

# **THE CHALLENGE TO CHANGE**

## **Introduction**

1. On 22 January this year the Government published 'Civil Registration: Vital Change', a White Paper setting out its proposals to change the civil registration system. These proposals constitute both a challenge and an opportunity for the Church of England.
2. The White Paper's proposals acknowledge a cultural shift in the way that 'community' is perceived by society, and in the quality and scope of the registration services demanded by society. This is reflected not only in the proposals concerning marriage and marriage venues, but also in the proposed provision of other services such as naming ceremonies. Thus the White Paper obviously implies greater competition for the Churches from providers of secular rituals. In terms of marriage alone, the implications for the Church of England are significant. What is suggested is a system of civil legislation closer to that already operating in Scotland. The proposals are celebrant-based rather than place-based, offering greater individual choice in civil marriage, and offering a wider range of options as regards venues of marriage for other Churches.

## **Our response**

3. This will inevitably have an impact on society's expectations of marriage ceremonies and offers a challenge to the Church of England to seize a

missionary opportunity and respond positively in a way which is both faithful and serviceable: faithful in our understanding of and belief in marriage, and serviceable in providing as far as possible for the needs and expectations of the community we serve.

4. The Church of England is in a strong position to offer couples something unique and precious which it is clear that a great many of them seek. This is an opportunity for dioceses and parishes to review the Church's own practice regarding the solemnisation of marriage and marriage preparation and to ensure that the latter topic features in continuing ministerial education. The House of Bishops has already published a teaching document in 1999 entitled 'Marriage'. The authors of this Report commend that document as a valuable resource in responding to the new situation in a way which is faithful and serviceable.

### **Recent background**

5. The General Synod had an opportunity last November to consider the thinking behind the report 'Just Cause or Impediment?' (GS1436) produced by the Review of Aspects of Marriage Law Working Group under the chairmanship of the Bishop of St Edmundsbury and Ipswich. Synod was invited to postpone any decision until the Government had published its White Paper, and the Archbishops' Council requested that a group of bishops be asked to take forward issues of concern with the Government and to make further recommendations in the light of the White Paper. This Group was headed by the Bishop of London and included the Bishops of Guildford, Norwich and St Edmundsbury and Ipswich ('the Bishops' Group') whose report this is.

6. The Group met Government ministers about the proposals contained in the White Paper on 12 February. The meeting was very positive. The Lord Chancellor confirmed that any changes to the Marriage Act 1949 would leave open the possibility of the Church having its own legal requirements as to where and how marriages according to Anglican rites could be conducted. He also confirmed that the Government intended to put no pressure on the Church of England to change its own processes. In addition there was a positive response from the Government in respect of the Church's continuing role in marriage preliminaries, with agreement that the principle that should be observed is one of reducing bureaucracy and eliminating duplication.
7. The Government confirmed that the celebrant-based model would move the emphasis in civil law from the *place* of marriage to the *person* conducting the marriage. This would allow a greater range of venues to be used for marriage, and greater flexibility as to when marriages could take place. As to civil marriages, the determining factor would be whether the civil registrar was prepared to marry a couple in a particular place at a particular time, and it would rest with the civil authorities to determine where it would be appropriate for civil marriages to be solemnised, subject to some basic legal requirements. The arrangements proposed would allow the Churches, including denominations other than the Church of England, similar flexibility. It would then be for each denomination to determine where it would allow marriages according to its own rites to be conducted. Whereas the Marriage Act 1949 perpetuated a number of distinctions between the Church of England/Church in Wales on the one hand

and the Society of Friends, the Jews and other denominations (including the Roman Catholics and the Free Churches) and religions on the other, the main thrust of Government proposals in respect of the civil law on the time and place of marriage is to create a ‘level playing field’ for all ‘service providers’.

### **The Group’s recommendations**

8. The Group’s main recommendations are set out in the following paragraphs. While they build upon the recommendations made in GS1436, they take full account of the points explained above and the mission opportunity offered by the Government’s proposals. The recommendations have been considered and endorsed by both the House of Bishops and the Archbishops’ Council, and welcomed by the Archbishop of Canterbury. They fall under seven main headings, as follows.

