

## GENERAL SYNOD

### Preliminaries to Marriage

#### A background paper from the Secretary General

##### *The existing legal position*

1. The legal aspects of marriage according to the rites of the Church of England are governed by the Marriage Act 1949 (“the Marriage Act”). Section 5 of the Marriage Act prescribes four methods of authorising marriages. A marriage according to the rites of the Church of England may be solemnized–
  - a. after the publication of banns of matrimony,
  - b. on the authority of a special licence granted by the Archbishop of Canterbury,
  - c. on the authority of a common licence (normally granted by the chancellor of the diocese or a surrogate), or
  - d. on the authority of certificates issued by a superintendent registrar.

Banns, special licences and common licences are usually referred to as ‘ecclesiastical preliminaries’ as they are methods for authorising a marriage for which persons holding office in the Church of England are responsible. An authorisation in the form of superintendent registrar’s certificates is usually referred to as ‘civil preliminaries’ as the granting of the certificate is a function of a civil (i.e. secular) official.

2. The publication of banns involves reading aloud, during the time of divine service on three Sundays, a declaration that the parties intend to marry and requiring anyone who knows a reason in law why those persons may not marry to declare it.
3. Special licences are granted to enable persons with particular connections with non-parochial places of worship (for example college chapels) to marry there and in other unusual cases (for example, where one of the parties is unable to leave hospital).
4. Common licences dispense with the need for banns and are granted, for example, where it is discovered that banns have not been published as they should have been or where a party to the marriage does not live in England or Wales.
5. Superintendent registrar’s certificates are granted after the requisite period of notice (normally 28 days) has been given by the couple at the register office. The certificates are issued by the register office. Unlike in the case of those who marry after banns or by special or common licence (who the incumbent is obliged to marry<sup>1</sup>), an incumbent is not obliged to solemnize a marriage on the authority of superintendent registrar’s certificates: he or she has a discretion whether or not to agree to solemnize a marriage authorised by civil preliminaries.<sup>2</sup>
6. In 2008 and 2012<sup>3</sup> the General Synod legislated by Measure to increase the range of churches in which a couple may choose to marry. That legislation – which confers a right on a couple to marry in any church with which either of them has a “qualifying connection”<sup>4</sup> – operates on the basis that marriages will normally take place following the publication of banns.

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<sup>1</sup> Provided that neither party has a former spouse living.

<sup>2</sup> Section 17 of the Marriage Act 1949.

<sup>3</sup> The Church of England Marriage Measure 2008 and the Church of England Marriage (Amendment) Measure 2012.

<sup>4</sup> As defined in section 1(3) of the 2008 Measure.

7. In 2012 the General Synod legislated to provide increased flexibility as to the publication of banns.<sup>5</sup> Until then, banns had to be published on three successive Sundays during the morning service (unless there was no morning service, in which case they were to be published at an evening service). Under the new provisions, banns are to be published at the “principal service” and may, additionally, be published at another service on the same Sunday. This new provision was made to take account of the fact that many couples were likely to attend evening rather than morning services and to increase the pastoral opportunities presented by the publication of their banns.<sup>6</sup>
8. As a result of amendments to the Marriage Act made by the Immigration Act 2014, banns and common licences are no longer available to authorise a marriage where either party is neither a British citizen nor a national of an EEA<sup>7</sup> state nor a national of Switzerland<sup>8</sup>. While a special licence remains an option for a small number of cases (for example, death-bed marriages), marriages involving non-UK/EEA/Swiss nationals must now normally take place following civil preliminaries. The couple are required to give notice at a designated register office. The Home Office may increase the notice period from the usual 28 days to 70 days if they decide to investigate the marriage to discover whether it is a sham. After the expiry of the notice period, the superintendent registrar issues the certificates and the marriage may take place. As in the case of any other marriage on the authority of superintendent registrar’s certificates, the incumbent has a discretion as to whether to permit the marriage to take place.
9. As the large majority of marriages according to the rites of the Church of England do not involve non-UK/EEA/Swiss nationals, most marriages in church continue to take place after the publication of banns of matrimony. Most couples are able to demonstrate their entitlement to have banns published by the production of passports. The [\*Guidebook for the Clergy\*](#) issued by the General Register Office provides information as to how a couple who are unable to produce passports can establish their UK, EEA or Swiss nationality by other means.

