

GENERAL SYNOD**DRAFT CHURCH OF ENGLAND MARRIAGE (AMENDMENT) MEASURE****REPORT OF THE REVISION COMMITTEE****Membership**

Chair: Mr Clive Scowen (London)

Ex officio members**(Steering Committee):**

The Ven Timothy Barker (Archdeacon of Lincoln)

The Rt Worshipful Timothy Briden (Vicar-General of Canterbury)
(Chair of the Steering Committee)

The Revd Canon Kathryn Fitzsimons (Ripon and Leeds)

Appointed members:

The Revd Mark Ireland (Lichfield)

Mrs Mary Nagel (Chichester)

Mr David Robilliard (Winchester – Channel Islands)

Consultants:

Mrs Nicola Harding (Diocesan Registrar for Ripon & Leeds)

Ms Sue Burrige (Marriage Policy Adviser to the Archbishops’
Council)

Staff:

The Revd Alexander McGregor (Legal Adviser)

Sir Anthony Hammond KCB QB (Standing Counsel)

Miss Sarah Clemenson (Secretary)

1. The draft Church of England Marriage (Amendment) Measure (“the draft Measure”) received First Consideration at the November 2010 group of sessions of the General Synod. The period for the submission of proposals for amendment under Standing Order 53(a) expired on 28 December 2010.
2. Nine submissions were received by the Revision Committee (“the Committee”) within the permitted time frame and were published on the Church of England website in accordance with Standing Order 53(aa). Two submissions which contained proposals for the abolition of banns as a legal preliminary to marriage were ruled to be out of order. The Committee received one submission from a non-Synod member (Mr Raymond Hemingray, the Diocesan Registrar for Peterborough), which it considered. A full list of the proposals received, and the Committee’s decision in respect of each, is set out in Appendix I. Two Synod members exercised their right under Standing Order 53(b) and attended the Committee to speak to their proposals, while another member nominated another person to attend and speak on his behalf.
3. The Committee met on one occasion in March 2011 and the amendments which it accepted are reflected in the draft Measure as it now returns to the Synod (GS 1805A). Appendix II to this Report contains a destination table showing how the provisions in the draft Measure at First Consideration (GS 1805) relate to those in the draft Measure now before the Synod and where new provisions have been inserted.

4. The decisions of the Committee were unanimous, unless otherwise stated.

Consideration of the draft Measure ‘clause by clause’ including proposals for amendment

Clause 1

Submission from the Revd Christian Selvaratnam: mission initiatives and other fresh expressions

5. In his submission to the Committee, the Revd Christian Selvaratnam made two proposals for amendment to clause 1 of the draft Measure to extend the list of qualifying connections with a parish: first, to include habitual attendance at public worship for not less than six months in a mission initiative to which a bishop’s mission order relates where the order makes provision providing for there to be a qualifying connection with a particular parish where those conditions are met; and second, to include habitual attendance at public worship for not less than six months within the context of a Fresh Expression of Church that was not the subject of a bishop’s mission order, where the bishop has designated it as being associated with the parish in question for this purpose. To achieve those aims, Mr Selvaratnam proposed the insertion of two new sub-clauses into section 1 of the Marriage Measure 2008 (“the 2008 Measure”) by amending clause 1 of the draft Measure.
6. Mr Selvaratnam attended the Committee to speak to his submission and explained that the spirit of the qualifying connection established by the 2008 Measure was to enable people to marry in a place with which they had a link through their worship. Since many people now worshipped in Fresh Expressions and other mission initiatives (particularly younger couples of marrying age), it was only right, Mr Selvaratnam argued, that the qualifying connection provisions should extend to them.
7. The Committee acknowledged that such initiatives for worship were becoming increasingly important and agreed with the proposals in principle. To achieve the proposals in legal terms, the Committee considered whether amendments could be made to the Church Representation Rules to extend the provisions governing membership of the church electoral roll to include those who habitually worshipped at a Fresh Expression of Church or other mission initiative associated with a particular parish. However, the Committee was advised against that approach: the Marriage Act 1949 (“the 1949 Act”) allowed a couple to marry in their “usual place of worship”, and membership of the church electoral roll of a parish was evidence that a person’s usual place of worship was a parish church or authorised chapel of that parish. However, in the scenario with which Mr Selvaratnam was concerned, a Fresh Expression might meet outside the parish with which it was connected. There would therefore be difficulties with providing that attendance at such a Fresh Expression or other initiative meant that a person had his or her “usual place of worship” in the parish concerned.
8. The Chair of the Committee proposed, alternatively, that a vehicle could be provided in the draft Measure for bishops to designate a congregation that regularly met for worship as having a qualifying connection with a particular parish. The Legal Adviser and Standing Counsel advised, however, that that would create a new legal creature altogether, and amounted to revisiting matters which had been dealt with in the Dioceses, Pastoral and Mission Measure 2007. The issue concerned the structure of bishops’ mission orders, and was not primarily related to the matters with which the draft Measure was concerned.
9. In a similar vein, the Committee also considered whether an amendment could be made to section 1(3)(c) of the 2008 Measure so as to read, “that person has at any time habitually

