) and (3); Marriage (Registrar General's Licence) Act 1970, s 10(2).

(1) housebound wedding: £81 (registrar) and £84 (superintendent registrar);

(2) detained wedding: £88 (registrar) and £94 (superintendent registrar); and

(3) wedding of a terminally ill person: £2 each for the registrar and superintendent registrar.

12.59 Under our proposed reforms, wedding ceremonies involving people who are housebound, detained or terminally ill will generally not be subject to different regulation from other weddings.[33] Like all weddings, they will be able to take place anywhere, subject to the officiant's agreement. We therefore provisionally propose that civil weddings at the place where a person who is detained or housebound is located should be subject to the same fees as other civil weddings outside of the register office. As we explain at paragraphs 12.49 to 12.52 above, those fees would be a fixed fee for the registration officer to officiate, and an additional fee for the registration officer's travel time, based on a standard, prescribed hourly rate. We acknowledge that, in these cases, individuals may not have the same choice to marry outside the register office that other couples will have. Nevertheless, we think that consistency and simplicity points towards applying the same fees that apply to other weddings outside the register office.

12.60 However, as in relation to preliminaries, we think that weddings involving a party who is terminally ill should be given special treatment. The current cost for the superintendent registrar's and registrar's attendance at these ceremonies is very low, well below cost-recovery. We understand that is because the fee has not changed since Registrar General's licences were introduced in 1971. Nevertheless, we think that there is a good policy basis for weddings involving someone terminally ill should continue to be charged a low rate. We question whether it is more cost effective for local authorities to officiate these weddings for free, as a £2 fee might cost more to administer than the fee itself. We invite consultees to share their thoughts with us on this point.

Consultation Question 82.

12.61 We provisionally propose that the fees for a registration officer to officiate at a wedding at the place where a person is housebound or detained should be the same fees as prescribed for the registration officer to officiate at any other wedding outside the register office.

Do consultees agree?

[33] As we explain at paras 12.13 to 12.21 above and in Ch 11, there will continue to be special rules, and additional fees, in relation to giving notice.

Consultation Question 83.

12.62 We invite consultees' views as to whether, for a registration officer to officiate at a wedding involving a party who is terminally ill

(1) the fee should be set by regulation at a level below cost-recovery; or

(2) there should be no fee.

Religious (and non-religious belief) weddings

12.63 Fees are currently charged in relation to locations and ceremonies for religious weddings other than Anglican, Jewish and Quaker weddings. All of these fees are prescribed by regulation, in the Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016:[34]

(1) for the certification of the place of worship: £29;

(2) for registration of the building for the solemnization of marriage: £123, or £64 in cases where the building is already registered for opposite-sex marriages or same-sex marriages, as the case may be; and

(3) for the attendance of the registrar, if an authorised person is not present: £86.

There is no fee for the certification of an authorised person.[35]

12.64 Under our proposed scheme, there will be no requirement for a religious wedding to take place in a place of worship. There will therefore be no scheme for certification or registration of a place of worship for the purposes of weddings law; however, the regime for certifying a building as a place of worship serves other purposes, so may be necessary to retain.

12.65 All officiants will be responsible for ensuring that the location of the wedding is safe and dignified. We note at paragraphs 7.193 to 7.198 above the possibility of a voluntary system to keep a record of locations which have already been found to be safe and dignified, for venues which frequently host weddings. As we have explained, if there were such a system, there might be fees associated with approval under it.

12.66 Under our proposals, a religious wedding will need to be attended by a religious officiant; we have not proposed any provision for a registrar to officiate at a religious wedding. Therefore, there will not need to be any fee prescribed for the attendance of a registration officer at a religious wedding.

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34 SI 2016 No 911, sch 1.

35 Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1. We note that some local authorities also appear to require couples marrying in registered buildings to purchase a marriage certificate.

12.67 However, authorisation of most religious (and non-religious belief) officiants may incur a fee. As we explain in Chapter 5, Anglican clergy and registration officers will automatically be authorised as officiants. But officiants nominated by religious and (if enabled by Government) non-religious belief organisations, maritime officiants, and (if enabled by Government) independent officiants will have to apply to the General Register Office for authorisation. We think that where applications must be made, the Registrar General should be able to prescribe a fee to reflect the work involved in assessing the application. We anticipate that this fee would be minimal, particularly when the nominating body had successfully nominated officiants previously.

12.68 Whether these modest fees would be passed onto couples would be a matter for the body. As religious groups conduct weddings as part of their services to their community, and in line with their faith, many conduct weddings at very low costs. As is the case now, any fees religious officiants charge will be a matter for the religious body, subject to the requirement that officiants do not operate for profit. If non-religious belief officiants are authorised to officiate at weddings, their fees will also be a matter for the non-religious belief body, again subject to the rule against operating for profit.

Consultation Question 84.

12.69 We provisionally propose that the Registrar General should be able to prescribe a fee for an application to authorise an officiant, set at a level to recover any costs incurred in assessing the application.

Do consultees agree?

Civil weddings by independent officiants

12.70 If independent celebrants are authorised to officiate at legal weddings, they will be unlike other types of officiant: they will not be officiating at weddings as part of Government's service to its residents, nor will they be officiating at weddings as part of a broader belief system. Although independent celebrants may have a variety of personal motivations to conduct weddings, they are generally considered to be operating on a commercial basis. We do not say this to detract from the services independent celebrants provide their communities. Many celebrants feel a sense of calling for their work, and dedicate significant time, effort and skill in the ceremonies they conduct. We are moreover aware that many celebrants generously provide low-cost options for couples or families in need, for all types of ceremony, including weddings and funerals.[36] Finally, and as we noted in the Scoping Paper, there is nothing objectionable in someone receiving remuneration for the work that they do.

12.71 As we explain in Chapter 5, because independent officiants would largely be operating on a commercial basis, it would not make sense to apply to them the rule preventing religious (and non-religious belief) officiants from operating for profit. The

[36] A recent survey found that almost 70% of independent celebrants were "willing to offer concessions on fees, principally for reasons related to compassion rather than commercial gain": S Pywell, "The day of their dreams: celebrant-led wedding celebration ceremonies" [2020] *Child and Family Law Quarterly* 177, 198.

policy decision as to whether independent celebrants should be allowed to conduct legal wedding ceremonies is one for Government. In our view, that decision necessarily includes a decision to allow a person to be an officiant on a commercial basis.

12.72 We considered whether we should suggest that the prescribed fee that will apply to registration officers for officiating at a wedding should apply to independent officiants, on the basis that independent officiants will be conducting civil weddings. However, we decided that such a rule would not work in practice. If independent officiants were authorised to officiate legal weddings, and a couple chose an independent officiant to officiate at their wedding, the couple would invariably want the independent officiant to conduct the ceremony as well. The service independent officiants offer is a professional, personalised ceremony. Therefore, any attempt to put a cap on the fee an independent officiant could charge for officiating at a ceremony could be easily circumvented because the officiant could charge additional fees for planning and conducting the ceremony and other services.

12.73 It may nevertheless be the case that some independent officiants would offer their services for fees similar to, or possibly even below, those charged by local authorities for registration officers. For example, a recent survey of independent celebrants found that the most common fees charged were £251 to £750.[37] This range is comparable to what our research found that local authorities also generally charge to conduct a wedding: we found that the median fee for the attendance of the superintendent registrar and register at wedding on a Saturday afternoon in summer is £488 (of course, as we note above, this fee reflects the costs of the attendance of two registration officers). Some independent officiants might also offer reduced fees on compassionate grounds, as they do now.

12.74 However, as we explain in Chapter 5, if independent celebrants were authorised to act as officiants, we do think that their business interests should not be permitted to conflict with their state authorised role of officiating legal wedding ceremonies. For example, we do not think that celebrants should be permitted to accept fees for referring a couple to another wedding service provider, such as a venue or a florist. However, other than this rule against conflicts of interest, independent celebrants would be free to set their own fees.

REGISTRATION

12.75 Under the current law, there are no separate fees for registration of a marriage. We think that this should continue: any cost of registration should be included within the fee for giving notice.

12.76 There are prescribed fees for obtaining documents, such as a certified copy of an entry in the marriage register book (or, under the schedule system, a copy of the record made from the schedule), for conducting searches of indices, and for

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37 S Pywell, "The day of their dreams: celebrant-led wedding celebration ceremonies" [2020] *Child and Family Law Quarterly* 177, 195 to 196. A survey conducted in Australia found that the average cost of an independent celebrant was $724 (or around £380): Wedded Wonderland, *The cost of a wedding in Australia 2019*, https://weddedwonderland.com/the-cost-of-a-wedding-in-australia-2019/ (last visited 1 May 2020).

corrections of entries. Under our provisional proposals, fees for marriage certificates, searches and other documents would continue to be set by regulations.

Chapter 13: The potential impact of our proposals

INTRODUCTION

13.1 In this Consultation Paper, we make provisional proposals for a new legal scheme for weddings. We set out our initial views on some of the potential impacts of our proposals in this chapter, asking consultees to provide us with their views and any evidence of impact that they might have.

> In Chapter 1, we note that the majority of this Consultation Paper was drafted prior to the COVID-19 pandemic. Excluding a section in Chapter 11 where we consider our provisionally proposed scheme in light of the pandemic, the impact the pandemic has had on weddings does not feature in our discussions about the current law and our proposals for general reform within the paper. This is also true of our discussion in this chapter of the potential impacts of our proposals.
>
> When responding to the consultation questions in this chapter, we invite consultees to consider and share with us their views on the potential impact of our proposed reforms in light of the COVID-19 pandemic, and the difficult economic circumstances which it has caused. In particular, we welcome any thoughts on whether our proposed reforms would aid, or impede, economic recovery of the weddings industry in England and Wales.

13.2 We seek to understand the economic impact of our proposals as part of the process of producing an impact assessment, which we will publish when we make recommendations to Government in our final report. Understanding the economic impact of our proposals is one measure by which we can assess their benefits. The economic impact of our proposals is likely to be significant: one survey estimates that the United Kingdom wedding industry is worth £10 billion per year.[1] Even small improvements in the law affecting the wedding industry could have substantial benefits.

13.3 But the positive impact of reform will not just be financial or easily capable of monetisation. Many of the significant benefits of reform, such as increased choice for couples and a better accommodation of the diversity of religious beliefs in England and Wales, cannot easily be assessed in terms of financial impact. Nonetheless, it is essential to identify all the benefits of reform, whether or not they can be monetised.

13.4 In this chapter, we first consider the benefits of reform that cannot easily be monetised. Moving on to benefits that can be monetised, we consider the benefits to couples that could result from reform, outlining the impact on register office weddings, weddings on approved premises or other specialist wedding venues, and weddings in

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[1] Hitched W.I.F.E., *Each year UK weddings are worth £10 billion*, http://hitched-wife.org/wedding-facts-economics/summary-stats/each-year-uk-weddings-are-worth-10-billion-pounds/ (last visited 1 May 2020).

homes or community venues. Next, we consider the potential benefits to businesses and to local authorities. We then focus on the potential benefits for the economy as a whole. Finally, we discuss the potential costs of reform, both transitional costs and ongoing costs.

13.5 This project focusses on the law governing the formalities of getting married; therefore, we are limited to considering the costs and benefits that are a consequence of the legal regime, such as the costs of authorising wedding venues and having registration officers officiate at weddings. Many economically important elements of the weddings industry, such as catering, venue hire for the wedding reception, flowers and decorations, clothing, photography, and other ancillary services, are not directly impacted by our scheme. However, we note that these industries would benefit if reform led to an increase in weddings and so an expansion of the market.

13.6 We ask consultees to give their views and experiences on a number of potential impacts of reform. Wherever possible, we would be grateful if responses could provide evidence supporting the views put forward, and quantification of the impacts described.

BENEFITS OF REFORM THAT CANNOT EASILY BE MONETISED

13.7 Although the economic benefits of reform to weddings law are likely be significant, many of the main benefits of this project go beyond the economic. The purpose of reform is to promote choice and fairness, to allow all couples to have a wedding that is meaningful to them, while making the law simple, certain and efficient. The benefits will be to support self-expression as well as to reflect the diversity of beliefs in England and Wales. Being able to marry in a way that is meaningful to them may also encourage more couples to get married.

Modernising the legal system

13.8 Reform would have the benefit of modernising the legal system. Although this benefit might seem abstract, bringing the law up to date with the prevailing views and values across society can help to ensure that the law remains relevant to individuals.[2]

Respecting choice

13.9 A law that is clearer, simpler and gives couples more choice in where and how they celebrate their wedding could provide a significant benefit for some couples: by making it easier for a couple's religious or other meaningful ceremony to be legally recognised, it would reduce the chances of a couple's wedding amounting to a non-qualifying ceremony.[3] The benefits of this are likely to be both financial and symbolic.

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2 See eg R Sandberg, "Farewell, 'Flexible' Fudge: The position of unregistered religious marriages returns to square one" (25 February 2020) *Law & Religion UK*, https://www.lawandreligionuk.com/2020/02/25/farewell-flexible-fudge-the-position-of-unregistered-religious-marriages-returns-to-square-one/ (last visited 1 May 2020); A Khan, *Register our Marriage* (October 2019), https://registerourmarriage.org/sites/rom.hocext.co.uk/files/2019-11/BRIEFING%20by%20Aina%20Khan%20OBE_1%20October%202019.pdf (last visited 1 May 2020).

3 We explain the concept of a non-qualifying ceremony in detail in Ch 10.

Reducing the likelihood of a non-qualifying ceremony to protect couples

13.10 The greater likelihood of a wedding resulting in a legally recognised marriage would spare individuals from the financial hardship that can result from the breakdown of a relationship that is not legally recognised. Couples in which one party is financially dependent on the other, or is the primary caregiver of children, would benefit from the more equitable outcome of the court being able to adjust the couple's property and finances in the event that the relationship breaks down. For some individuals and their children, this remedy can be the difference between meeting their basic needs or suffering significant financial hardship, such as needing to rely on welfare benefits (which in turn imposes a financial cost on the state).

13.11 Reform of cohabitation law, which the Law Commission recommended in 2007,[4] would also help to address the uncertainty, unfairness and hardship that can arise on the termination of a relationship where the couple had a non-qualifying ceremony, or when one of the parties to a non-qualifying ceremony dies intestate. Nonetheless, while reform of cohabitation law would be an important element in protecting those who are not regarded as married, it would not address the fundamental issue that those who have gone through a ceremony of marriage would generally describe themselves as married rather than cohabitants.[5] While we are not proposing that intention alone should be the criterion by which marital status is tested, our provisional proposals would make it more likely that a ceremony entered into by couples who intended to be married was described as a marriage (whether valid or void) rather than no marriage at all.

Encouraging couples to marry

13.12 More generally, a law that gives couples more choice about how they get married, including providing couples with more low-cost options and options that allow them to express themselves with a wedding that is meaningful for them, may also enable – and encourage – some cohabitants to get married.