#### ***Venues – places of worship***

9. The intention of the Bishops’ Group is to encourage people to marry in accordance with the rites and ceremonies of the Church of England. This would be facilitated by introducing a concept of a ‘demonstrable connection’ which allows couples greater flexibility as regards venues for marriage. So, while couples would retain the legal right to marry in their own parish church, the ‘demonstrable connection’ principle would allow couples to marry in a *parish church* or other *parochial place of worship* of a parish other than their own if they met certain criteria; for example, if the parents of one of them lived in the parish in which the couple wished to be married. The precise criteria would be laid down by the General Synod and could be

amended from time to time by the Synod without the need to alter the civil legislation.

10. In addition, the Bishops' Group considers it is also appropriate to apply the 'demonstrable connection' approach to *non-parochial places of worship*. To enable this to happen the Bishops' Group recommends that non-parochial places of worship should be subject to a flexible local system of licensing or regulation undertaken at a diocesan level. This would be based on national criteria formulated in consultation with the House of Bishops which would draw on the Faculty Office's experience in this area. Although the Church's criteria would be applied locally in the light of local circumstances and need, the intention is to have a broadly uniform approach which offers consistency of practice across the nation. However, it would obviously be necessary to accept, in the case of a marriage taking place in a private place of worship such as a school or chapel, that the institution which owned it would need to consent to the marriage taking place and might well have its own criteria as to what was a sufficient connection for that purpose.

### ***Marriage in venues other than places of worship***

11. Greater flexibility to marry in secular venues is the new reality introduced by the White Paper. The community or communities to which individuals see themselves as belonging may well be communities of association rather than geographically centred in a church or other place. Moreover, even where the community is, in fact, place centred, that place may have no real relationship to the place or places where its members live. The significant criteria for the Church are the integrity of the concept of marriage and the way in which marriage

is conducted. While the place where the marriage takes place is obviously significant, these criteria do not inevitably rule out marriages in places other than places of worship. The Bishops' Group considers that, in principle, there will be circumstances in which a marriage according to the rites of the Church of England could properly be solemnised in a place other than a place of worship. The Church also has to acknowledge the need to be serviceable as well as faithful and the Bishops' Group considers, therefore, that the Church will wish to welcome the opportunity to extend its ministry in this area outside places of worship.

12. The Bishops' Group recognises that many people will be wary of moving into uncharted territory. It is, therefore, appropriate that regulation of such venues should rest in one place so that a uniform and consistent set of criteria can be applied. The Archbishop of Canterbury's Special Licence is already capable of being used to permit marriages outside parish churches and other places of worship and the Bishops' Group recommends that the Special Licence should continue to be used for this purpose so taking advantage of the Faculty Office's experience in this area. The Archbishop of Canterbury has been consulted on this matter and welcomes the proposal. The intention would be to aim for simplicity of operation and application in an area of marriage provision which may be expected to grow substantially in the future. This is particularly important as the Church must be prepared to maintain its own standards and be prepared to say that certain places would not be appropriate venues for marriages conducted according to Anglican rites.

### *Streamlined preliminaries*

13. In response to a suggestion from the Bishops' Group, the Government has indicated that it would be prepared to consider a joint system of Church/State preliminaries where a couple marrying according to the rites of the Church of England need only visit the Minister. The proposal would be that the Minister would be responsible for enquiring whether there was any impediment to the marriage and collecting the relevant information from the couple. This could then be sent to the civil registrar, who would have the legal responsibility for checking its accuracy and completeness, and for displaying a notice in the office of the Superintendent Registrar or electronically on the World Wide Web to satisfy the legal requirement for public notification. It would additionally be possible for the Minister to make an announcement in church, similar in spirit to the current practice of calling banns, but possibly accompanied by a request to pray for the couple. In exceptional circumstances the Superintendent Registrar might have to contact the couple direct or might need to see them personally in order to resolve any discrepancies. The registrar would then, if all the material was in order, enter the details on the computerised civil registration system and issue the couple with a 'schedule' of the computerised information, as for all other marriages, indicating that there was no legal impediment to the marriage taking place. It would then be for the Minister to conduct the marriage, if he or she still agreed to do so.
14. Bearing in mind the need for serviceability in an age of computerised records and increasing complexity, the Group also welcomes the transfer of the legal responsibility for checking the accuracy of information

to the civil registrar. While accepting that some matters will require further consideration – such as the issue of fees, the examination of evidence and the transfer of information – the Bishops’ Group recommends the acceptance of the new form of Church/State preliminary which, in the majority of cases, continues the ‘one stop shop’ system currently enjoyed by the Church. The system outlined above would, if adopted, fit this purpose. The Group commends the use of marriage announcements to welcome a couple and introduce them to the congregation. This would continue, and develop, the spirit of the banns system while recognising that such announcements would no longer be a legal requirement in the process of public notification, if the model outlined above were accepted.