attended public worship *in a congregation belonging to that parish* for a period of not less than six months *if the bishop in writing so designates*". Standing Counsel advised that there was no legal concept of a congregation 'belonging' to a church and the proposal did not carry when put to the vote with 3 members voting in favour and 3 against.

10. Since the 2008 Measure was statute law, it was important that the legal rights it established were certain and capable of enforcement, and the Committee acknowledged that it was difficult to see how Mr Selvaratnam's proposals could be defined with enough certainty that they might be incorporated within the ambit of the 2008 Measure. Although the Steering Committee appreciated the thinking behind Mr Selvaratnam's proposals, it advised the Committee that the law already sufficiently dealt with the issue and did not believe amendments should be made to the draft Measure. The Steering Committee had come to the view that those worshipping in a Fresh Expression of Church or other mission initiative ought to rely on the provisions for a qualifying connection in the 2008 Measure if they were able, and beyond that should use the special licence procedure.
11. The Committee regretted that it had not been able to find an effective way of extending the qualifying connection provisions in the manner envisaged by Mr Selvaratnam in the context of the draft Measure, but noted that the issue would likely come up again in the future. Accordingly, the Committee voted against Mr Selvaratnam's proposed amendments to clause 1 to insert a new clause 1(3)(f) in the 2008 Measure by 5 votes to 2 and clause 1(3)(g) by 5 votes to 1. The Committee therefore did not make any amendments to clause 1 of the draft Measure to extend the qualifying connection to include public worship at a mission initiative or a Fresh Expression of Church.

Submissions from the Dean of the Arches and Auditor and from Mr Hemingray: application of certain provisions of the Marriage Act 1949 to marriage by virtue of a qualifying connection

12. The Committee also considered a submission received from the Dean of the Arches and Auditor which proposed three extensions to the qualifying connection. With the permission of the Chair, Mr Ian Blaney of the Faculty Office attended the meeting and spoke to the proposals on behalf of the Dean. The Dean was of the view that clause 1 of the draft Measure should be amended so that section 6(3) of the 1949 Act would explicitly apply to marriages that were intended to take place by virtue of a qualifying connection under the 2008 Measure, e.g. where there was no church building or other licensed building in the parish in which the parents of a couple who wished to marry from the family home resided.
13. The Dean also proposed that that provision should be extended to section 15(2) of the 1949 Act, so that it applied to a marriage taking place by way of common licence.
14. In a similar vein, the Dean also proposed that section 29(3) of the Pastoral Measure 1983 (relating to parishes with no parish church and where a building had been designated as a parish centre of worship) should extend to marriage by virtue of a qualifying connection.
15. The Faculty Office dealt with such issues on a daily basis and for the sake of clarity encouraged the Committee to accept the proposals to put those couples who relied on a qualifying connection to marry in the church of their choice on a level playing field with those who relied on residence or their membership of the electoral roll.
16. In discussion the Committee agreed the principle that, wherever possible, persons with a qualifying connection with a parish should be put in the same position as persons who were resident, or habitually worshipped, in that parish. It therefore accepted the Faculty Office's

