

## GENERAL SYNOD

## PRELIMINARIES TO MARRIAGE

The Revd Stephen Trott (Peterborough) to move:

**'That this Synod, noting the Registration of Marriages Regulations 2015 and the growing burden and complexity of the legal requirements imposed on members of the clergy who conduct weddings in the Church of England, invite the Archbishops' Council to bring forward draft legislation to replace ecclesiastical preliminaries to marriage by universal civil preliminaries, such as those which have been in operation in Scotland since 1977, when banns were replaced by a Marriage Schedule issued by the civil registrar.'**

1. It is a matter for great thankfulness that the Church of England is steadily and progressively committing itself to a new culture of intentional evangelism and mission, in the very different society in which we now live in the 21st Century. Such endeavours require us to use our slender resources as effectively as possible, and our human resources are the most precious and vital of all that we have been given by God to enable us to carry out the Great Commission. It follows that we should do all we can to reduce or at least to simplify our considerable inheritance of administration wherever it is no longer helpful or necessary, so as to free the Church for its ministry locally and nationally as the Body of Christ.
2. One such administrative task, which both takes a great deal of time and is the source of considerable anxiety to parish clergy, is the legal work undertaken by the clergy as registrars in connection with church weddings. It is the responsibility of the minister to make sure that the civil preliminaries required by law are carried out correctly, whether by Banns, or by licence, or (increasingly since 2015) by referring the couple to the local register office.
3. Banns of Marriage are a familiar and historic part of life for clergy, parishes and for many (not all) of those who are married in Church. Their publication was introduced by Canon 51 of the Fourth Lateran Council in Rome in 1215 and they have been part of the law of England ever since. Only one publication was required at first. Subsequently the Council of Trent (1545-1563) imposed three publications, and this was adopted by the Church of England, although not represented at the Council.
4. The original purpose of Banns was to prevent clandestine or unlawful marriages from taking place between family members within the prohibited degrees of affinity. Other impediments such as attempted bigamy, or marriage to a minor without the consent of a parent, could also come to light because of the publication of Banns. Banns became a deterrent against unscrupulous suitors seeking to take financial advantage of women in an age when a husband acquired his wife's property by virtue of marriage.
5. In 1215 publication of Banns was an effective step in tightly-knit local communities when most if not all parishioners were present in the church on any given feast day to hear the publication, and would be likely to be aware of any impediments to the marriage. It is somewhat less effective in the modern era where only a small proportion of the population, especially in urban areas, is in church to hear the Banns published.
6. Marriage law was administered in England almost entirely by the Church until 1753, when Parliament passed Lord Hardwicke's Marriage Act, making preliminaries - either Banns or a marriage licence – a statutory as well as an ecclesiastical requirement. So as to prevent clandestine marriages the service was now required to be performed by a minister of the Church of England in a church building, during daylight hours.