### ***Registration***

15. Under the system of preliminaries outlined in paragraph 13 above, the Minister would confirm in writing that the marriage had taken place, probably by signing the ‘schedule’. This would be returned to the civil registrar, who would enter the information in the computerised civil registration system; that computerised record would constitute the legal registration of the marriage, and the marriage certificate would in effect be a printed version of it. However, the Bishops’ Group recommends that the Church should keep its own registers of marriage services. Although such a register would not amount to legal evidence that the parties had been married, it would constitute the Church’s record that the ceremony had taken place, and could be signed in the same way as at present

### *Time of marriage*

16. The hours during which marriages may be solemnised are currently between 8.00 in the morning and 6.00 in the evening. In the light of the recommendations made above, and particularly in relation to marriages conducted outside parish churches and other parochial places of worship, it is recommended that these restrictions should be lifted, so that the time when the marriage takes place should be a matter for agreement between the couple and the Minister (and also the owners of the chosen venue if it is in private ownership). It is important, however, to underline that although the law is likely to be changed in order to extend the time during which marriages can take place so that a couple would be able to request a time outside the present limits, they would, as now, have no right to insist on being married at any particular time or, indeed, on any particular date.

### *Ecumenical matters*

17. The Bishops' Group welcomes the fact that the proposed changes to civil law would appear to make it possible to use Canon B43.9 to allow the use of a parish church for marriages according to the rites of churches covered by the Church of England (Ecumenical Relations) Measure 1988. This would still be subject to the same conditions as apply in other cases under that Canon (i.e. the invitation must come from the incumbent and have the approval of the parochial church council and the bishop). The House of Bishops has already welcomed the ecumenical opportunities afforded by the White Paper in removing the civil obstacles to marriages according to the rites of other

denominations taking place in Anglican places of worship.

### **Timetable and process**

18. As part of the consultation process involved with the production of the White Paper, the Government has asked the Church of England to respond to its proposals, and this Report forms the Church's response in respect of marriage law. The Government has also announced that it will introduce the necessary legislative changes by using the Order-making powers in the Regulatory Reform Act 2001. The first stage of this process will be the publication of a further consultation document later this year that will include reference to the Church's position. The timetable currently envisaged is that proposed legislative changes will be scrutinised in 2003/04. Implementation of the legislation will be on a phased basis thereafter.
19. For the Church, this would involve two processes. Firstly, close co-operation with the Government to establish the legislative changes required and secondly, the drafting of the necessary ecclesiastical legislation and other instruments which require approval by the Synod. It will be necessary to appoint a Group to take forward both aspects of this work, to put flesh on the bare bones of the recommendations set out below, and also to plan the implementation of the new arrangements.

### **Recommendations**

20. The recommendations are summarised below.
  - (a) The application of the principle of 'demonstrable connection' to all places of worship;

- (b) The introduction of a locally regulated licensing system, based on nationally agreed criteria, to deal with marriages in non-parochial places of worship;
- (c) That marriage be permitted outside places of worship subject to the Special Licence procedure operated by the Faculty Office of the Archbishop of Canterbury;
- (d) The adoption of a new Church/State preliminary as proposed at paragraphs 13 and 14 above;
- (e) The introduction of ‘marriage announcements’ to continue the tradition of banns;
- (f) That church marriage registers should be retained alongside the new procedures, although they would no longer constitute legal evidence that the parties had been married;
- (g) That marriage be permitted outside the current times (8.00 a.m. – 6.00 p.m.) in negotiation between the Minister and the couple, together with those responsible for the venue;
- (h) That good quality marriage preparation be made available in all cases and that couples be encouraged to take advantage of it;
- (i) That in the light of changes to civil law, clergy be encouraged to review the pastoral and practical aspects of preparing for and solemnising marriage;
- (j) That dioceses ensure that appropriate programmes of continuing ministerial education are available to assist clergy in adjusting to the changes recommended in this Report.