13.13 We recognise that there are many reasons why couples may cohabit. Those who have ideological objections to marriage, or where one partner simply does not want to get married, are unlikely to change their minds as a result of changes in how they can marry. But those who are saving up for their perfect wedding, or who cannot currently have the wedding that would be meaningful to them recognised under the law, may well find that easier to achieve under our provisionally proposed scheme.

13.14 As we discuss in more detail at paragraph 13.41 below, law reform that results in any couples getting married who would otherwise remain cohabitants will have the benefit of giving those individuals financial protections in the event the relationship ends or one of the parties dies, without which some individuals will suffer significant financial hardship.

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4 Cohabitation: The Financial Consequences of Relationship Breakdown (2007) Law Com No 307.

5 R Akhtar, "Religious-only marriages and cohabitation: deciphering differences" in R Akhtar, P Nash and R Probert (eds), *Cohabitation and Religious Marriage: Status, Similarities and Solutions* (2020).

13.15 It may also bring significant non-financial benefits. In one recent study, participants in focus groups spoke of the importance of a wedding as "a public declaration of love and commitment", it being a promise not only to the other person but also to the wider community.[6] Marriage was generally seen as contributing to emotional and psychological security and involving a higher level of commitment.

13.16 Of course, individual experiences of marriage and cohabitation will vary considerably. There will be marriages that are short-lived and a profoundly negative experience for the couple, and cohabiting relationships that are life-long and a source of great happiness and support. Nonetheless, large-scale longitudinal studies also suggest that marriage is associated with benefits to the health and happiness of the couple, the stability of their relationship, and positive outcomes for their children.[7] Cohabiting relationships tend to be shorter than marriages and are more prone to breakdown.[8] Research findings indicate that marriage is associated with the best outcomes for children: while these more positive outcomes can to some extent be explained by the characteristics of those who marry, rather than the mere fact of marrying, some benefits do seem to persist even after such factors are taken into account.[9] Married couples in the UK also have better self-reported health than cohabitants, although these benefits were linked to the duration of the relationship and whether a previous relationship had broken down.[10] Married couples also reported higher levels of subjective well-being: this was more pronounced among women than among men and seems to have been the result of the quality of the relationship.[11] Marriage was also associated with positive mental health outcomes for more disadvantaged women: as the authors note, such benefits may be because

> marriage generally provides a more secure and stable environment through legal protection…, greater social recognition of the relationship and higher levels of commitment expressed through a public vow…, all of which could in turn provide greater well-being.[12]

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6 A Berrington, B Perelli-Harris and P Trevena, "Commitment and the changing sequence of cohabitation, childbearing and marriage: Insights from qualitative research in the UK" (2015) 33 *Demographic Research* 327, 342; see also J Carter and S Duncan, "Wedding paradoxes: individualized conformity and the 'perfect day'" (2016) 65 *The Sociological Review* 3.

7 As the terminology of "association" suggests, it is not clear that marriage causes these benefits. Such benefits may result from the characteristics of those who marry, for example their age, socio-economic status, etc.

8 B Wilson and R Stuchbury, "Do partnerships last? Comparing marriage and cohabitation using longitudinal census data" (2010) 139 *Population Trends* 37.

9 A Goodman and E Greaves, *Cohabitation, marriage and child outcomes: IFS Commentary C114* (2010); C Crawford, A Goodman, E Greaves and R Joyce, *Cohabitation, marriage, relationship stability and child outcomes: an update: IFS Commentary C120* (2011).

10 B Perelli-Harris, S Hoherz, F Addo, T Lappegård, A Evans, S Sassler and M Styrc, "Do Marriage and Cohabitation Provide Benefits to Health in Mid-Life? The Role of Childhood Mechanisms and Partnership Characteristics Across Countries" (2018) 37 *Population Research and Policy Review* 703.

11 B Perelli-Harris, S Hoherz, T Lappegård and A Evans, "Mind the 'Happiness' Gap: The Relationship Between Cohabitation, Marriage and Subjective Well-being in the United Kingdom, Australia, Germany, and Norway" (2018) 56 *Demography* 1219.

12 B Perelli-Harris and M Styrc, "Mental Well-Being Differences in Cohabitation and Marriage: The Role of Childhood Selection" (2017) 80 *Journal of Marriage and Family* 239, 251.

This is not a reason for privileging marriage – since conferring greater legal rights on cohabitants might also bring similar benefits through increasing legal protection and social recognition – but it is a reason for thinking about how best to enable couples who would prefer to get married to express their commitment publicly in a form that is meaningful to them.

Consultation Question 85.

13.17 We invite consultees' views on:

(1) whether the current law discourages or prevents couples from getting married; and

(2) whether our provisional proposals would facilitate couples getting married leading to an increase in the number of couples who are legally married.

Please provide us with any evidence you have of the scale of the impact of the law or any benefits.

BENEFITS TO COUPLES: FACILITATING LOWER COST WEDDINGS

13.18 It will come as no surprise to anyone that weddings are often expensive. Recent surveys suggest that the average cost of a wedding is between £18,000[13] and £30,000.[14] Of course, there is significant variation: some couples spend considerably more on their weddings, and some considerably less.[15] There is also variation in what is included in the average price: many surveys do not just include the cost of the wedding ceremony and reception; some include the cost of engagement rings and honeymoons, which can be significant.

13.19 Surveys have found that most couples spend a significant amount on their venue, whether for the ceremony or both the ceremony and wedding reception. Bridebook.co.uk's survey found that couples spent £6,152 on average for their venue,

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13 Bridebook.co.uk's 2018 survey of 2,668 couples married in 2017, who had voted in the Wedding Industry Awards 2018, found that the average amount couples spent on a wedding in the United Kingdom in 2017 was £17,913 (excluding honeymoon). There was regional variation in that average: the average London wedding was £31,837 and the average wedding in North East England was £15,624: see Bridebook.co.uk, *The UK Wedding Report 2018* (2018) p 13, https://www.dropbox.com/s/m3iehyr7wc3rva7/The%20UK%20Wedding%20Report%202018.pdf?dl=0 at 13.wc3rva7/The%20UK%20Wedding%20Report%202018.pdf?dl=0 (last visited 1 May 2020).

14 Hitched's National Wedding Survey 2019 surveyed more than 2000 couples (readers of You and Your Wedding magazine) about their planning process for weddings in 2019. They found that the average cost of a wedding was £31,974, including a honeymoon and engagement ring: see H Pye, *The National Wedding Survey 2019: How Does Your Wedding Compare?* (15 August 2019), https://www.hitched.co.uk/wedding-planning/organising-and-planning/national-wedding-survey-2019/ (last visited 1 May 2020).

15 See NimbleFins, *Average Cost of a Wedding in the UK*, https://www.nimblefins.co.uk/average-cost-wedding-uk#nogo (last visited 1 May 2020).

with the highest cost for stately homes and manors, both averaging over £7,000.[16] Hitched's survey similarly found that venue hire, the largest cost for couples, averaged £5,406.[17]

13.20 As we have explained in this Consultation Paper, where a wedding ceremony (but not a reception) can take place is subject to legal regulation. Fees must also be paid for the attendance of the registrar, and in some cases also the attendance of the superintendent registrar, fees which vary depending on the type of wedding and venue. Both costs will be reduced by our provisional proposals to simplify and clarify the law. A law that is more efficient and gives couples more choice could result in savings for couples getting married.

Register office weddings

13.21 In Chapter 5, we provisionally propose that the law should only require one registration officer to attend a civil wedding. Currently, both a superintendent registrar and registrar must attend every civil wedding, including so-called "statutory" weddings in the register office.

13.22 As we explain in Chapter 12, the fee for a statutory ceremony is set by regulation, as a fee for the attendance of the registrar, at £46;[18] there is no fee prescribed for the attendance of the superintendent registrar, who is also required to attend. These weddings are usually simple and short, with no or limited personalisation permitted and often no guests allowed other than the two witnesses.

13.23 We have heard that the statutory ceremony is not widely available. Some stakeholders have stated that many local authorities restrict bookings for statutory ceremonies by limiting when they are available, or are simply not providing ceremonies for the statutory fee of £46.

13.24 This concern was outlined by the All-Party Parliamentary Humanist Group ("APPHG") in its 2018 report *Any Lawful Impediment*:

> Many [registration services] are increasingly restricting the number of 'no-frills' registration-only ceremonies available, both to early hours of certain weekday mornings and in some cases making them prohibitively expensive. They are also

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16 Bridebook.co.uk, *The UK Wedding Report 2018* (2018) pp 36 and 41, https://www.dropbox.com/s/m3iehyr7wc3rva7/The%20UK%20Wedding%20Report%202018.pdf?dl=0 at 13.wc3rva7/The%20UK%20Wedding%20Report%202018.pdf?dl=0 (last visited 1 May 2020). Food and drink (if not included in venue hire), marquee hire, and entertainment do not appear to be included in this figure: see p 24.

17 H Pye, *The National Wedding Survey 2019: How Does Your Wedding Compare?* (15 August 2019), https://www.hitched.co.uk/wedding-planning/organising-and-planning/national-wedding-survey-2019/ (last visited 1 May 2020). Food and drink does not appear to be included in this figure.

18 Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1.

> sometimes restricting the register offices in the local authority at which such ceremonies can occur, [and] how soon they are available… .[19]

The APPHG's research found that most local authorities only offer statutory ceremonies during the week, with many offering statutory ceremonies only one day a week, and four offering statutory ceremonies only one day per month. In many cases, statutory ceremonies could only take place in the morning. The APPHG also found that some local authorities do not appear to be offering ceremonies for the statutory fee of £46, but instead are advertising their lowest cost ceremony option for higher prices.[20]

13.25 These concerns have been reflected in more recent research. That research has also highlighted that many local authorities are significantly restricting the number of statutory ceremonies they will conduct, and in some cases are not advertising ceremonies for the statutory fee: in the most extreme case, the lowest cost service advertised by one local authority was £240, with another's £220. For those advertising the statutory service, many local authorities required couples to purchase a certificate in order to get married in the statutory ceremony, so charging a total of £57.[21] The research also found that in some cases, it appeared that booking fees were a separate fee that was not deductible from the cost of the ceremony, increasing the cost of a statutory wedding ceremony, in some cases substantially.[22]

13.26 A factor inhibiting local authorities from offering these statutory ceremonies could be that they might currently be providing them at a level below cost recovery. The law requires both the superintendent registrar and registrar to attend a wedding in the register office, but the regulations only authorise a fee to be charged for the attendance of the registrar.[23] Local authorities might therefore be conducting statutory ceremonies at a loss. Under our provisional scheme, only one registration officer will need to officiate at a civil wedding, including in a register office. It will therefore be a cheaper service for local authorities to provide. Local authorities might therefore be in a better position to make the service more widely available.

13.27 Marriage is a legal status that brings with it significant benefits and responsibilities. In our view, the option of marrying in a simple ceremony in a register office for a low cost should be genuinely available to all who want it.

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19 All-Party Parliamentary Humanist Group, *'Any lawful impediment?': A report of the All-Party Parliamentary Humanists Group's inquiry into the legal recognition of humanist marriage in England and Wales* (2018) p 51.

20 All-Party Parliamentary Humanist Group, *'Any lawful impediment?': A report of the All-Party Parliamentary Humanists Group's inquiry into the legal recognition of humanist marriage in England and Wales* (2018) p 56.

21 The prescribed fee for a marriage certificate is £11: Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1.

22 S Pywell, "2 + 2 = £127, if you're lucky" (3 March 2020) *Law Gazette*, https://www.lawgazette.co.uk/practice-points/2--2--127-if-youre-lucky/5103309.article (last visited 1 May 2020).

23 See Marriage Act 1949, s 45(1); Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1.

Weddings on approved premises

13.28 In Chapter 7, we provisionally propose to eliminate the current scheme for approval of premises for civil weddings outside the register office. These proposals will result in fewer, and lower, regulatory costs to venues, costs that are currently passed onto couples having weddings in those venues.

13.29 The cost that is passed onto individual couples marrying on approved premises, flowing from the current regime, might be small; therefore, this proposal might only result in a small cost saving to each couple. This might be especially true for couples having their wedding ceremonies in venues which are full service, providing a venue for both the ceremony and the reception, such as hotels, corporate and event spaces, and stately homes, which make up the majority of approved premises.[24] These venues might host many weddings per year, so the amount each has to charge any given couple to recover its costs in complying with the approval regime will be small. Such venues might continue to host the majority of weddings. In many other jurisdictions in which wedding venues are not specifically regulated by weddings law, many couples still opt for full service wedding venues, spending a large proportion of their budget on venues, with most of the cost reflecting the cost for hosting the reception.[25] On the other hand, it also seems possible that by increasing the number of places that could host a wedding ceremony, the market may become more competitive, which could also result in lower costs for couples generally.

13.30 Our proposals could result in a significant saving for couples having their wedding ceremony at smaller venues or venues which do not specialise in weddings, such as self-catering complexes, museums or farms. Although under the current law such venues have to pay the same fees as larger, specialist wedding venues, they generally host fewer weddings, so have fewer couples onto which to pass the regulatory costs of complying with the law governing weddings. Reducing those costs would therefore more significantly reduce the costs of getting married at smaller venues. It might also encourage more smaller venues to host weddings, increasing the range of more modest options.

13.31 Couples may also benefit from savings resulting from our provisional proposal that only one registration officer needs to attend a civil wedding ceremony. As we explain in Chapter 12, the fee for the attendance of the superintendent registrar and registrar at a wedding on approved premises varies, generally with local authorities charging a higher fee for Fridays, Saturdays, Sundays and bank holidays. Our initial research

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24 In 2015, at the time of our Scoping Paper, we had determined that hotels were 42.8% of approved premises, corporate and event spaces 11.6%, and heritage and rustic venues and attractions 8.4%: Scoping Paper, p 16.

25 For example, a recent survey by Scottish Wedding found that 30% of couples held their wedding in a hotel, with 72% of couples having their wedding ceremony and reception in the same venue: *How much does the average Scottish wedding cost and more, according to the Scottish Wedding Census 2018*, https://www.scottishweddingdirectory.co.uk/wedding-inspiration/cost-average-scottish-wedding-scottish-wedding-census-2018-results/ (last visited 1 May 2020). See also Wedded Wonderland, *The cost of a wedding in Australia in 2019*, https://weddedwonderland.com/the-cost-of-a-wedding-in-australia-2019/ (last visited 1 May 2020); Ratesupermarket.ca, *The Cost of Love in Canada 2018*, https://www.ratesupermarket.ca/blog/the-cost-of-love-in-canada-2018/ (last visited 1 May 2020).

suggests that the median attendance fee for a wedding on a Saturday in summer at 2pm is £488.

13.32 Under our proposals, because only one registration officer will need to attend a civil wedding as a matter of law, attendance fees will be lower in cases where there is no operational need for more than one registration officer. It may result in fees for some couples being halved, given that fees are set at a level for the local authority to recover its costs.