7. The exclusive role of the Church of England came to an end with the Marriage Act of 1836, which provided for civil marriage and for marriages to be conducted by other denominations and faiths. Parliament reformed the law concerning married women's property as long ago as 1870.
8. The Marriage Act of 1949 consolidated in a single Act a large number of statutes which regulated by law many of the practical aspects of marriage both by civil registrars and by the clergy acting as registrars. These regulations have continued to be modified and tightened by subsequent Acts and regulations, as part of the developing and changing concept of marriage (and indeed divorce law) in the public understanding and as defined by law. The law of marriage has become much more than solemnising the consecrated union of husband and wife, as the Church understands it.
9. In recent decades, marriage has also become the basis for the establishment of a number of very significant human rights, including rights concerned with residence and citizenship in the UK. The already considerable responsibility borne by those who serve as registrars, including the clergy of the Church of England, has been greatly magnified by the heightened significance of marriage as a legal mechanism for acquiring rights within the UK. A number of people engaged in organising sham marriages for the purpose of obtaining these rights have faced prosecution and long prison sentences.
10. There is a kind of folk memory concerning Banns of Marriage in which it is assumed that everyone who is married in Church first has their Banns published. The reality is that for many years, where either or both of the parties is not resident in England or Wales (where Banns can be published) a common licence has been obtained as an alternative to Banns. As more and more UK citizens now live and work abroad, this method of preliminaries to marriage is becoming more routine. It is also possible to apply for a Superintendent Registrar's Certificate from the local register office, in place of Banns, which can be accepted at the discretion of the minister conducting the service.
11. More recently, under the provisions of the Immigration Act 2014, the government has published regulations which render unlawful the marriage of a non-EEA national by means of either Banns or a common licence. Since 2 March 2015, non-EEA nationals may only marry by way of a Superintendent Registrar's Certificate issued by a register office which has been specially designated for this purpose. For the first time in 800 years Banns of Marriage have become subject to discrimination on grounds of nationality, and are no longer available to a defined category of people wishing to be married in church.
12. The excellent *Anglican Marriage in England and Wales: A Guide to the Law for the Clergy* published by the Faculty Office of the Archbishop of Canterbury includes some 40 pages including the various complications which may confront a minister who is dealing with an application by a couple to be married at their parish church, to which a further four A4 pages have been added as a supplement to cover the recent changes made by the government. A significant proportion of applicants do not fit the traditional category of a parishioner resident in Thomas Hardy's England who wishes to be married at their local church, such are the permutations of the regulations which have evolved haphazardly since 1949. A law degree comes in handy here, but there is still a great deal of head-scratching to be done, and in fear of the law and its consequences if something should go wrong - and many things can - and many clergy strongly sympathise with the couple concerned who simply want to get married in the face of what is by any standard a Gordian knot of regulations.

13. The clergy, whose ministry ought to be concerned with marriage teaching and preparation, are under considerable pressure to ensure that the preliminaries are carried out lawfully. They must preside according to law at the marriage ceremony, and sign the registers and issue a marriage certificate, and they must complete a return to the registrar general afterwards. It is a legal rôle, and a heavy burden which very many would be glad to hand over formally to the State, which both defines the law and enforces it.
14. Fortunately there is a solution close to hand, which is tried and tested and in daily operation north of the Border. Banns were abolished in Scotland by the Marriage (Scotland) Act 1977 and by the Church of Scotland in 1978. The result has been a dramatic simplification of the legal requirements for a wedding in Scotland. A couple who wish to marry in a religious ceremony give notice to the local Registrar, who carries out the necessary checks and issues a Marriage Schedule to the parties seven days before the wedding, enabling the service to be conducted by a recognised minister using an agreed form of service.
15. At the service the Marriage Schedule is signed by the couple, by the minister and by two witnesses. It is returned to the Registrar within three days, and so far as the couple and the minister are concerned, that completes all the legal requirements. The minister and their church authority retain full discretion as to who may be married. The same questions can be asked by the minister as before, to ensure that the proposed marriage is in accordance with church teaching and church law.
16. If such a procedure were to be adopted by the Church of England it would not affect in any way its doctrine of marriage. Banns could continue to be published if desired, but in the sure knowledge that all legal checks and requirements were now the responsibility of the civil registrar, who has access to vastly greater resources for verifying the information given on the application form. The administrative burden currently borne by the clergy, surrogates, diocesan registrars and on all those who administer common licences, would be very greatly reduced or even disappear. It is possible that special licences issued by the Faculty Office might continue to be required, but this need might also fall away given the simplicity of the Scottish model.
17. The Scottish clergy and ministers with whom I have discussed the Scottish system, who have experienced the English system as well, have expressed their delight with the pastoral simplicity of the Marriage Schedule arrangements, by contrast with the anxiety, complexity and lengthy administration involved in organising a marriage in the Church of England. With Banns no longer even available in the case of many couples, the time has come in England, as in Scotland, to let the Church be the Church - and hand over to the State what properly now belongs to the State.

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