21. The Bishops' Group further requests that the Archbishops' Council and the Business Committee establish a Working Party to take forward, in consultation with the House of Bishops, the process of:
- (i) working together with Government Departments in the outworking of the White Paper, and in particular in securing legislation to amend or replace the relevant provisions of the Marriage Act 1949 in accordance with the recommendations in this Report;
  - (ii) in the light of (i), preparing draft legislation and other material for submission to the Synod to implement those recommendations in this Report which require action by the Synod; and
  - (iii) initiating proposals to implement the other recommendations in this Report and the proposed new legislation on marriage, including support for clergy and parishes.

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## **Chapter 3 Marriage**

3.1 Any modernisation of the law relating to marriage must continue to protect the rights of the individuals involved. It is also important that the seemly and dignified nature of the marriage ceremony is not compromised.

### **Civil Preliminaries to marriage**

3.2 The changes to the civil preliminaries to marriage, introduced last year by the Immigration and Asylum Act 1999, have reaffirmed the Government's policy that couples should give notice of marriage in person. Currently individuals have to give formal notice of their intention to marry at the register office where they live. Couples will have a choice of where to give notice provided that they have had a usual residence in England or Wales for the preceding seven days. Local registration service providers will be expected to ensure that individuals have a choice of times for giving notice of marriage and will receive a statutory fee from the individual. They will also have information on marriage preparation and support services which will be made available to the couple. Greater use of technology will improve administration and reduce the burden on the public.

- 3.3 Staff working for a local registration service provider will enter the information required for the notice of marriage onto the central database that contains records of vital events. When this includes records for people born in England and Wales in the last 70 years, information on the database will be used to confirm and help to ensure that the information given is correct. For most people, this will remove the need to produce documentary evidence of name, age or marital status. The couple will still need to provide evidence of their nationality.
- 3.4 Once all the necessary checks have been completed and the required 15 days waiting period has passed, the couple will be given a document (schedule) to confirm that the marriage ceremony can proceed. This will also be used later when verifying that the marriage ceremony has taken place. The person who conducted the ceremony and the bride and groom as well as the witnesses will sign this schedule immediately after the ceremony. It will then be returned to the local registration service provider who will add the details to the notices of marriage already held on the database. This will confirm that the marriage has taken place.

### **Banns and common licence (Ecclesiastical preliminaries to marriage)**

- 3.5 Currently marriages according to the rites and ceremonies of the Church of England and the Church in Wales can take place following ecclesiastical preliminaries such as banns and common licence without the need for civil preliminaries. The Archbishop's Council of the Church of England has established a Working Group to review aspects of marriage law. The terms of reference of the Working

Group include consideration of the preliminaries to marriage, including the possibility of civil preliminaries for all couples and the residential requirements for getting married in church. The Church in Wales contributed to the Church of England working group. The Church of England working group presented its initial recommendations to the General Synod in November 2001.

3.6 If the outcome of the Church of England review is that there should be no change to the current system of ecclesiastical preliminaries, it may not be possible for this 'schedule' system to extend to those marriages which take place according to the rites and ceremonies of the Church of England or the Church in Wales. It would therefore be necessary to subsequently capture these marriages electronically to add to the national database.

3.7 If the outcome is the adoption of a system where everyone uses the civil system of preliminaries, the intention is that the couple must still first make contact with the minister in order to make the arrangements for the ceremony. This would maintain the Church's pastoral role and provide an opportunity for religious guidance and support. The couple would then give notice of their intention to marry to the local registration service provider. Any greater use of technology in relation to the preliminaries to, or to the registration of, marriage would be extended to all marriages which take place in England or Wales.

### 3.8 **Publicising marriage**

The arrangements for publicising marriages will be updated. At present, a notice of marriage is displayed in the Register Office of the district where the bride or

groom usually lives. Whilst this could continue, it is arguable that in today's more mobile society, couples are often not known to the local community. The Government's view is that use of the Internet could be more appropriate to ensure public knowledge of the event, though it is important information is available locally. This could be via a notice board or Internet link.

### **3.9 Improving the range of information required in the registration of a marriage**

This will include the birth dates (rather than the ages) of the bride and groom, their places of birth, the names and occupations of their fathers and mothers and the name and occupation of a step-parent where applicable. Respondents to the consultation indicated that they would like to see fuller information in a marriage registration. People are often distressed to discover that they cannot include the name of a step-parent in the record of one of the most important events of their lives.