13.33 This reduction will benefit couples who have someone who is not authorised under the law – such as a Humanist celebrant or an independent celebrant – conduct the ceremony.[26] Currently, some couples combine a superintendent registrar-led legally recognised civil wedding with a ceremony led by a celebrant. The Wedding Celebrancy Commission told us of a pilot programme being undertaken in Staffordshire between registration officers and independent celebrants to offer such ceremonies, and we have heard of more informal initiatives elsewhere. Despite the smaller role being played by the superintendent registrar in these cases, stakeholders have told us that couples must still pay the regular attendance fees for both the superintendent registrar and registrar. The Wedding Celebrancy Commission noted that the cost is the main drawback to the scheme. Under our provisional scheme couples would be paying for two persons (one registration officer and the celebrant) rather than three (the superintendent registrar, registrar and celebrant).

13.34 As we note in Chapter 5, we are not considering whether Humanist celebrants or independent celebrants should be able to officiate at weddings. However, should Government decide to allow those types of officiant to officiate at weddings, couples would only need to pay for one person in such cases rather than two.

13.35 At present, some couples also combine a civil ceremony with a religious blessing on approved premises, essentially having a religious ceremony outside a place of worship (although at present such weddings are strictly civil weddings, as it is the civil ceremony that is legally recognised). These couples must also pay fees for both the superintendent registrar and registrar. Under our proposals, religious weddings will be able to be held anywhere, including at commercial venues, subject to the religious officiant's consent. Couples having religious weddings outside registered places of worship will therefore be spared the cost of the attendance of the superintendent registrar and registrar, as the attendance of their religious officiant (assuming that they are an authorised officiant) will be all the law requires.

Weddings at home or in community venues

13.36 In Chapter 7, we provisionally propose removing the current rules that limit where certain types of wedding can take place. Under our proposals, both civil and religious weddings will be able to take place at any location, subject to the officiant's consent, which will include a consideration of dignity and safety. Our proposals will also eliminate the red tape and expense surrounding the approval process. Together, these reforms will expand the options for couples wanting a low-cost wedding. They will be able to have their wedding a place that is meaningful and personal to them, but

[26] As we explain in Ch 5, the law would not require the same person to conduct, or lead, the ceremony.

still low-cost, such as at a beach, in a local park, in a small community centre, or in their or a family member's home or garden.

13.37 These options have proven popular in other jurisdictions. For example, in New Zealand, where the law does not restrict where a wedding can take place, a significant number of couples have their weddings "in family members' gardens or other modest venues such as holiday homes and community halls".[27] Rather than spending money on venue hire, couples marrying at home might undertake home improvements, such as a new patio or an improved fence, to "clean the place up" to prepare for the wedding.[28]

13.38 Small civil weddings would also only require, for operational purposes, one registration officer to attend. One registrar alone conducts the ceremony and registers the marriage in Scotland, and a schedule system (in which documents are not required to be filled out during the ceremony in duplicate, as under the current law) will make this task easier for registration officers in England and Wales. Couples having small civil weddings will therefore benefit from our provisional proposal that the law should only require one officiant to attend; we expect that in such cases, even if the registration officer is conducting the wedding, only one will be required. For couples having a small civil wedding outside the register office, the fees for the registration officer to officiate (and also conduct) the ceremony might be half of the current attendance fees.

13.39 Religious weddings, in turn, would require a religious officiant to attend. While the officiant need not be the person who conducts the ceremony, they could also take on this role. In such cases only one fee would be payable.

13.40 It seems possible that giving greater freedom to couples to choose lower cost, but still meaningful, venues might remove the cost barriers preventing some cohabiting couples from marrying. Studies have found that some couples delay getting married because of the real or perceived expense of weddings, with many couples wanting what they see as a "proper" wedding outside the register office.[29] Changing the range of options as to where people can get married has the potential to change this attitude.[30]

13.41 It could therefore be that reform to the law to governing weddings could encourage more couples to get married. Any couples that get married as a consequence of

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27 M Baker and V Elizabeth, *Marriage in an age of cohabitation: How and When People Tie the Knot in the Twenty-First Century* (2014) pp 104 to 105. The website mykiwiwedding.co.nz gives budget estimates for weddings at different locations in New Zealand, noting that "backyard weddings" have no venue cost, and estimates that outdoor venues are approximately $2,200 NZD, for both the venue and chairs and table rental: https://mykiwiwedding.co.nz/typical-wedding-cost/ (last visited 1 May 2020).

28 M Baker and V Elizabeth, *Marriage in an age of cohabitation: How and When People Tie the Knot in the Twenty-First Century* (2014) p 105.

29 See eg J Eekelaar and M Maclean, "Marriage and the Moral Bases of Personal Relationships" (2004) 31 *Journal of Law and Society* 510; S Duncan, A Barlow and G James, "Why don't they marry? Commitment and cohabitation in 21st century Britain" [2005] *Child and Family Law Quarterly* 383.

30 R Probert, "A uniform marriage law for England and Wales?" [2018] *Child and Family Law Quarterly* 259, 267.

having more, and lower-cost, options, would gain economic benefits from the legal protection and benefits of marriage.[31] These protections, in particular the right to apply for financial provision on the dissolution of a marriage and the share the surviving spouse is entitled to if the other dies intestate, are far greater than those given to cohabiting couples, who are limited to making claims based on the law of implied trusts and proprietary estoppel. As the Law Commission explained in the Cohabitation project, the outcomes in cohabitation cases have been criticised for failing to provide fair outcomes: the law might be seen to be failing cohabitants who make economic sacrifices as part of their relationship, including as the primary caregiver of any children. With no ability to claim support from their former partner, some individuals suffer severe financial consequences, resulting in them and their children needing to rely on welfare benefits for support.[32]

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31 For example, in relation to financial provision on the dissolution of the marriage, intestacy, and beneficial treatment for inheritance tax.

32 See Cohabitation: The Financial Consequences of Relationship Breakdown (2007) Law Com No 307.

Consultation

Consultation Question 86.

13.42 We invite consultees' views on the impact of the current law on couples including in relation to:

(1) the availability and costs of register office weddings;

(2) the costs of marrying on approved premises;

(3) the costs of marrying in registered places of worship;

(4) the costs of marrying in locations that are not authorised for weddings under the current law; and

(5) the necessity and costs of a having a separate, legally recognised wedding.

13.43 We invite consultees' views on the potential benefits to couples of our proposed scheme, including benefits relating to:

(1) the availability of register office weddings and any savings in relation to them;

(2) savings from being able to marry in locations without the need for a pre-approval process, including places of worship, locations that could currently be approved premises, and locations that could not be approved under the current law, such as outdoors or in private homes; and

(3) the necessity of a separate, legally recognised wedding and any consequent savings.

If you have any evidence to support your answers, or which might help us assess the extent of possible benefits, please provide it.

BENEFITS TO BUSINESSES

13.44 As we note above, the United Kingdom wedding industry is thought to be worth £10 billion per year.[33] Many businesses, both large and small, participate in the industry, offering services to couples and others involved in a wedding.

13.45 Because the current law strictly regulates the locations where weddings can take place, wedding venues and, in particular, civil wedding venues, are the most directly affected by the legal regime. Wedding venues will therefore be the business that would be most directly impacted by our scheme.

13.46 As we explain below, we foresee three potential impacts on wedding venues from our provisional proposals: lower costs for all businesses and increased opportunities for

[33] Hitched W.I.F.E., *Each year UK weddings are worth £10 billion*, http://hitched-wife.org/wedding-facts-economics/summary-stats/each-year-uk-weddings-are-worth-10-billion-pounds/ (last visited 1 May 2020).

small businesses; more competition among businesses; and a growth in business due to more weddings taking place in England and Wales. We explain in the following section why we think more couples will choose to marry in England and Wales as a consequence of our proposals.

Reducing costs for businesses and increasing opportunities for small businesses

13.47 In Chapter 7, we provisionally propose to eliminate the current regime requiring that premises be approved to host civil weddings. Our initial research suggests that the fees for obtaining approval are often high, with a median across England and Wales of £1,500, excluding renewal fees. We propose that officiants will instead be responsible for ensuring that the venue is safe or dignified, a process we anticipate will be less regulatory and cheaper than the current law. In Chapter 12, we explain how we think any fees necessary for this process would work when a registration officer is officiating the ceremony. We also provisionally propose, in Chapter 7, to eliminate the rules preventing outdoor and private locations from being able to host wedding ceremonies. As we explain in that chapter, these rules prevent some venues from being able to be approved, or result in some venues having to incur significant costs to comply with approval requirements.

13.48 Reducing, and in many cases eliminating, the costs of obtaining approval will increase competition among venues. In particular it will facilitate smaller businesses, or businesses which do not specialise in weddings, to host weddings. These reforms would also make the law more efficient, reducing the costs of doing business for venues.

13.49 To inform its contributions to our pre-consultation event with wedding venues, Bridebook.co.uk conducted a survey of wedding venues in 2019, which it shared with us. In it, 29% of venues who responded thought that the costs of approval under the Marriages and Civil Partnerships (Approved Premises) Regulations 2005[34] were too high. Some noted that the costs prevented their venue from being approved or otherwise impacted their business.

> "We held a licence to conduct civil ceremonies but found the cost far outweighed the income".
>
> "It's far too expensive for a hall like ours to obtain a licence".
>
> "The licence is very expensive for the amount of weddings we have here".
>
> "Current regulations are limiting to our business growth".[35]

13.50 Some venues responding to the Bridebook.co.uk survey specifically commented that the requirement for approval of each room where the ceremony might be held imposed an onerous cost.

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34 SI 2005 No 3168.

35 Bridebook.co.uk, *UK Wedding Industry Law Review Report* (October 2019).

"The current method of charging per room is laughable and works against the smaller venue who like us only does 12 weddings a year [as] we pay the same as a local hotel who run 80 weddings a year".

"The barrier to us is that we have several spaces and buildings across the estate … . To licence all of the areas is too expensive, and depending on the size of the wedding there may be different areas the couple may wish to use. It is this indecision about where to licence that has put us off in the past, however without a licence we are losing business".[36]

13.51 Our provisional proposal that weddings should not be required to take place indoors will also give venues more flexibility in the spaces that they can offer couples. This might have a particular benefit for some venues. For example, Emma Robinson of Historic Houses thought that there could be specific advantages for historic houses in hosting outdoor weddings: she noted that "outdoor weddings come with far fewer risks to the historic fabric of listed buildings", and moreover that hosting a wedding outdoors or in another alternative space may allow the historic building itself to remain open to the public as a visitor attraction on the day of the wedding.

13.52 In addition, our provisional proposal that only one registration officer will be legally required to attend a civil wedding may increase the availability of registration officers. The current requirement to send two local authority employees might be impinging on the availability of registration officers to attend weddings on approved premises. Some venues responded to the Bridebook.co.uk survey on this point, commenting that couples' inability to book registration officers in their district was affecting their businesses.

"Whilst our relationship with the registrars is good we do have issues with dates / times not being available which loses us business".

"A lack of registrars means none are available for some dates in August 2020 and for others only at very early or late dates. This makes it difficult or impossible for couples to book us and our business suffers".[37]

13.53 Further, our proposals that religious officiants could conduct weddings outside places of worship would allow a couple to choose to have a religious officiant instead of a registration officer at such venues. If Government decided to allow non-religious belief organisations or independent celebrants to conduct weddings, those officiants would also be able to conduct weddings on premises that are currently approved only for civil weddings and that can only be conducted by registration officers.

Increasing competition by removing unnecessary regulation

13.54 Approved premises under the current scheme get an obvious benefit from approval, in the form of an advantage over venues that are not approved within the local authority district. The 2019 survey that Bridebook.co.uk conducted of venues illustrates that some venues are aware that reform could result in them losing this advantage.

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36 Bridebook.co.uk, *UK Wedding Industry Law Review Report* (October 2019).

37 Bridebook.co.uk, *UK Wedding Industry Law Review Report* (October 2019).

"There is enough competition without opening the civil ceremonies up to unlicensed and unstructured areas".

"If there is no regulation to where civil ceremonies can happen inside or outside then my business would suffer negatively from too many venue options for couples to choose from or just getting married in their own garden for example and I would have to close".

"Our experience is that we get bookings because we are a licenced premise to host weddings at our venue".

13.55 We do not think that loss of competitive advantage for some businesses is a good reason against making the law fairer and better. One of the principles underlying our project is to reduce unnecessary red tape for wedding venues. A consequence of reducing red tape is to allow competition within the wedding venue industry. Moreover, we do not think that couples' choices about where they can get married should be restricted to provide a market advantage to some businesses.

13.56 In any event, it may not be that these sorts of venue lose business. The types of couple who are most likely to take advantage of lower-cost options will be those who are currently having a register office wedding and then a reception at home or in a modest (unapproved) venue, or who are not marrying at all. As we note above, we expect that many couples will continue to choose to have their wedding ceremony at a venue that specialises in weddings and can provide a full service both for the ceremony and reception. The experience of other countries bears this out.[38]

13.57 Even under the current law, couples having a religious service often choose to have it at premises approved for civil weddings, because they are good venues (not only offering a suitable location for the ceremony, but also facilities and services for the ceremony and reception), which have, or develop, experience in hosting weddings, regardless of legal authorisation. We understand that this is the experience in Northern Ireland, where the law does not restrict where religious weddings can take place but does regulate civil wedding venues. When religious weddings are not celebrated in religious buildings, they often take place in venues that are approved places for civil weddings. The venue's approved status is irrelevant for the religious wedding; nevertheless, the venue is chosen because it is beautiful and well equipped to host weddings. Indeed, our provisional proposals to allow religious weddings to take place anywhere may result in more couples having a religious wedding in venues that can combine the ceremony and the reception.

13.58 Bridebook.co.uk's 2018 survey highlighted that 60% of couples choose to have their wedding ceremony at the same venue as their wedding reception; 27% of couples had their ceremony at a place of worship, and so generally had to host their reception at a different venue. The survey found that the five most important factors for couples choosing a venue were location, friendly staff, the aesthetics of the premises, the cost,

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38 See Scottish Wedding, *How much does the average Scottish wedding cost and more, according to the Scottish Wedding Census 2018*, https://www.scottishweddingdirectory.co.uk/wedding-inspiration/cost-average-scottish-wedding-scottish-wedding-census-2018-results/ (last visited 1 May 2020).

and the grounds.[39] Most couples' decision about where they hold their wedding ceremony will continue to be based on these factors. We therefore expect that the types of premises that are currently approved premises will continue to be popular choices for couples.

Increasing the business opportunities from increased numbers of weddings in England and Wales

13.59 Below, we discuss the possibility that reforms to the law to give couples more choice might result in more weddings taking place in England and Wales, both by reducing the number of couples who travel from England and Wales to marry in other jurisdictions, and increasing the number of overseas couples who marry here. Such increases would benefit many sectors in the economy, including the wedding sector, such as those providing ancillary series such as catering, as well as the tourism sector. Wedding venues would be among those who would benefit.