view that it was sensible and correct that those cases should be included within the ambit of the qualifying connection provisions. Accordingly, the Committee voted in favour of amendments to clause 1 of the draft Measure to give effect to the proposals, namely, the insertion of new subsections 1A(3) and (4) in clause 1(1) of the draft Measure. (The Committee was advised that if it accepted the proposal to apply section 6(3) of the 1949 Act for the purposes of section 1 of the 2008 Measure, marriage by common licence in the same circumstances would be covered automatically by section 2 of that Measure owing to the way in which section 2 operated and that it was therefore unnecessary to make an amendment applying section 15(2) of the 1949 Act.) In accepting the proposals, the Committee implicitly accepted those given in Mr Raymond Hemingray's submission.

Submission from the Ven Paul Ferguson: pastoral reorganisation

17. The Venerable Paul Ferguson's submission related to the position where pastoral reorganisation had taken place in a parish with which a person had a qualifying connection. The Archdeacon proposed that where the boundaries of a parish have been changed, a person should be able to establish a qualifying connection with both (a) the parish where the place now is and (b) the parish in which the place in question used to be at the time when the facts giving rise to the connection with that place arose. However, the Committee was advised that that was already the effect of section 1 of the 2008 Measure: the qualifying connection that a person is deemed to have by section 1(13) is not in substitution for the connection that a person has by virtue of section 1(3).
18. Nevertheless, to clarify the issue, the Steering Committee proposed an amendment to insert the phrase, "Without prejudice to section 1(3)" at the start of section 1(13) in the 2008 Measure, by inserting a new sub-clause 1(3) in the draft Measure. The Committee accepted that amendment.
19. The Committee also agreed, at the suggestion of the Chair, that clause 1 should be amended in order to amend section 1 of the 2008 Measure to address the position where a person has had a qualifying connection with a parish (parish A) and a church that was the parish church of that parish was now the parish church of a different parish (parish B) so that he or she would be deemed to have a qualifying connection with parish B, and to that end agreed to the insertion of a new sub-clause 1(4) into the draft Measure.

Other amendments considered by the Committee

20. The Committee also noted that there appeared to be a lacuna in the 2008 Measure, in that section 29(2) of the Pastoral Measure 1983 permitted the designation of any building "*or part of a building*" to be designated as a parish centre of worship. However, section 1(2) of the 2008 Measure only extended the qualifying connection to "a church or other building licensed for public worship...designated, under section 29(2) of the Pastoral Measure 1983, as a parish centre of worship." A question could, therefore, arise as to whether a right to marry by virtue of a qualifying connection extended to *part* of a building that had been designated as a parish centre of worship. To address that lacuna, the Committee agreed to the inclusion of the insertion of clause 1(2).
21. Finally, for the sake of clarity the Committee agreed that new section 1A(2)(a) inserted by clause 1(1) of the draft Measure should be amended to insert a comma after the words "a parish church" and after "applies", and to insert the word "public" before "chapel".
22. The Committee agreed that clause 1 as amended should stand part of the draft Measure.

Clause 2 generally

Submissions from the Bishop of Peterborough, the Revd Stephen Trott and the Revd Paul Benfield: proposal to abolish banns as an ecclesiastical preliminary

23. The Committee had received submissions from the Rt Revd Donald Allister, Bishop of Peterborough and the Revd Stephen Trott, supported by the Revd Paul Benfield, which both proposed the abolition of banns as a legal preliminary to marriage.
24. In exercise of his power under Standing Order 53(i), the Chair of the Committee determined those submissions to be out of order on the basis that they proposed amendments that were not relevant to the general purport of the draft Measure or within the scope of any relevant clause and that could not, in accordance with Standing Order 53(e), be given effect by the Committee.
25. In a brief discussion, the Committee noted that had the proposals been deemed within scope, it would nevertheless oppose the recommendation that banns be abolished: the publication of banns presented a valuable pastoral opportunity, by encouraging a couple to attend church and to meet members of the clergy.