3.10 Central and local government departments and Agencies will be able to access the central database to verify the particulars of a marriage for specified purposes. Other public and private sector agencies and organisations may also be able to verify information provided the couple have given their informed consent. This will mean that there will be a significant reduction in the use of paper certificates. The Government accepts that for certain purposes, specifically provision to overseas authorities and during the transitional period, there will continue to be a need for certificates.

3.11 As with births and deaths, it is envisaged that the couple will want a document that will act as a personal

record of the event. Every couple will be able to buy a commemorative certificate. A certificate suitable for legal purposes will be available both locally and centrally, but once the demand for paper certificates reduces significantly, certificates will only be available from the centre.

## **The Marriage Ceremony**

### **3.12 Religious and civil ceremonies**

Civil marriage was introduced in 1837 to provide a marriage facility for couples who did not want a religious ceremony. The Government recognises this distinction is important and will maintain it.

### **3.13 Civil Marriage in special circumstances**

There will continue to be civil marriage services for the housebound or detained to give notice of marriage and to be married where they live. The Registrar General will be able to waive the 15 day waiting period where he considers there are compelling reasons to do so. The provision for marriages of the terminally ill that are currently solemnised under the Marriage (Registrar General's Licence) Act 1970 will continue.

### **3.14 More choice on place of marriage**

There is a wide support for relaxation of the current restrictions on the places where people may get married in England and Wales. There is also support for removal of the legal restrictions on residence for religious marriage to bring them in line with those for civil ceremonies, where couples can choose to marry in any part of England and Wales.

### 3.15 **More choice in marriage ceremony**

Public expectation for enhancements to and involvement in the planning of civil wedding ceremonies has increased considerably over the last ten years. The introduction of civil marriage in approved premises in 1995 acted as a further catalyst to improvements in the service. Additions to civil weddings such as music and poetry readings are now available to many couples thereby personalising the event and giving it greater meaning. The Government supports the provision of such enhancements and proposes that this should form one element of the national standards for civil marriage.

3.16 The Government intends to introduce a system based on the appointment of celebrants who would be responsible for the solemnisation of either religious or civil marriages. Such a system already works in other parts of the world including Scotland, New Zealand and parts of Australia (see Annex B for more information). As well as widening the choice of marriage venue, the Government will remove the restriction on the time of marriage and allow ceremonies to take place at any time. These restrictions have been in place since the inception of civil registration but are no longer necessary in today's society.

3.17 The place and time of marriage will become a matter for negotiation between the celebrant and the parties to the marriage. This is already an option for those professing the Jewish religion or those belonging to the Religious Society of Friends (Quakers), who, for historical reasons, have always been exempt from the restrictions on place and time of marriage. National standards for civil ceremonies will set out the criteria to

be met in order to ensure that the solemnity and dignity of the occasion are not compromised.

- 3.18 Religious celebrants will be appointed by the religious groups to which they belong and notified to the Registrar General. The local registration service provider will appoint civil celebrants, who initially will be employees of the local service provider. The local service provider will be expected to offer a choice of venues and time. There will be no restriction in registration legislation on where civil or religious celebrants can celebrate marriages, provided the distinction between civil and religious ceremonies remains. This will give more choice for couples and introduce an element of competition that does not currently exist. The Government believes this will encourage an improvement in standards across the country.
- 3.19 There will be no fee for the appointment of a civil or religious celebrant. There will be a statutory fee for the attendance of a civil celebrant at a marriage ceremony. Local registration service providers and religious organisations will be able to set additional fees where, for example, the celebrant travels from their normal office or outside their parish to perform a ceremony or provide an enhanced ceremony.
- 3.20 The Church of England, Church in Wales and the other main religious denominations will regulate themselves in terms of appointing religious celebrants. The Registrar General will require to be notified of their appointment. For other less known or new denominations, the Registrar General will wish first to establish whether the criteria for recognition as a

religious body are met before approving the appointment of religious celebrants.

- 3.21 The Government believes that the celebrant-based system is more flexible and responsive to the couples needs and circumstances. It also brings considerable administrative simplicity in line with the Government's commitment to deregulation and modernisation, but provides appropriate safeguards for this important change in individuals legal status.