13.60 We also noted the possibility that reform to allow couples to marry in a way that is meaningful to them, including couples looking to marry at a location that is personal to them but which is affordable, might result in more cohabitants deciding to get married. If some couples get married who would not otherwise have done so, businesses will benefit.

[39] Bridebook.co.uk, *The UK Wedding Report 2018* (2018) p 39, https://www.dropbox.com/s/m3iehyr7wc3rva7/The%20UK%20Wedding%20Report%202018.pdf?dl=0 at 13.wc3rva7/The%20UK%20Wedding%20Report%202018.pdf?dl=0 (last visited 1 May 2020).

Consultation

Consultation Question 87.

13.61 We invite consultees' views on the impact of the current law on venues, including in relation to:

(1) the costs resulting from the Marriages and Civil Partnerships (Approved Premises) Regulations 2005,[40] including the costs of complying with them and any lost opportunities arising from being unable to fulfil the requirements; and

(2) the availability of registration officers to attend weddings on approved premises and the costs of their attendance.

13.62 We invite consultees' views on the potential benefits to venues of our proposed scheme, including benefits relating to:

(1) hosting weddings without requiring Government pre-approval;

(2) the availability of registration officers for civil weddings;

(3) the ability of venues to host weddings officiated by religious officiants, and (if enabled by Government to officiate at weddings) non-religious belief organisations and independent officiants; and

(4) the business opportunities arising from an increase in the number of weddings in England and Wales.

If you have any evidence to support your answers, or which might help us assess the extent of possible benefits, please provide it. We would also welcome any data on the size of businesses that are affected by the law or will be impacted under our proposed reforms.

BENEFITS TO LOCAL AUTHORITIES

13.63 As we explain at the beginning of Chapter 12, we do not propose significant reforms to the approach local authorities take in determining fees for their services related to weddings: the fees will continue to be determined on a cost-recovery basis. Therefore, many aspects of our proposed scheme will be cost-neutral for local authorities. However, our provisional proposals might allow local authorities to save costs in how they deliver their services, both in relation to overseeing civil preliminaries and conducting weddings. Efficiency gains could offer local authorities an opportunity to improve their services.

13.64 In Chapter 4, we provisionally propose that notice of an intended wedding to the registration service should be a two-stage process: notice of the wedding and an in-person meeting with the registration officer. Although these two stages could happen

[40] SI 2005 No 3168.

at the same time, they would not need to, and couples could give their initial notice online or by post. The National Panel for Registration thought that this proposal might have the effect of improving services. By allowing couples to provide information, including copies of documents, online or by post, registration officers would save time in recording information during the in-person meeting. Registration officers would be able to review information provided before meeting the parties, allowing registration officers to focus the in-person interview on any areas of concern. Any time registration officers saved in dealing with straightforward cases could be re-directed to couples needing more assistance.

13.65 Our provisional proposal to remove the legal requirement that a superintendent registrar and registrar attend all civil weddings may reduce the costs that local authorities incur in conducting weddings. In responding to the 13th programme, Robin Mair, a local authority staff member, commented that the requirement for the attendance of two members of staff represented 10% of the registration authority's budget, on "recruiting, training and other staff costs for staff I don't need for operational reasons". As we note at paragraph 13.26 above, our proposal might result in a cost saving in the context of register office weddings, for which local authorities can only charge for the attendance of the registrar. For weddings outside the register office, local authorities could still decide to send two registration officers staff, but only if necessary from an operational point of view.

Consultation Question 88.

13.66 We invite consultees' views on the impact of the current law on local authorities.

13.67 We invite consultees' views on the potential benefits to local authorities of our proposed scheme.

If you have any evidence to support your answers, or which might help us assess the extent of possible benefits, please provide it.

BENEFITS TO THE ECONOMY AS A WHOLE

13.68 We anticipate that our provisional proposals could provide benefits to the economy in England and Wales as a whole. The main benefit would be to increase the number of weddings that take place in England and Wales by making this jurisdiction a more attractive choice. The second is the benefits that we expect would flow to the United Kingdom maritime industry by increasing the size of the United Kingdom ship register if weddings could take place on cruise ships under the law of England and Wales.

As we note at the beginning of this chapter, given the timing of the COVID-19 pandemic, our discussion of the potential costs and benefits of our proposed reform does not take into account the pandemic and its impact on the economy. We note that the tourism industry and the cruise industry have been particularly hard hit. We again invite consultees to consider whether our proposed reforms – both in their immediate and long-term impact – would aid, or impede, economic recovery of the economy as a whole, including in relation to tourism and the cruise industry.

Increasing the number of couples holding their wedding in England and Wales

13.69 Throughout this Consultation Paper, we have made provisional proposals to simplify weddings law and to give more flexibility to couples in how and where they get married. This scheme would bring the law of England and Wales in line with the laws of its close neighbours, such as Scotland, and with other common law jurisdictions such as Australia and Canada.

13.70 We think our provisional proposals would make England and Wales a more attractive jurisdiction for couples to marry in, whether for couples who are resident here or couples who are resident overseas. As we note above, more weddings taking place in England and Wales would provide a benefit to the economy, boosting the business of wedding venues and other wedding service providers, among others.

Reducing the number of couples who are resident in England and Wales but marry elsewhere

13.71 Increased choice for couples might encourage more couples who live in England and Wales to have their wedding here, rather than travelling to marry in other jurisdictions, so that the money they spend on their wedding contributes to the economy in England and Wales.

13.72 Of course, couples will choose to travel overseas to get married for a variety of reasons. Some might want to combine their wedding and their honeymoon, in a destination wedding. Some might want to get married closer to family or friends in another country. But we think that the fact that the current law restricts the ability of many couples to marry in the type of location that they would want, to personalise their ceremony, or to have their wedding conducted by a person who shares their non-religious beliefs, also plays a role.

13.73 There are no reliable data on the number of couples who travel from England and Wales to marry elsewhere. The Office for National Statistics has reported that data suggests that, of the 73,000 United Kingdom residents who went abroad to get married in 2016, "the vast majority (around 90%) of the marriages … are to residents of England and Wales".[41] Although 89% of the United Kingdom population lives in England and Wales,[42] it may be that reforms to offer couples more choice in England

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41 Office for National Statistics, *Marriages in England and Wales QMI* (28 March 2019).

42 Office for National Statistics, *Population estimates for the UK, England and Wales, Scotland and Northern Ireland: mid-2018* (26 June 2019) table 1.

and Wales would reduce the number of couples who are resident here who choose to get married outside the United Kingdom.

13.74 Couples who are resident in England and Wales also travel to other parts of the United Kingdom to get married. For example, of a total of 27,525 weddings in Scotland in 2018, the parties resided elsewhere in the United Kingdom, the Isle of Man or the Channel Islands in 4,844 cases, or 17.6% of all weddings.[43] In Northern Ireland in 2018, of 7,966 weddings, 549 couples were resident in the rest of the United Kingdom, amounting to 6.9% of weddings.[44] Reform could allow England and Wales to retain more of its couples who might leave to get married, including some who go to Scotland or Northern Ireland.

Increasing the number of couples who are resident elsewhere but marry in England and Wales

13.75 Just as we do not have data on the number of couples who travel from England and Wales to marry elsewhere, we also do not have clear data on the residency of couples who get married in England and Wales. The best data of which we are aware are the estimates from the Office for National Statistics, which suggest that of the estimated 17,000 overseas residents who married in the United Kingdom in 2016, only half married in England and Wales.[45] This is smaller than might be expected given the relative size of England and Wales and its popularity with overseas visitors more generally: England and Wales attract approximately 10 times more visitors from outside the United Kingdom than Scotland does.[46]

13.76 England and Wales do not appear to be popular wedding destinations for foreign couples.[47] We think that the law, and the practical barriers it puts in the way of overseas couples marrying here, plays a large part in this. Our provisional scheme might make England and Wales a more attractive destination for weddings.

13.77 In addition to our provisional proposals to increase the options available to couples, we also provisionally propose reforms to the system of civil preliminaries. The current law requires couples who are not resident in England and Wales to, in practice, either travel to England and Wales at least twice, or to stay in England and Wales for a minimum of 5 weeks. We provisionally propose to eliminate the requirement for seven days' residence to give notice, and to allow notice to be given remotely, with the in-person interview taking place at a later date during the 28-day waiting period. We

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43 National Records of Scotland, *Vital Events Reference Tables 2018* (2019) s 7 table 7.09.

44 Northern Ireland Statistics and Research Agency, *Registrar General Annual Report 2018 Marriages* (November 2019) table 7.14.

45 Office for National Statistics, *Marriages in England and Wales QMI* (28 March 2019).

46 Visit Britain, *Inbound nation, region & county data*, https://www.visitbritain.org/nation-region-county-data (last visited 1 May 2020).

47 See eg an Australian survey identifying the most popular destinations for the 3% of Australian couples who marry overseas as the United States, Bali, New Zealand, Fiji, Canada and Italy: EasyWeddings, *Australian Wedding Industry Report* (2018), https://www.easyweddings.com.au/business/wp-content/uploads/sites/11/2018/04/Easy-Weddings-2018-Survey.pdf (last visited 1 May 2020).

expect that these reforms would make it easier for non-residents to hold their weddings in England and Wales.

13.78 Similar reforms in Jersey appear to have increased the number of people travelling to Jersey for their wedding. Although (again) there are no official statistics, we have been told by the Jersey Superintendent Registrar that the number of weddings involving non-residents has increased since the law was reformed, which included allowing the first stages of the notice procedure to take place electronically.

13.79 Scotland might also be a useful comparator. In Scotland, there is no residency requirement and notice can be given by post. It appears that many couples who travel to the United Kingdom to get married have their weddings in Scotland. In 2018, 5,907 Scottish weddings, or 21.5% of the total, involved a couple who did not reside in Scotland. Most of these couples were from other parts of the United Kingdom.[48] While there will be many reasons for couples choosing to have their wedding in Scotland, the absence of a residence requirement and the greater choice about where couples can get married and who can solemnize the marriage must certainly be factors.

13.80 As we note above, England and Wales attract approximately 10 times more visitors from outside the United Kingdom than Scotland does.[49] OneSpirit Interfaith Foundation, which currently sees many couples travelling from overseas to marry in Scotland and Ireland, agreed that England and Wales could hold a similar attraction as a wedding locale for visitors, based on the many beauty spots in the country.

13.81 Based on the number of weddings in Scotland of couples from outside the United Kingdom, it might be realistic to predict around 8,500 couples would visit England and Wales to marry, if our provisional proposals were enacted.[50] Multiplied by the average amount spent on venues, catering and accommodation for weddings, even this modest number has the potential to generate a significant additional sum for the economy.

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48 In 2018 17.6% of weddings in Scotland involved couples who were living elsewhere in the United Kingdom.

49 Visit Britain, *Inbound nation, region & county data*, https://www.visitbritain.org/nation-region-county-data (last visited 1 May 2020).

50 There may also be couples who are going to Scotland to have an outdoors or Humanist wedding who would stay in England and Wales to marry if those options were available here.

Consultation Question 89.

13.82 We invite consultees' views on the impact of the current law on:

(1) residents of England and Wales travelling to other jurisdictions to get married; and

(2) residents of overseas jurisdictions travelling to England and Wales to get married.

13.83 We invite consultees' views on the potential benefits of our proposed scheme relating to:

(1) residents of England and Wales travelling to other jurisdictions to get married; and

(2) residents of overseas jurisdictions travelling to England and Wales to get married.

If you have any evidence to support your answers, or which might help us assess the extent of possible benefits, please provide it.

Allowing weddings to take place at sea on cruise ships

13.84 Many cruise lines offer weddings. There are four types of cruise ship wedding:

(1) a legal ceremony at sea;

(2) a legal wedding harbourside, whilst in port;

(3) a legal wedding ashore, mid-cruise; and

(4) a symbolic ceremony, that is not legally recognised, at sea.

Of these, we understand that legal weddings at sea are the most popular.

13.85 The revenue to cruise companies from weddings can be significant. The Department for Transport has shared data with us that suggests that, for example, one major cruise company made £4.4 million from weddings in 2018.

13.86 Many cruise ships registered in the United Kingdom already offer weddings, but they are limited to offering symbolic (non-legally binding) ceremonies at sea or weddings at port in jurisdictions which allow such weddings, for example, Australia, New Zealand, British Columbia and California.

13.87 United Kingdom registered ships are unable to offer legal ceremonies at sea, in international waters, because of the domestic weddings law of England and Wales. The Department for Transport has explained that the inability to do so has influenced

the decision of some companies as to where to register, or "flag", their ships. For example, in 2011 Cunard announced that three vessels operating out of Southampton would no longer sail under the British flag, because they were unable to conduct weddings at sea on the United Kingdom register.[51]

13.88 In Chapter 11, we make provisional proposals to enable weddings to take place in international waters aboard cruise ships registered in England and Wales.

13.89 Government expects that if United Kingdom registered ships could conduct weddings at sea, more cruise ships would register in the United Kingdom, particularly those vessels whose home port is Southampton.[52]

13.90 Increasing the number of ships registered in the United Kingdom would have significant implications for the United Kingdom's status. The Department for Transport, in its 2019 report *Maritime 2050: Navigating the Future*, explained the links between the United Kingdom ship register and the larger maritime sector:

> The UK Ship Register can be an attractor of maritime businesses and specifically shipping companies to the UK. It can also benefit from the wider cluster effect of companies being attracted by our quality business services, our high performing ports and our collective government and industry ambitions to grow the maritime sector. So, the UK Ship Register's success is inexorably linked to the wider ability of the UK to remain a competitive and attractive destination for the global maritime sector… .[53]

13.91 According to a recent industry analysis, the United Kingdom was the 21st largest of the world's ship registers, and 9th among national registers.[54] A competitive environment has meant that it has proved challenging to keep growing the size of the United Kingdom ship register; nevertheless, there is "strong ambition" on the part of Government to "grow the flag". Government's aim is for the United Kingdom register to "be one of the top 10 registers in the world in terms of tonnage".[55]

13.92 Weddings law may have a significant role to play in achieving this ambition. The Department for Transport has explained that the cruise industry would like to be able to provide an opportunity to United Kingdom residents and couples joining a cruise ship at a United Kingdom port to have a legal marriage on board. A representative of

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51 "Cunard announces it will drop the British flag" (19 October 2011) *BBC News*, https://www.bbc.co.uk/news/uk-england-hampshire-15366562 (last visited 1 May 2020).

52 See eg *UKSR Advisory Panel Report: Review of the UK Ship Register and Recommendations for Future Improvements* (2015) paras 3.16 and 5.6(j).

53 Department for Transport, *Maritime 2050: Navigating the Future* (January 2019) s 5.8.

54 Clarksons Research, *World Fleet Monitor* (11:4 April 2020). See also Department for Transport, *Shipping Fleet Statistics: 2019* (April 2020) p 4, which places the United Kingdom at 24th. The largest registers are open registers, whereas the United Kingdom register is a national register. National registers require ships to be owned, at least in part, by national interests; conversely, open registers are open to anyone. The Maritime and Coastguard Agency provides data about eligibility for the United Kingdom register online: https://www.gov.uk/guidance/uk-ship-register-for-merchant-ship-and-bareboat-charter-100gt#customer-support (last visited 1 May 2020).