Clause 2(1)

Submission from the Revd Mark Steadman and the Revd Paul Benfield: form of banns where marriage is by virtue of qualifying connection

26. The Revd Mark Steadman and the Revd Paul Benfield both proposed in submissions to the Committee that clause 2(1) of the draft Measure should be expanded to include an additional form of words to be used when publishing the banns of persons who intend to marry by virtue of a qualifying connection. Mr Steadman attended the Committee to speak to his submission, and suggested that the statutory form of words should make express provision for that circumstance in order to clarify the law on banns and to reconcile differences between the law and practice.
27. The Committee acknowledged that there had for many years been widespread disparity between the requirements of section 7 of the Marriage Act 1949 and parochial practice. While the 1949 Act requires the publication of the names of those proposing to marry and their parish of residence only, it has long been common practice for electoral roll memberships also to be published. That has now led to the suggestion in the statutory guidance that details of the qualifying connection should also be published. The Committee agreed that it was desirable to reconcile law and practice, but that that should be done by trying to conform practice to the simple requirements of the 1949 Act. So, rather than proposing an amendment to clause 2 of the draft Measure to address the issue, the Committee **recommends** that the House of Bishops revisit its statutory guidance as it relates to the publication of banns in order to reflect the legal position and to make it clear to the clergy. Furthermore, the Committee agreed that the statutory guidance should make explicit that the blank spaces in the form of banns reproduced in clause 2(1) should be replaced with the name of the individuals' parishes (and not their full addresses). (An amendment to clause 2(1) to that effect was not necessary, given that the requirement was clear by virtue of long established custom and practice.)
28. The Committee therefore did not make any amendments to clause 2(1) and agreed that it should stand part of the draft Measure.

Clause 2(2)

Submission from the Revd Dr Rob Munro: service at which banns to be published

29. The Revd Dr Rob Munro proposed in his submission that clause 2(2) should be amended to enable banns to be published at a service other than that required by section 7(1) of the Marriage Act 1949. The 1949 Act currently requires banns to be published on three Sundays at morning service or, only if there is no morning service, at an evening service. Dr Munro submitted that pastoral considerations – in particular the likelihood that many couples would attend in the evening even if there was a morning service – meant that the clergy should simply have a discretion as to the Sunday service at which banns would be published.
30. The Committee agreed that Dr Munro’s suggestion made practical sense and to amend the draft Measure accordingly. It therefore substituted sub-clause 2(2) of the draft Measure as given First Consideration with sub-clauses 2(2)(a) and (b) in the Measure as revised by it and now before the Synod. (The heading of clause 2 has been amended to include a reference to the time of publication of banns.)
31. The Committee agreed that clause 2(2) of the draft Measure as amended should stand part of the draft Measure.

Clause 3(1)

32. The Committee made no amendments to clause 3(1) and agreed that it should stand part of the draft Measure

Clause 3(2)

33. The Committee made no amendments to clause 3(2) and agreed that it should stand part of the draft Measure

Clause 3(3)

34. To improve the drafting of clause 3(3)(a), the Committee agreed that a comma should be inserted after “Islands” in the first line, and that the phrase “or either of them” in the second line should be deleted.
35. The Committee also agreed that clause 3(3)(b) should be amended to clarify that clause 2 of the draft Measure would not automatically apply to the Isle of Man, since the 1949 Act itself does not extend there.
36. The Committee agreed that clause 3 as amended should stand part of the draft Measure.

Long Title

37. The Committee agreed that the Long Title should be amended to include a reference to “the time of the publication of banns” and, subject to that, should stand part of the draft Measure.