55 Department for Transport, *Maritime 2050: Navigating the Future* (January 2019) s 5.8.

Carnival UK agreed, stating that being able to conduct legally binding weddings at sea is a considerable factor in determining where to register their cruise ships. The representative explained that, of 282 weddings conducted last year, 90% of those on board P&O ships were United Kingdom guests, and 70% on board Cunard ships were United Kingdom guests. If the domestic law were reformed to allow marriages on cruise ships, the United Kingdom register might be particularly competitive as compared to jurisdictions which do not allow same-sex weddings.[56]

13.93 The Department for Transport has explained that Government is principally looking to attract cruise ships entering service soon. A number of big cruise companies have no vessels registered in the United Kingdom, but will be bringing new vessels into service in the next five years.[57] If the law is reformed to make weddings at sea possible, they might see the United Kingdom register as more desirable.

Consultation Question 90.

13.94 We invite consultees' views on the impact of the current law on the United Kingdom ship register and the maritime industry.

13.95 We invite consultees' views on the potential benefits to the United Kingdom ship register and the maritime industry of our proposed scheme.

If you have any evidence to support your answers, or which might help us assess the extent of possible benefits, please provide it.

COSTS

13.96 Throughout this chapter, we focus on the benefits of our proposals. However, law reform usually also imposes costs. They can be divided into two types:

(1) transitional costs, the costs incurred in moving to the new scheme; and

(2) ongoing costs, the costs of the new scheme going forward.

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56 For example, Carnival Corporation spoke publicly against an amendment to the law in Bermuda which prevented same-sex marriage, as it precluded the company from conducting legal same-sex weddings on vessels registered in Bermuda (see S Calder, "Bermuda same-sex marriage repeal means some cruise ships can't host gay weddings" (8 February 2018) *The Independent*). The legislation preventing same-sex marriages in Bermuda has recently been stuck down by the Supreme Court in June 2018 (see *Ferguson v Attorney Genera*l [2018] SC (Bda) 45 Civ (6 June 2018)). The Court of Appeal dismissed the Government's appeal in November 2018 (*Attorney General for Bermuda v Ferguson* (Civil Appeal Nos 11 and 12 of 2018). The Government said in May 2019 that the Court of Appeal had granted leave to appeal to the Privy Council ("Same-sex case heading for London" (30 May 2019) *The Royal Gazette*).

57 For example, we understand that MSC Cruises has no vessels on the United Kingdom register: its current fleet is around 1.9 million gross tonnes and there is 1.8 million gross tonnes due to enter service over the next 5 years; similarly, we understand that Royal Caribbean has no vessels on the United Kingdom register: its current fleet is around 3.5 million gross tonnes and there is 1.2 million due to enter service in the next 5 years.

Costs to Government and local authorities

13.97 The General Register Office will incur costs in designing the documents necessary to update the system of preliminaries. As we explain in Chapter 4, recent legislation enables implementation of a schedule system.[58] Therefore, many of the costs of the system of preliminaries that we recommend will have already been incurred. However, there would be additional costs in updating the systems and forms to reflect the information that will be gathered at the notice stage under our proposed scheme, for example, in recording the officiant who will conduct the wedding rather than the place where the wedding will take place.

13.98 By removing the residency requirement, our proposed scheme leaves it up to Government how the assessment of any notice given online or by post will be allocated, whether to the General Register Office or (more likely) between local authorities. As we note in Chapter 4, online or postal notice applications could go to a central hub: the application could be assessed at this central hub, or be assessed by the local authority where the person plans to have the in-person interview. Conversely, the online or postal application could be required to be sent to the local authority where the person plans to have the in-person interview, with no central hub. Whatever approach is taken, there will be costs in designing, implementing, and maintaining this system. However, because many local authorities already take some information online, when couples book an appointment to give notice, moving to an online system might not be costly.

13.99 Local authorities will also incur transitional costs in providing training to registration officers about the new rules governing preliminaries, and in updating their internal systems.

13.100 Our proposals to change the requirements for a ceremony will also result in transitional costs. The General Register Office will have to update its guidance to registration officers. Under our scheme, the General Register Office will be required to provide guidance to all authorised officiants, including in relation to considering the safety and dignity of a location for a wedding and in relation to forced and sham marriages. That will be an ongoing cost.

13.101 Under our proposals, the General Register Office will shift from being responsible for registering religious places of worship for marriage (including certifying places of worship, registering places of worship for marriage, and recording authorised persons), to authorising nominated officiants, maritime officiants and, if authorised to conduct weddings, independent celebrants. There will be costs in implementing this system. However, we do not think that the costs of running the system will be greater than the costs of the current system of registration of places of worship.

Costs to businesses

13.102 The businesses most likely to incur costs as a result of our new system are wedding venues. We do not think that the system we propose will result in businesses incurring ongoing costs. However, there could be transitional costs to wedding venues.

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58 See the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019.

13.103 There could be transitional costs to businesses in moving from the old system to our new proposed system. For example, in a recent survey undertaken by Bridebook.co.uk, some venues were concerned that the fees they will have paid for approval under the current law would become wasted. One venue asked, "will we be refunded for the cost of our licence as it is valid for 3 years?"[59] Approval is usually only for three years, and some local authorities charge yearly fees. If our proposals are taken forward, there could be a transition period, during which fees were reduced to reflect the shorter period for which approval would be relevant. If there were no transition period, the costs that approved premises had spent on approval could be perceived by them as transitional costs.

13.104 Cruise companies would also be subject to costs in order to authorise officiants to conduct weddings on ships: they would incur any costs necessary for the officiant to satisfy training requirements, pay the fee for authorising officiants, and meet any costs associated with their officiants complying with the requirement for continuing professional development.

Costs to religious (and non-religious belief) groups

13.105 Religious groups might incur transitional costs in order to provide training and support to those with roles under the law, in order to ensure that their officiants complied with the new law.

13.106 Under the current law, religious groups must pay modest sums to certify and register their places of worship for marriage. Under our proposed scheme, they would instead be required to pay fees to authorise their officiants. As we explain in Chapter 12, these fees would be prescribed nationally. We do not anticipate that the fees would be significant; nevertheless, they would be costs that religious groups would have to bear under the new scheme.

13.107 If non-religious belief organisations were authorised by Government to solemnize marriages, they would also have to meet the costs necessary to authorise their officiants.

Costs to independent officiants

13.108 If Government decides to enable independent celebrants to conduct legally binding weddings, independent officiants would be subject to costs in order to be authorised to officiate at weddings. Independent officiants would have to meet the costs of fulfilling training requirements, paying the application fee to the General Register Office, and meeting their obligations for continuing professional development.

Costs to couples

13.109 As we explain above, we believe that couples will benefit from our reforms. In our view, the costs that fall on couples under our proposed scheme will be less than the costs under the current law. That is not to say that there will be no costs to couples from our scheme: our proposals will not make getting married free.

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[59] Bridebook.co.uk, *UK Wedding Industry Law Review Report* (October 2019).

13.110 Some of the costs that will fall on businesses and local authorities in complying with the new scheme may be passed onto couples, given that businesses operate for profit and local authorities operate under the principle of recovering their costs. Nevertheless, we reiterate our view that couples will be given more choice under our reforms, and many of these choices will allow couples to spend less money on their wedding, and in particular on their wedding ceremony venue, if they choose.

Consultation

Consultation Question 91.

13.111 We invite consultees to tell us their views on the potential costs of our provisional proposals, including costs to:

(1) Government and local authorities;

(2) businesses;

(3) religious (and non-religious belief) organisations;

(4) independent officiants; and / or

(5) couples.

Chapter 14: Consultation Questions

Consultation Question 1.

14.1 We invite consultees to tell us if they are in a marriage that is not recognised by the law, whether celebrated in a religious or non-religious ceremony. And if so:

(1) did you understand that the marriage would not be recognised by the law at the time of the wedding, and if not, when did you find out?

(2) was it your choice not to have a legally binding wedding (and if so, what were your reasons for doing so)?

(3) have you experienced any consequences from not being in a legally recognised marriage?

Paragraph 1.58

Consultation Question 2.

14.2 We invite consultees to tell us about any legal barriers that prevented them from having a legally binding wedding that was meaningful or personal to them, whether they are legally married or not.

Paragraph 1.59

Consultation Question 3.

14.3 We invite consultees to share with us their experience with weddings during the COVID-19 pandemic.

Paragraph 1.65

Consultation Question 4.

14.4 We provisionally propose that the requirement that couples are resident in an English or Welsh registration district for seven days prior to giving notice of their intention to marry to the superintendent registrar should be abolished.

Do consultees agree?

Paragraph 4.92

Consultation Question 5.

14.5 We provisionally propose that it should be possible to start the notice period by giving notice online, by post or in person at any registration district, and that any person giving notice online or by post would be required to attend a separate in-person interview at a later date.

Do consultees agree?

Paragraph 4.93

Consultation Question 6.

14.6 We invite consultees' views as to whether the minimum period between the in-person interviews and the date from which the couple can get married should be:

(1) three days;

(2) seven days; or

(3) another period of time.

Paragraph 4.94

Consultation Question 7.

14.7 We invite consultees' views as to whether it should be possible for interviews to take place remotely, in the future, with the possibility of an in-person interview being required where concerns arise about sham or forced marriages or the capacity of either party to consent.

Paragraph 4.95

Consultation Question 8.

14.8 We invite consultees' views as to whether it should continue to be possible for notice to be given outside England and Wales where one of the couple who is resident in Scotland, or in a specified Commonwealth country or territory, or on a naval ship at sea, and both are relevant nationals or exempt from immigration control.

Paragraph 4.96

Consultation Question 9.

14.9 We provisionally propose that notices of marriage should be publicly displayed online, save where this would expose either of the couple to a risk of harm.

Do consultees agree?

Paragraph 4.97

Consultation Question 10.

14.10 We provisionally propose that the schedule should be valid for 12 months from the date of issue.

Do consultees agree?

Paragraph 4.98

Consultation Question 11.

14.11 We provisionally propose that:

(1) the schedule should identify the officiant who will officiate at the wedding; and

(2) at the parties' request, the registration service should issue an amended schedule with a substitute officiant.

Do consultees agree?

Paragraph 4.99

Consultation Question 12.

14.12 We provisionally propose that a substitute officiant should be able to officiate at the wedding if the officiant named in the schedule is unexpectedly unable to act because of death, sudden illness or unavoidable delay.

Do consultees agree?

14.13 We invite consultees' views as to whether a substitute officiant should be able to act in other circumstances.

Paragraph 4.100

Consultation Question 13.

14.14 We provisionally propose that banns published in Scotland, Northern Ireland or Ireland should no longer authorise an Anglican wedding in England or Wales.

Do consultees agree?

Paragraph 4.149

Consultation Question 14.

14.15 We provisionally propose that the rules about where banns can be published to authorise an Anglican wedding if a church is injured by war damage should be repealed.

Do consultees agree?

Paragraph 4.150

Consultation Question 15.

14.16 We invite consultees' views as to whether banns to authorise an Anglican wedding should be required to be published only in the church where the wedding is to take place.

Paragraph 4.151

Consultation Question 16.

14.17 We invite consultees' views as to whether to authorise an Anglican wedding clergy should:

(1) have the power to call for documentary evidence and be required to check such evidence; and

(2) be required to meet with each of the couple separately, before banns are published.

Paragraph 4.152

Consultation Question 17.

14.18 We invite consultees' views as to whether both of the couple should be required to attend and make separate declarations that there is no impediment to their marriage in order for a common licence to be granted to authorise an Anglican wedding.

Paragraph 4.153

Consultation Question 18.

14.19 We invite consultees' views as to whether:

(1) Anglican preliminaries should continue to be recognised as legal preliminaries to weddings officiated by the Church of England and the Church in Wales; or

(2) all weddings should be preceded by civil preliminaries.

Paragraph 4.173

Consultation Question 19.

14.20 We provisionally propose that all weddings should be attended by an officiant who should have a legal duty to:

(1) ensure that the parties freely express consent to marry each other;

(2) ensure that the other requirements of the ceremony are met; and

(3) ensure that the schedule or (if Anglican preliminaries are retained) marriage document is signed.

Do consultees agree?

Paragraph 5.65

Consultation Question 20.

14.21 We provisionally propose that registration officers should only be able to officiate at civil weddings.

Do consultees agree?

Paragraph 5.66

Consultation Question 21.

14.22 We provisionally propose that only one registration officer should need to officiate at a civil wedding.

Do consultees agree?

Paragraph 5.67

Consultation Question 22.

14.23 We provisionally propose that clerks in Holy Orders within the Church of England and the Church in Wales should be recognised as officiants by virtue of their office.

Do consultees agree?

Paragraph 5.144

Consultation Question 23.

14.24 We provisionally propose that:

(1) for religious organisations[1] other than the Church of England or the Church in Wales, the relevant governing authority of the organisation should be responsible for nominating officiants to officiate at weddings; and

(2) (if Government enables non-religious belief organisations to officiate at weddings) the relevant governing authority of the non-religious belief organisation should be responsible for nominating officiants to officiate at weddings.

Do consultees agree?

Paragraph 5.145

Consultation Question 24.

14.25 We provisionally propose that, if Government enables non-religious belief organisations to officiate at weddings, such organisations should be defined (to mirror the description of religion in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*[2]) as

> An organisation that professes a secular belief system that claims to explain humanity's nature and relationship to the universe, and to teach its adherents how they are to live their lives in conformity with the understanding associated with the belief system.

Do consultees agree?

14.26 We invite consultees' views as to whether there should be a list of types of organisations that should not amount to a non-religious belief organisation for the purpose of officiating at weddings, and if so, what types of organisations should be listed.

Paragraph 5.146

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1 That meet the description given by the Supreme Court in *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 610.

2 [2013] UKSC 77, [2014] AC 610.

Consultation Question 25.

14.27 We provisionally propose that religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations should be able to nominate officiants if the body has:

(1) at least 20 members who meet regularly for worship or in furtherance of their beliefs, and

(2) a wedding service or a sincerely held belief about marriage.

Do consultees agree?

Paragraph 5.148

Consultation Question 26.

14.28 We invite consultees' views as to whether the law should expressly exclude religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations from nominating officiants if the organisation promotes purposes that are unlawful or contrary to public policy or morality.

Paragraph 5.149

Consultation Question 27.

14.29 We invite consultees' views as to whether religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations should be able to nominate officiants by office, in addition to nominating named individuals.

Paragraph 5.150

Consultation Question 28.

14.30 We provisionally propose that nominations of officiants by religious and (if enabled by Government to officiate at weddings) non-religious belief organisations should be made to the General Register Office, which should be responsible for keeping a public list of all nominated officiants.

Do consultees agree?

Paragraph 5.151

Consultation Question 29.

14.31 We provisionally propose that (if enabled by Government to officiate at weddings) independent officiants should be able to apply to the General Register Office to be authorised and included on the public list of officiants.

Do consultees agree?

Paragraph 5.152

Consultation Question 30.

14.32 We provisionally propose that religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations should be responsible for ensuring that the persons they nominate as officiants are "fit and proper" persons.

Do consultees agree?

Paragraph 5.187

Consultation Question 31.

14.33 We provisionally propose that (if enabled by Government to officiate at weddings) independent officiants applying to be authorised should be required to demonstrate that they are "fit and proper" persons by proving that they:

(1) are aged at least 18;

(2) understand the legal requirements for being an officiant and performing the role; and

(3) have undergone mandatory training and continuing professional development in the legal aspects of being an officiant, with the content to be determined by the Registrar General.

Do consultees agree?

Paragraph 5.188

Consultation Question 32.

14.34 We provisionally propose that officiants nominated by religious and (if enabled by Government to officiate at weddings) non-religious belief organisations should be prohibited from making a business of officiating at weddings, by elevating the making of profits above the expression of their beliefs.

Do consultees agree?

Paragraph 5.189

Consultation Question 33.

14.35 We provisionally propose that (if enabled by Government to officiate at weddings) independent officiants should be prohibited from acting with a conflict of interest but that there should not otherwise be limits on the fees that they can charge for officiating at a wedding.

Do consultees agree?

Paragraph 5.190

Consultation Question 34.

14.36 We provisionally propose that, if Government enables independent celebrants and/or non-religious belief organisations to officiate at weddings, it should not be possible for the same person to be:

(1) authorised as an independent officiant and nominated by either a religious or a non-religious belief organisation; or

(2) nominated by both a religious and a non-religious belief organisation.

Do consultees agree?

Paragraph 5.191

Consultation Question 35.

14.37 We provisionally propose that officiants should have a responsibility to uphold the dignity and solemnity of marriage.

Do consultees agree?

Paragraph 5.200

Consultation Question 36.

14.38 We provisionally propose that the General Register Office should issue guidance to all officiants on how weddings should be conducted.

Do consultees agree?

Paragraph 5.201

Consultation Question 37.

14.39 We provisionally propose that the primary responsibility for monitoring officiants and requesting withdrawal of authorisation if they fail to comply with the fit and proper person standard or their duties or responsibilities should lie with the organisation that nominated them.

Do consultees agree?

Paragraph 5.212

Consultation Question 38.

14.40 We provisionally propose that the General Register Office should have the power to de-authorise nominated officiants if they fail to comply with the fit and proper person standard or their duties or responsibilities, and if the body who nominated them fails to act.

Do consultees agree?

Paragraph 5.213

Consultation Question 39.

14.41 We provisionally propose that the General Register Office should be responsible for monitoring independent officiants and de-authorising those who fail to comply with the fit and proper person standard or their duties and responsibilities, including conducting investigations necessary to exercise its powers.

Do consultees agree?

Paragraph 5.214

Consultation Question 40.

14.42 We provisionally propose that there should be no time limit on the authorisation of officiants.

Do consultees agree?

Paragraph 5.215

Consultation Question 41.

14.43 We provisionally propose that an independent officiant's authorisation would lapse if they failed to comply with the obligation to engage in continuing professional development.

Do consultees agree?

Paragraph 5.216

Consultation Question 42.

14.44 We provisionally propose that:

(1) during every wedding ceremony, the parties:

(a) should be required to express their consent to be married to each other, whether orally or otherwise, but

(b) should not be required to express that there is no impediment to their marrying each other (with the issue of impediments being addressed during the preliminaries);

(2) religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations should be able to submit details of their wedding ceremonies to the General Register Office, to identify the way(s) each party expresses consent in accordance with their beliefs;

(3) the schedule (or marriage document) should contain a declaration to be signed by each party that they had during the ceremony expressed consent to be married to the other, or they were now consenting to be legally married to the other, the signing of which would itself be an expression of consent if the ceremony did not contain an expression of consent; and

(4) the marriage should be formed at the point when both parties have expressed consent to be married to each other, whether during the ceremony or when signing the declaration in the schedule (or marriage document).

Do consultees agree?

Paragraph 6.68

Consultation Question 43.

14.45 We provisionally propose that all weddings should take place according to the form and ceremony chosen by the parties and agreed to by the officiant.

Do consultees agree?

Paragraph 6.69

Consultation Question 44.

14.46 We provisionally propose that there should be no special rules about the form of Anglican, Jewish or Quaker weddings, and that there should be no legal limitations on who can have those types of wedding (but like all religious groups, Anglican Jewish and Quaker groups will continue to be able to impose their own requirements as a matter of their own practice).

Do consultees agree?

Paragraph 6.70

Consultation Question 45.

14.47 We provisionally propose that religious content should be permitted in civil wedding ceremonies, provided that the ceremony remains identifiable as a civil ceremony rather than a religious service.

Do consultees agree?

14.48 We invite consultees' views as to whether specific examples of religious content should be expressly allowed at civil weddings, and, if so, what those examples should be.

Paragraph 6.109

Consultation Question 46.

14.49 We provisionally propose that the provision to permit a religious service to be conducted after a civil wedding ceremony (section 46 of the Marriage Act 1949) should be repealed.

Do consultees agree?

Paragraph 6.114

Consultation Question 47.

14.50 We provisionally propose that the existing requirements for a wedding to take place with open doors, or otherwise for public access to be allowed, should be repealed.

Do consultees agree?

Paragraph 6.136

Consultation Question 48.

14.51 We provisionally propose that all weddings should be legally permitted to take place anywhere.

Do consultees agree?

14.52 We invite consultees' views as to whether the law should limit weddings in any particular venues, including:

(1) outdoors,

(2) on inland waters such as lakes or rivers,

(3) in the air, and / or

(4) in private homes.

Paragraph 7.158

Consultation Question 49.

14.53 We provisionally propose that civil wedding locations should not have to be publicly accessible or regularly available to the public for the solemnization of civil marriages.

Do consultees agree?

Paragraph 7.160

Consultation Question 50.

14.54 We invite consultees' views as to whether the law should prohibit:

(1) civil weddings from taking place in religious venues and (if non-religious belief organisations are enabled by Government to officiate at weddings) non-religious belief venues?

(2) (if non-religious belief organisations are enabled by Government to officiate at weddings) religious weddings from taking place in non-religious belief venues?

(3) (if non-religious belief organisations are enabled by Government to officiate at weddings) non-religious belief weddings from taking place in religious venues?

Paragraph 7.161

Consultation Question 51.

14.55 We provisionally propose that it should be the responsibility of the officiant to decide whether the location for the wedding should be approved.

Do consultees agree?

Paragraph 7.190

Consultation Question 52.

14.56 We provisionally propose that, as a part of their responsibilities, officiants should ensure that the wedding location is:

(1) safe, and

(2) dignified.

Do consultees agree?

14.57 We provisionally propose that guidance should be produced by the General Register Office to provide advice to officiants on how to assess whether a location is safe and dignified for a wedding.

Do consultees agree?

Paragraph 7.191

Consultation Question 53.

14.58 We invite consultees' views as to whether there should be an optional pre-approval process available for locations that frequently host weddings, that operates alongside the general rule that the officiant must agree to the location.

14.59 If consultees agree that there should be such a pre-approval process:

(1) who should be responsible for it, and

(2) how should it work?

Paragraph 7.199

Consultation Question 54.

14.60 We provisionally propose that after a wedding ceremony, the schedule or (if Anglican preliminaries are retained) marriage document should be able to have added to it:

(1) the date of the wedding;

(2) the location of the wedding; and

(3) the names and occupations of the parties' parents, each of whom the parties should be able to identify as "mother", "father", or "parent".

Do consultees agree?

Paragraph 8.29

Consultation Question 55.

14.61 We provisionally propose that couples should have the choice of registering their marriage in English only, in Welsh only, or in both English and Welsh.

Do consultees agree?

Paragraph 8.30

Consultation Question 56.

14.62 We provisionally propose that an option for electronic registration should be introduced at a later date when infrastructure is in place to provide a high level of security.

Do consultees agree?

Paragraph 8.31

Consultation Question 57.

14.63 We provisionally propose that any one of the following factors on its own should render a marriage void:

(1) the failure of both or either party to give notice of the intended marriage to the registration service, or (if Anglican preliminaries are retained) the relevant Church authority;

(2) the wedding taking place after authority to marry had lapsed;

(3) the knowledge of both parties that the ceremony was not officiated by an authorised officiant; or

(4) the knowledge of both parties that the necessary opt into same-sex marriage had not been given by the relevant religious governing authority, in the case of same-sex marriages.

Do consultees agree?

14.64 We provisionally propose that the following factors should not render a marriage void:

(1) mistakes in the issuance of the schedule or (if Anglican preliminaries are retained) marriage document;

(2) the absence of witnesses; and

(3) a failure to sign the schedule or (if Anglican preliminaries are retained) marriage document, or to register the marriage.

Do consultees agree?

Paragraph 10.128

Consultation Question 58.

14.65 We provisionally propose that the following factors should result in a non-qualifying ceremony:

(1) both:

(a) failure of one or both parties to the marriage to give notice of the intended marriage, and

(b) either:

(i) the knowledge of both parties that the ceremony was not officiated by an authorised officiant, or

(ii) in the case of same-sex marriages the knowledge of both parties that the necessary opt into same-sex marriage had not been given by the relevant religious governing authority; or

(2) failure of one or both parties to express consent to the marriage.[3]

Do consultees agree?

Paragraph 10.130

[3] Noting that if the consent was not valid due to duress, mistake or incapacity, the marriage would be voidable: Matrimonial Causes Act 1973, s 12.

Consultation Question 59.

14.66 We provisionally propose that a presumption in favour of the validity of a marriage should arise where:

(1) the couple have signed the schedule or (if Anglican preliminaries are retained) marriage document, or

(2) the couple have given notice and gone through a ceremony with a person acting as officiant,

but should not require the couple to have cohabited for any period after its celebration.

Do consultees agree?

14.67 We provisionally propose that the presumption that a couple is married if they have cohabited for a long period of time and are believed to be married by friends and family should be abolished.

Do consultees agree?

Paragraph 10.131

Consultation Question 60.

14.68 We provisionally propose that the three-year time limit on petitioning for nullity on the basis of lack of consent should be abolished.

Do consultees agree?

Paragraph 10.143

Consultation Question 61.

14.69 We provisionally propose that it should be an offence:

(1) for any person to purport to be an officiant and deliberately or recklessly mislead either of the couple about their status or the effect of the ceremony; or

(2) for an officiant deliberately or recklessly to mislead either of the couple about the effect of the ceremony.

Do consultees agree?

Paragraph 10.170

Consultation Question 62.

14.70 We invite consultees' views as to whether there are any problems with the law governing weddings of persons who have a terminal illness, are detained in a prison or hospital, or are housebound.

Paragraph 11.17

Consultation Question 63.

14.71 We provisionally propose that parties who have a terminal illness should be required to give notice of their intention to marry and be interviewed by a registration officer prior to the schedule being issued.

Do consultees agree?

Paragraph 11.26

Consultation Question 64.

14.72 We provisionally propose that the Registrar General's licence should be abolished, and that there should be a single form of civil authority to marry – a schedule – issued by registration officers.

Do consultees agree?

Paragraph 11.35

Consultation Question 65.

14.73 We provisionally propose that schedules issued to couples where one or both parties has a terminal illness should be valid for 12 months.

Do consultees agree?

Paragraph 11.37

Consultation Question 66.

14.74 We provisionally propose that schedules issued to couples where one or both parties are detained in prison or hospital or are housebound should be valid for 12 months.

Do consultees agree?

Paragraph 11.44

Consultation Question 67.

14.75 We provisionally propose that weddings legislation should contain a power for secondary legislation to make emergency provisions that would permit:

(1) the validity of schedules and other forms of authority to marry to be extended until after a national emergency;

(2) both stages of civil preliminaries to take place entirely remotely;

(3) the officiant, the couple, and the witnesses to each attend the wedding ceremony remotely; and

(4) the schedule to be signed by each of the officiant, the couple, and the witnesses remotely, or for each to sign a different copy of the schedule.

Do consultees agree?

14.76 We provisionally propose that the emergency provisions should be able to apply to all couples, depending on the nature and length of the emergency.

Do consultees agree?

14.77 We provisionally propose that the emergency provisions should facilitate weddings of those who might be at risk of death, rather than requiring evidence that the person is seriously ill and is unlikely to recover.

Do consultees agree?

Paragraph 11.82

Consultation Question 68.

14.78 We provisionally propose that weddings should be able to take place in the territorial sea, and in bays and other coastal waters, adjacent to England and Wales.

Do consultees agree?

Paragraph 11.145

Consultation Question 69.

14.79 We provisionally propose that weddings should be able to take place in international waters under the law of England and Wales, on board cruise ships registered in the United Kingdom with a port of choice in England or Wales.

Do consultees agree?

Paragraph 11.146

Consultation Question 70.

14.80 We invite consultees' views as to whether weddings should be able to take place in international waters under the law of England and Wales, on board vessels other than cruise ships, and if so, which types of vessel.

Paragraph 11.147

Consultation Question 71.

14.81 We provisionally propose that couples should be required to give the name and registration number of the ship on which they intend to marry in international waters, when giving notice of their intention to marry, but should not be required to give the name of the officiant.

Do consultees agree?

Paragraph 11.148

Consultation Question 72.

14.82 We provisionally propose that weddings on ships in international waters should be officiated by:

(1) deck officers who have been authorised by the Registrar General as maritime officiants; and

(2) (if independent officiants are enabled by Government to officiate at weddings) other members of the ship's crew who have been authorised as independent officiants.

Do consultees agree?

14.83 We provisionally propose that maritime officiants should be subject to the same rules as we have provisionally proposed should apply to independent officiants.

Do consultees agree?

14.84 We provisionally propose that weddings on ships in international waters should be void if they are not officiated by a maritime officiant or a member of crew who is an independent officiant.

Do consultees agree?

Paragraph 11.149

Consultation Question 73.

14.85 We invite consultees' views about whether there is any demand for religious or non-religious belief weddings in international waters.

Paragraph 11.152

Consultation Question 74.

14.86 We provisionally propose that any fixed time limit for couples to return the schedule after their wedding should not apply to weddings in international waters, but instead couples should be required to return the schedule as soon as is reasonably possible.

Do consultees agree?

Paragraph 11.153

Consultation Question 75.

14.87 We provisionally propose that there should be an additional, standard fee charged in cases where the registration officer must travel to one of the persons giving notice because that person is housebound or detained. The fee should be set nationally on a cost-recovery basis.

Do consultees agree?

Paragraph 12.22

Consultation Question 76.

14.88 We invite consultees' views as to whether the fee for both parties to give notice of a wedding involving a person who is terminally ill should be:

(1) the same fee as other cases in which the registration officer must travel to the person giving notice, set nationally on a cost-recovery basis; or

(2) a separate fee from other forms of giving notice, set nationally on compassionate grounds at below cost level.