On behalf of the Committee
Clive Scowen (Chair)

May 2011

APPENDIX I**SUMMARY OF PROPOSED AMENDMENTS AND THE COMMITTEE'S DECISIONS**

– proposed in Committee by a member of the Committee

* – attended the Revision Committee meeting and spoke to their submission under Standing Order 53(b)

Clause in original draft Measure (GS 1805)	Name	Summary of proposal	Committee's decision
Long Title	Revision Committee #	Amend to include a reference to “the time of the publication of banns”.	Accepted.
1	Revd Christian Selvaratnam *	Extend the list of qualifying connections with a parish to include habitual attendance at public worship in a mission initiative to which a bishop's mission order relates and habitual attendance at public worship at a Fresh Expression of Church not the subject of such an order.	Not accepted.
1	Revd Mark Ireland #	Insert an additional clause to amend section 1(3)(c) of the 2008 Measure so as to read: “that person has at any time habitually attended public worship in a congregation belonging to that parish for a period of not less than six months if the bishop in writing so designates”.	Not accepted.
1	Dean of the Arches and Auditor * (Mr Ian Blaney spoke on behalf of the Dean) Mr Raymond Hemingray	Amend clause 1 so that section 6(3) of 1949 Act explicitly applies to marriages that were intended to take place by virtue of a qualifying connection under the 2008 Measure. Similarly, extend that provision to section 15(2) of the 1949 Act, so that it also applies to a marriage taking place by way of common licence. Also amend clause 1 so that section 29(3) of the Pastoral Measure 1983 should extend to marriage by virtue of a qualifying connection.	Accepted – save for section 15(2) as common licence provisions in the 2008 Measure will apply automatically.
1	Ven Paul Ferguson	Insert a new provision into clause 1 to amend section 1 of the 2008 Measure so that where the boundaries of a parish have been changed, a person should be able to establish a qualifying connection with both (a) the parish where the	Implicitly accepted in the Steering Committee's proposed amendment below.

		place now is and (b) the parish in which the place in question used to be at the time when the facts giving rise to the connection with that place arose.	
1	Steering Committee #	Amend clause 1 to insert the phrase, “Without prejudice to section 1(3)” at the start of section 1(13) of the 2008 Measure.	Accepted.
1	Mr Clive Scowen #	Insert a new sub-clause to extend section 1(2) of the 2008 Measure to cover a part of a building which has been designated as a parish centre of worship under section 29(2) Pastoral Measure 1983.	Accepted.
1	Mr Clive Scowen #	Insert a new sub-clause to amend section 1 of the 2008 Measure to address the position where a person has had a qualifying connection with a parish (parish A) and a church that was the parish church of that parish was now the parish church of a different parish (parish B) so that he or she would be deemed to have a qualifying connection with parish B.	Accepted.
1	Mr Clive Scowen #	Insert a comma in new clause 1A(2)(a) after the words “a parish church” and after “applies”, and insert the word “public” before “chapel”.	Accepted.
2	Rt Revd Donald Allister Revd Stephen Trott	Abolish the use of banns as a legal preliminary to marriage.	Out of order.
2	Revd Mark Steadman * Revd Paul Benfield	Amend clause 2 to provide special form of words for use when publishing the banns of persons marrying by virtue of a qualifying connection.	Not accepted.
2	Revd Dr Rob Munro	Amend clause 2 to provide that banns may be published at any Sunday service.	Accepted.
3(3)(a)	Steering Committee #	Insert a comma after “Islands” in the first line and delete the phrase, “or either of them” in the second line.	Accepted.
3(3)(b)	Steering Committee #	Amend clause 3 so that clause 2 of the Measure will not apply to the Isle of Man.	Accepted.

APPENDIX II**DESTINATION TABLE**

GS 1805 (as at First Consideration)	GS 1805A (as amended by the Revision Committee)
1(1)	1(1)
-	1(2)
-	1(3)
-	1(4)
2(1)	2(1)
2(2)	2(2)(a) and (b)
3	3

**Published by the General Synod of the Church of England
and on sale at the Church House Bookshop**

31 Great Smith Street, London SW1P 3BN

Copyright © The Archbishops' Council 2010

£3