Paragraph 12.23

Consultation Question 77.

14.89 We provisionally propose that it should continue to be possible for couples to have a civil wedding in a register office, for a fee prescribed by regulation.

Do consultees agree?

Paragraph 12.37

Consultation Question 78.

14.90 We provisionally propose that if any fee is charged for registration officers to ensure that a location is safe and dignified, that fee should be set by the local authority on a cost-recovery basis.

Do consultees agree?

Paragraph 12.43

Consultation Question 79.

14.91 We provisionally propose that if there is an optional pre-approval process for wedding locations that regularly host weddings, any fee for pre-approval should be set by the local authority or Government body responsible for it, on a cost-recovery basis.

Do consultees agree?

Paragraph 12.46

Consultation Question 80.

14.92 We provisionally propose that there should be an additional fee for a registration officer to officiate at a civil wedding outside the register office, which should be a standardised hourly rate to reflect the cost of the registration officer's time in travelling to and from the wedding, prescribed by regulations to apply across England and Wales.

Do consultees agree?

Paragraph 12.55

Consultation Question 81.

14.93 We provisionally propose that the principle that fees for discretionary services should be determined on a cost-recovery basis should continue to apply to additional services that local authorities provide, including for services registration officers provide beyond officiating at a civil ceremony.

Do consultees agree?

Paragraph 12.56

Consultation Question 82.

14.94 We provisionally propose that the fees for a registration officer to officiate at a wedding at the place where a person is housebound or detained should be the same fees as prescribed for the registration officer to officiate at any other wedding outside the register office.

Do consultees agree?

Paragraph 12.61

Consultation Question 83.

14.95 We invite consultees' views as to whether, for a registration officer to officiate at a wedding involving a party who is terminally ill

(1) the fee should be set by regulation at a level below cost-recovery; or

(2) there should be no fee.

Paragraph 12.62

Consultation Question 84.

14.96 We provisionally propose that the Registrar General should be able to prescribe a fee for an application to authorise an officiant, set at a level to recover any costs incurred in assessing the application.

Do consultees agree?

Paragraph 12.69

Consultation Question 85.

14.97 We invite consultees' views on:

(1) whether the current law discourages or prevents couples from getting married; and

(2) whether our provisional proposals would facilitate couples getting married leading to an increase in the number of couples who are legally married.

Please provide us with any evidence you have of the scale of the impact of the law or any benefits.

Paragraph 13.17

Consultation Question 86.

14.98 We invite consultees' views on the impact of the current law on couples including in relation to:

(1) the availability and costs of register office weddings;

(2) the costs of marrying on approved premises;

(3) the costs of marrying in registered places of worship;

(4) the costs of marrying in locations that are not authorised for weddings under the current law; and

(5) the necessity and costs of a having a separate, legally recognised wedding.

14.99 We invite consultees' views on the potential benefits to couples of our proposed scheme, including benefits relating to:

(1) the availability of register office weddings and any savings in relation to them;

(2) savings from being able to marry in locations without the need for a pre-approval process, including places of worship, locations that could currently be approved premises, and locations that could not be approved under the current law, such as outdoors or in private homes; and

(3) the necessity of a separate, legally recognised wedding and any consequent savings.

If you have any evidence to support your answers, or which might help us assess the extent of possible benefits, please provide it.

Paragraph 13.42

Consultation Question 87.

14.100 We invite consultees' views on the impact of the current law on venues, including in relation to:

(1) the costs resulting from the Marriages and Civil Partnerships (Approved Premises) Regulations 2005,[4] including the costs of complying with them and any lost opportunities arising from being unable to fulfil the requirements; and

(2) the availability of registration officers to attend weddings on approved premises and the costs of their attendance.

14.101 We invite consultees' views on the potential benefits to venues of our proposed scheme, including benefits relating to:

(1) hosting weddings without requiring Government pre-approval;

(2) the availability of registration officers for civil weddings;

(3) the ability of venues to host weddings officiated by religious officiants, and (if enabled by Government to officiate at weddings) non-religious belief organisations and independent officiants; and

(4) the business opportunities arising from an increase in the number of weddings in England and Wales.

If you have any evidence to support your answers, or which might help us assess the extent of possible benefits, please provide it. We would also welcome any data on the size of businesses that are affected by the law or will be impacted under our proposed reforms.

Paragraph 13.61

[4] SI 2005 No 3168.

Consultation Question 88.

14.102 We invite consultees' views on the impact of the current law on local authorities.

14.103 We invite consultees' views on the potential benefits to local authorities of our proposed scheme.

If you have any evidence to support your answers, or which might help us assess the extent of possible benefits, please provide it.

Paragraph 13.66

Consultation Question 89.

14.104 We invite consultees' views on the impact of the current law on:

(1) residents of England and Wales travelling to other jurisdictions to get married; and

(2) residents of overseas jurisdictions travelling to England and Wales to get married.

14.105 We invite consultees' views on the potential benefits of our proposed scheme relating to:

(1) residents of England and Wales travelling to other jurisdictions to get married; and

(2) residents of overseas jurisdictions travelling to England and Wales to get married.

If you have any evidence to support your answers, or which might help us assess the extent of possible benefits, please provide it.

Paragraph 13.82

Consultation Question 90.

14.106 We invite consultees' views on the impact of the current law on the United Kingdom ship register and the maritime industry.

14.107 We invite consultees' views on the potential benefits to the United Kingdom ship register and the maritime industry of our proposed scheme.

If you have any evidence to support your answers, or which might help us assess the extent of possible benefits, please provide it.

Paragraph 13.94

Consultation Question 91.

14.108 We invite consultees to tell us their views on the potential costs of our provisional proposals, including costs to:

(1) Government and local authorities;

(2) businesses;

(3) religious (and non-religious belief) organisations;

(4) independent officiants; and / or

(5) couples.

Paragraph 13.111

Appendix 1: Terms of Reference

1.1 The review will consider how and where couples can marry in England and Wales. It will seek to provide recommendations for a reformed law of weddings that allows for greater choice within a simple, fair, and consistent legal structure.

1.2 Five principles will underpin recommendations for reform:

(1) Certainty and simplicity;

(2) Fairness and equality;

(3) Protecting the state's interest;

(4) Respecting individuals' wishes and beliefs; and

(5) Removing any unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples.

1.3 To this end, the Law Commission will make recommendations regarding:

(1) Whether the legal preliminaries that must take place before a wedding could be streamlined;

(2) How the law should be reformed to enable marriage ceremonies to take place in a wider range of venues, including outdoor locations, at sea, and on military sites;

(3) How the law should be reformed in relation to who can solemnize a marriage and how it could be reformed to enable a wider range of persons to solemnize a marriage. This will include how marriage by humanist and other non-religious belief organisations could be incorporated into a revised or new scheme, and how provision could be made for the use of independent celebrants, but the Law Commission will not make recommendations as to whether the groups who can solemnize marriages should be expanded;

(4) What content is either required or prohibited as part of a wedding ceremony;

(5) How marriages should be registered, and by whom;

(6) What the consequences of failing to comply with all or some of the requirements for a valid marriage should be; and

(7) What offences are necessary to underpin the system governing weddings.

1.4 The review will proceed on the following policy assumptions.

(1) The project will not look to introduce universal civil marriage but it should investigate the potential for introducing universal civil preliminaries.

(2) There should be no change to the principle that, provided other requirements are met, religious groups should be able to marry people. There should be no change to the law determining what amounts to a religion for the purpose of the solemnization of marriage as decided by the Supreme Court in *R (on the application of Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77.

(3) The project should not undermine immigration provisions introduced by the Government to protect against sham marriages. These include the changes to marriage law enacted by the Immigration Act 2014, which extended the length of the waiting period that must elapse between parties to an intended marriage giving notice of the marriage and the authority for the marriage being granted, and which prescribed a different route for individuals who are not relevant nationals.

(4) The provisions of the civil and criminal law dealing with the issue of forced marriages should not be undermined by any changes to the law.

(5) That any non-religious belief organisations or independent celebrants given the right to conduct marriage ceremonies cannot discriminate between opposite and same-sex couples.

(6) Recommendations we make in relation to the solemnization of marriage would also apply (in so far as is relevant) where a civil partnership is being converted into a marriage.

(7) It will be for the Government to consider the detail of making corresponding provision where appropriate with civil partnership ceremonies, for example in the cases of approved premises which are open to marriage and civil partnership ceremonies.

1.5 The review will not consider:

(1) Who is eligible to enter into marriage;

(2) The question of whether or not religious groups should be obliged to solemnize marriages of same sex couples, which was decided by Parliament following wide public debate.

(3) The rights or responsibilities which marriage creates, such as the financial entitlements of surviving spouses or the consequences of divorce.

(4) The Church of England's and the Church in Wales's duty to conduct marriage ceremonies for their parishioners.

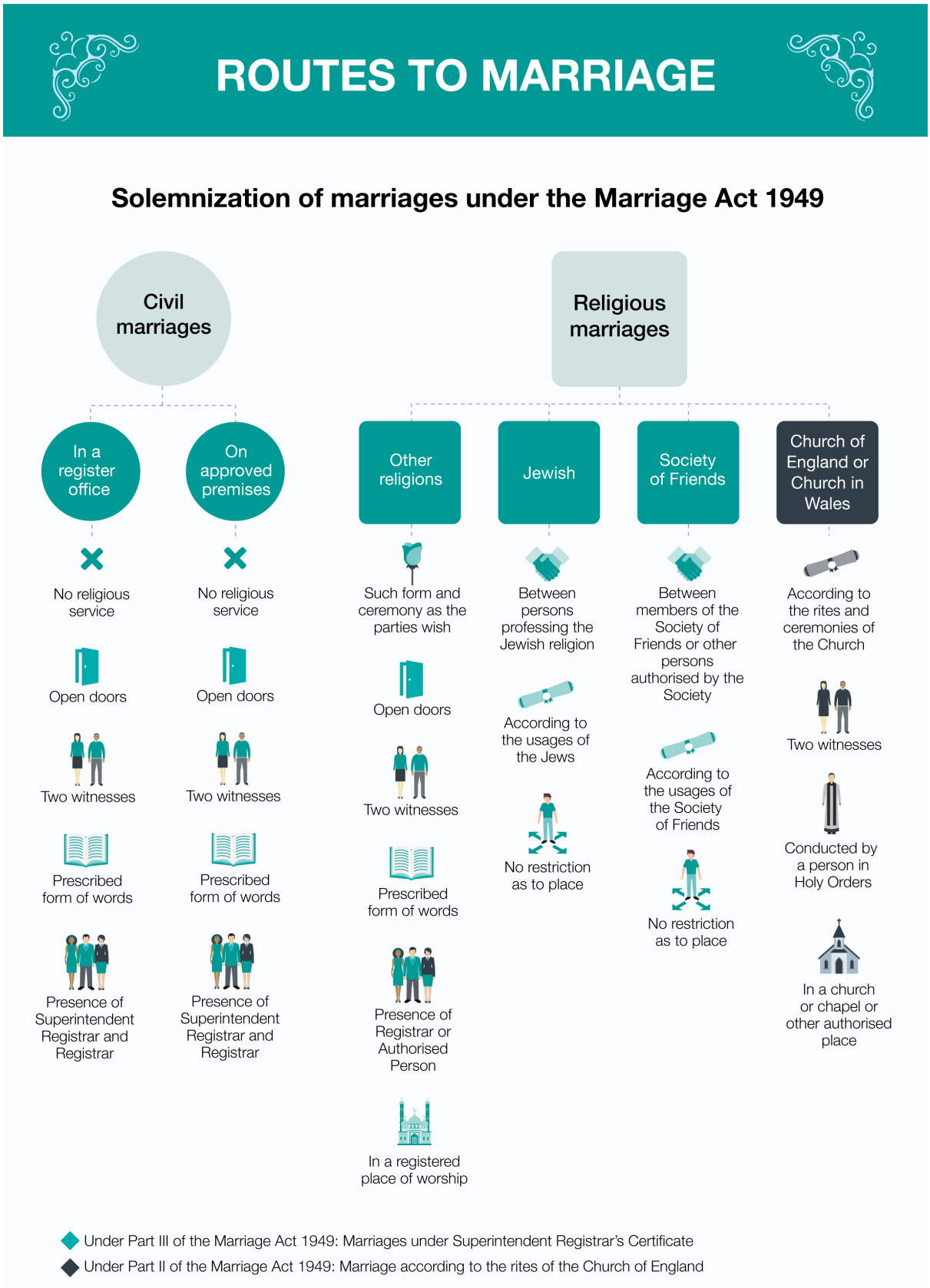
(5) The grounds on which a marriage can be void or voidable other than those grounds that relate to a failure to comply with the required formalities.

(6) The law of divorce, including the issues that can arise when a civil divorce has been granted but a religious one has not.

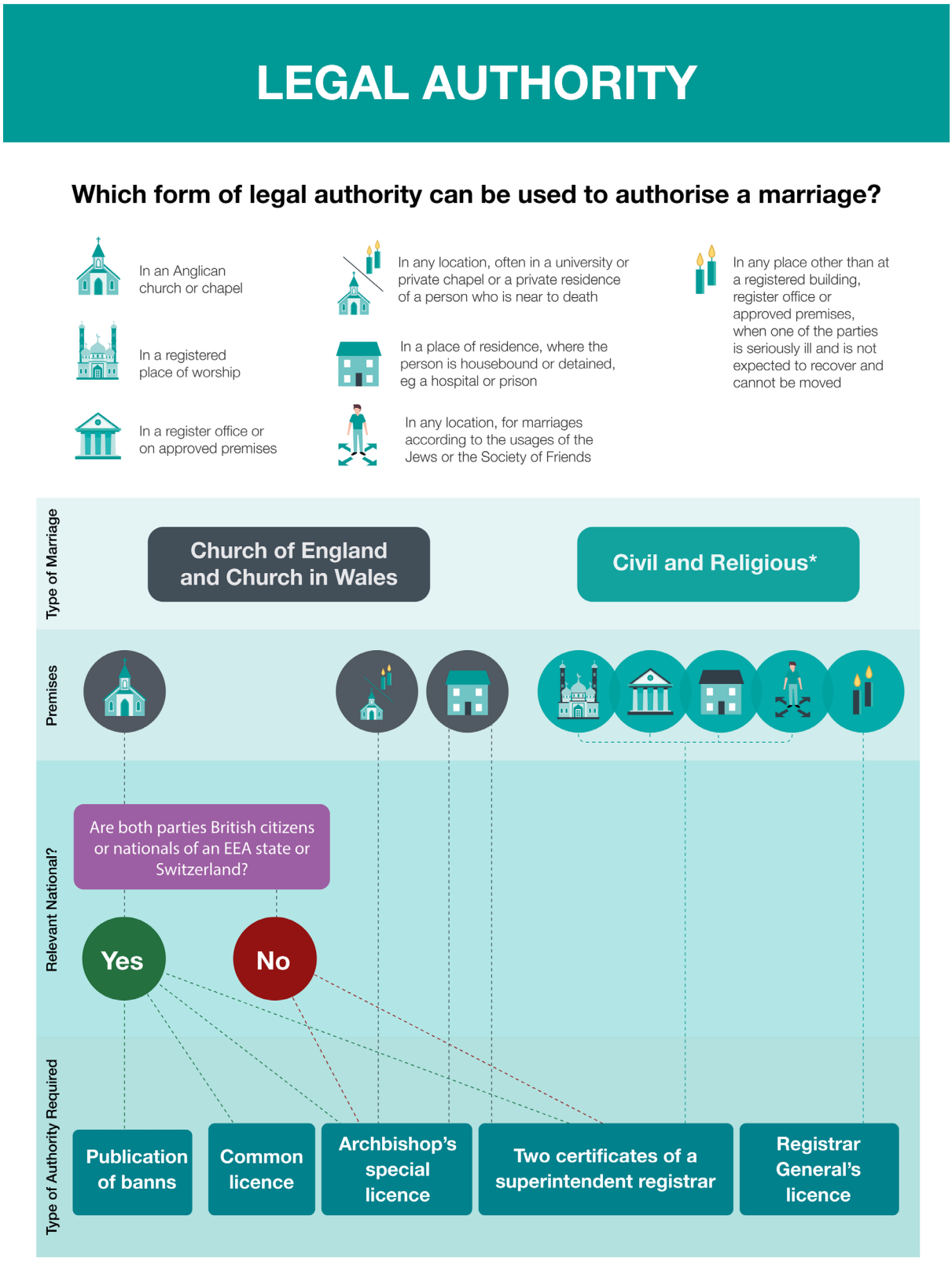
(7) How the law deals with marriages that have taken place in other jurisdictions.

(8) Ancillary wedding services unrelated to the law governing how and where people can legally marry, such as flowers and catering, including any cost or choice difficulties for consumers in relation to those services.

Appendix 2: Routes to marriage (the current law)

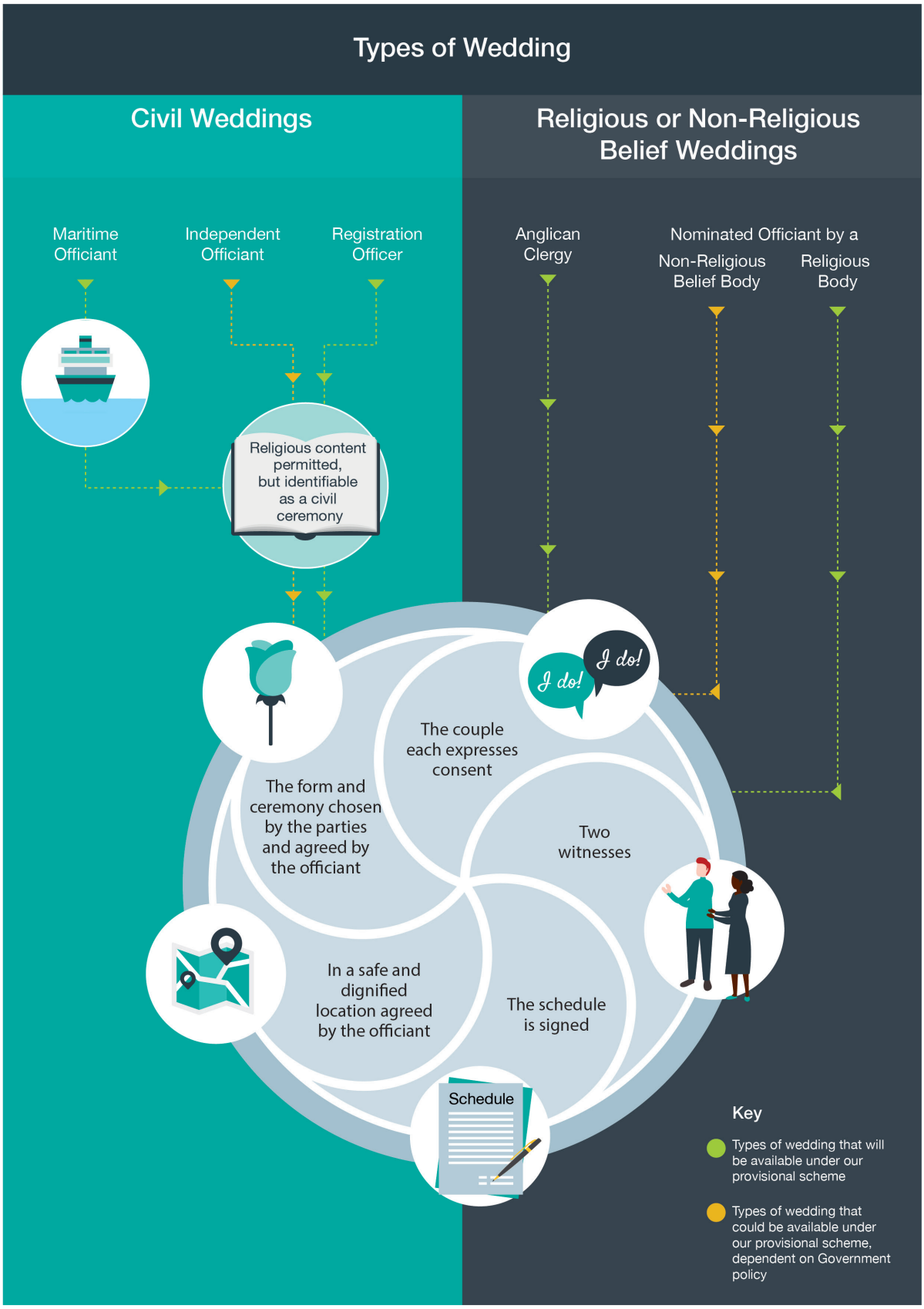


Appendix 3: Legal authority (the current law)

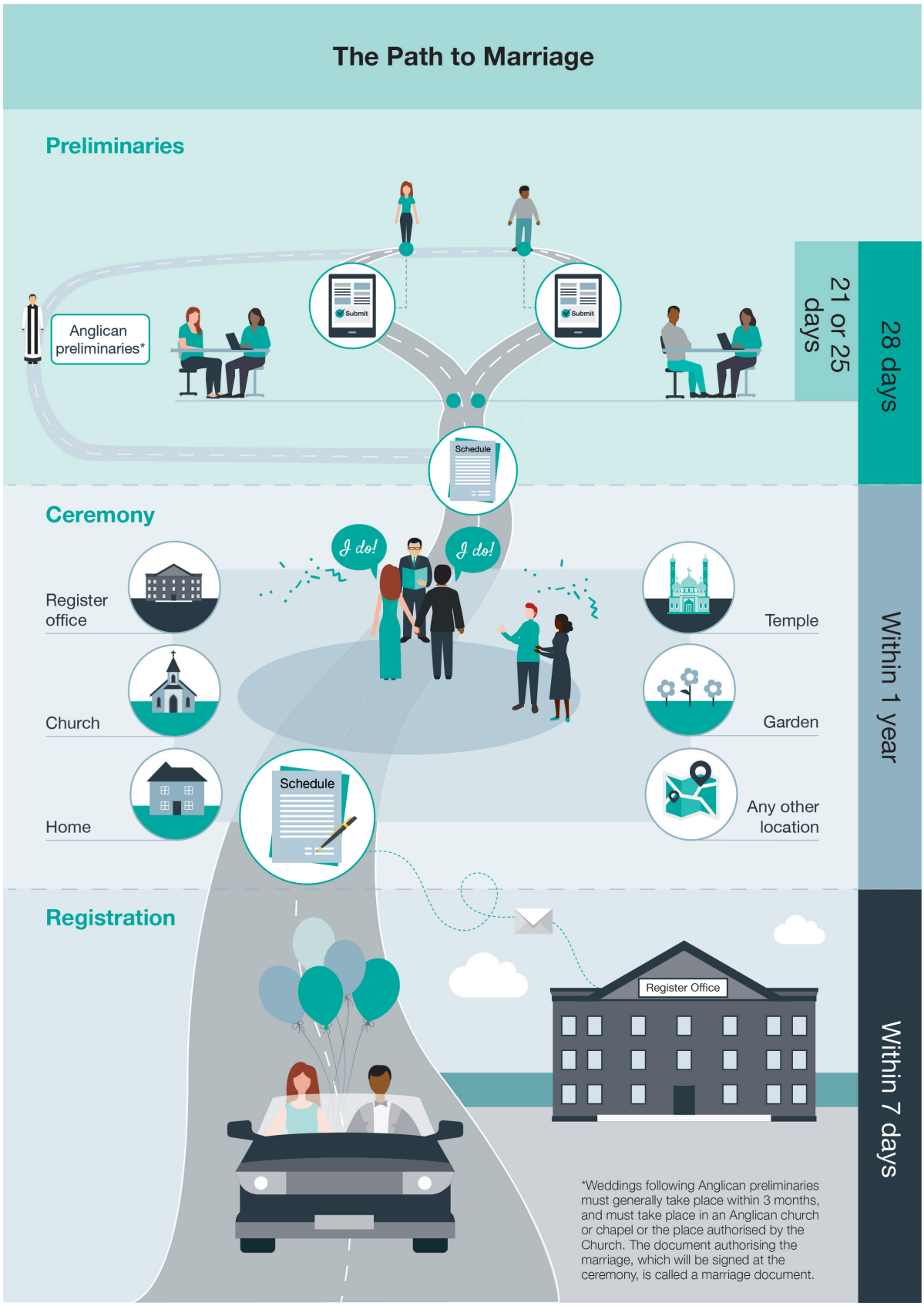


* Other than Church of England and Church in Wales

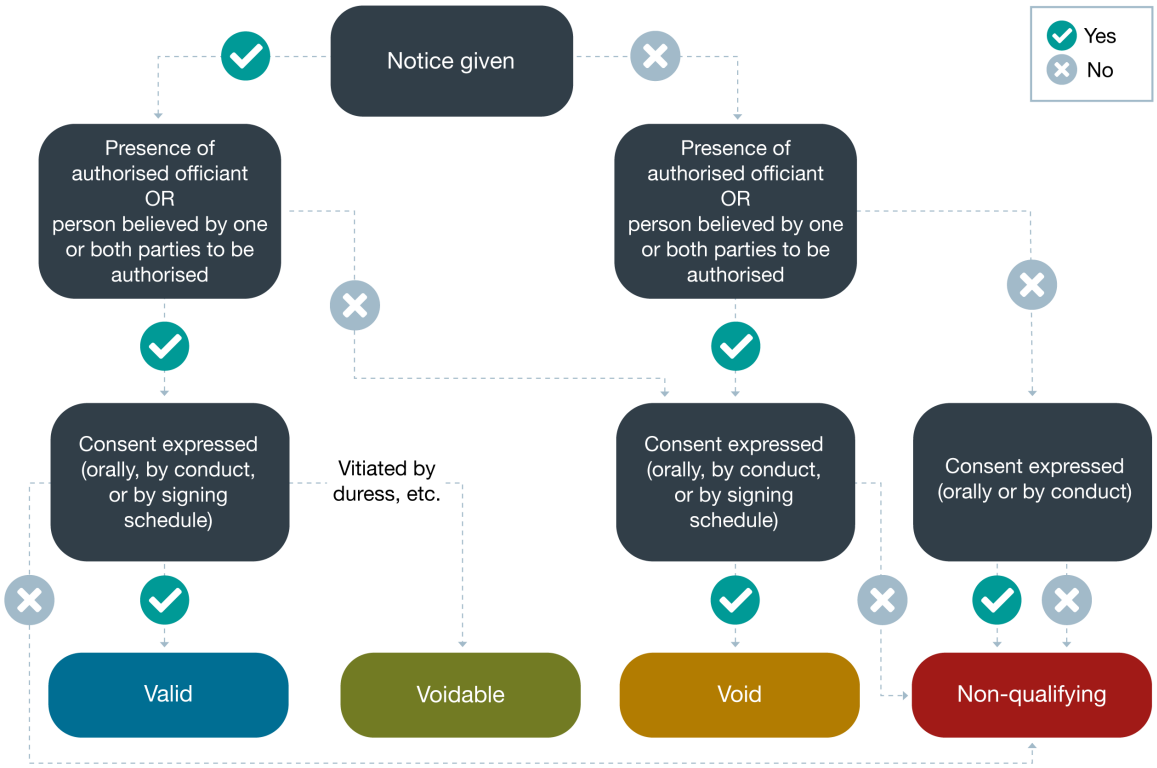
Appendix 4: Types of wedding (our proposals)



Appendix 5: Path to marriage (our proposals)



Appendix 6: Validity (our proposals)



Appendix 7: Fees table

Key
Current law
Our proposals

Fee	Amount	Basis
Civil preliminaries		
Taking notice: both parties exempt	£35 per person	Cost recovery
Taking notice: both parties exempt	Fixed nationally	Cost recovery
Taking notice: either party not exempt	£47 per person	Cost recovery
Taking notice: either party not exempt	Fixed nationally	Cost recovery
Taking notice: either party terminally ill	£18 per couple	Below cost recovery
Taking notice: either party terminally ill	Fixed nationally	Compassionate
Taking notice: additional fee to attend place where party is housebound	£47 per person	Cost recovery
Taking notice: additional fee to attend place where party is detained	£68 per person	Cost recovery
Taking notice: additional fee to attend place where party is detained or housebound	Fixed nationally	Cost recovery
Application to reduce waiting period	£60 per person	Cost recovery
Application to reduce waiting period	Fixed nationally	Cost recovery
Location		
Approval of premises for civil weddings	Set by local authorities	Cost recovery
Approval of venue by registration officer (or pre-approval of venue)	Variable (or fixed nationally)	Nil or cost recovery
Certification of place of worship	£29 per venue	Cost recovery

Fee	Amount	Basis
Registration of place of worship	£123 per venue	Cost recovery
Wedding ceremony		
Registrar attending wedding in register office	£46 per couple	Cost recovery
Registration officer officiating at any wedding	Fixed nationally	Cost recovery
Superintendent registrar and registrar attending wedding on approved premises	Set by local authorities	Cost recovery
Registrar attending weddings of housebound person	£81 per couple	Cost recovery
Registrar attending wedding of detained person	£88 per couple	Cost recovery
Superintendent registrar attending wedding of housebound person	£84 per couple	Cost recovery
Superintendent registrar attending wedding of detained person	£94 per couple	Cost recovery
Registration officer travelling to officiate at wedding outside of register office	Hourly rate (fixed nationally)	Cost recovery
Registrar attending wedding of terminally ill person	£2 per couple	Below cost recovery
Superintendent registrar attending wedding of terminally ill person	£2 per couple	Below cost recovery
Registration officer officiating at wedding of terminally ill person	Fixed nationally; or nil	Compassionate
Registrar attending wedding in registered building	£86 per couple	Cost recovery
Authorisation of officiant	Fixed nationally	Cost recovery