### *Previous proposals for change*

10. Between 2001 and 2004, as part of a wider plan for a complete reform of the law relating to marriage (which was itself part of a total reform of the civil registration system), the Government developed proposals which would have involved abolishing ecclesiastical preliminaries to marriage and replacing them with civil preliminaries in all cases.
11. One of the concerns expressed by a Bishops’ group set up to examine the Government’s proposals<sup>9</sup> was that any new system of preliminaries should not involve the parties being required to go through bureaucratic processes which might make them less inclined to marry in church. The House of Bishops and the General Synod made it clear that they were only prepared to support the principle of abolishing ecclesiastical preliminaries on the condition that what replaced them would retain the “one-stop shop”; i.e. an arrangement under which the couple would normally need only see the parish priest to make all the arrangements for their wedding.

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<sup>5</sup> By amending section 7 of the Marriage Act 1949. See section 2 of the Church of England Marriage (Amendment) Measure 2012.

<sup>6</sup> See GS 1805Y paragraphs 29-31.

<sup>7</sup> The European Economic Area. The member states of the EEA (other than the UK) are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, and Sweden.

<sup>8</sup> See the amendments made to section 5 of the Marriage Act 1949 by section 57 of the Immigration Act 2014. The amendments came into force on 2 March 2015.

<sup>9</sup> The report of the Bishops’ group *The Challenge of Change* (GS 1448) was endorsed by resolution of the General Synod in July 2002.

12. As a result the Government developed its proposals further. In their final form, the proposals involved a couple who intended to marry approaching the incumbent who would take down various details in order to establish the couple's right to marry. The incumbent would then forward those details to the civil registrar who would carry out various checks and take such steps to publicise the marriage as civil law would require. Having done so, and assuming that no impediment came to light, the registrar would issue a "Schedule". Following the issuing of the Schedule, the couple would be able to marry according to the rites of the Church of England. At the end of the service, the officiating member of the clergy, the witnesses and the couple would complete and sign the Schedule. The couple would then be required to forward the completed Schedule to the registrar for registration.
13. The Government's proposals were ultimately not proceeded with after they encountered procedural difficulties in Parliament.

### *The proposals of the Reverend Stephen Trott*

14. The Reverend Stephen Trott's motion asks the Archbishops' Council to bring forward draft legislation to replace ecclesiastical preliminaries to marriage with civil preliminaries. That would seem to involve the abolition of banns, common licences and special licences. All couples who wished to marry according to the rites of the Church of England would instead have to give notice at a register office. After 28 days<sup>10</sup>, superintendent registrar's certificates would be issued and they would be able to marry.
15. As the right to marry in church applies only if ecclesiastical preliminaries are used, abolishing banns would mean that parishioners would cease to have a right to marry in their parish church. The right to marry in another church with which they have a qualifying connection would also be lost. It is not clear from Mr Trott's proposal whether he intends that result.
16. Another result of Mr Trott's proposals would be to end for all couples the "one-stop shop" arrangement which enables marriage preliminaries to be arranged between the couple and the clergy without the need additionally to involve the civil authorities. The Synod may wish to consider whether it agrees with the conclusion reached in 2002 that making couples go through bureaucratic civil processes might make them less likely to marry in church.
17. Another consideration for the Synod would be that for some people at least, the abolition of ecclesiastical preliminaries might be seen as removing one of the threads of the establishment of the Church of England. For them, this aspect of establishment points not to a privileged position for the Church of England, but to its rootedness in the life of local communities where the public declaration of intent to marry remains a significant pastoral moment.
18. In that connection, the staff of the Weddings Project<sup>11</sup> report the following conclusions from the interviews and focus groups they have carried out.
  - Almost all the clergy they spoke to in pilot dioceses prayed for couples whose banns were being published.
  - Where couples are invited to church to hear the publication of their banns they respond positively and often attend.

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<sup>10</sup> Or potentially after 70 days if either party was a non-UK/EEA/Swiss national.

<sup>11</sup> The Weddings Project was established by the Archbishops' Council to explore and advocate ways in which the Church could build on the mission opportunities offered by weddings and by the changes in the law brought about by the Church of England Marriage Measure 2008. The project aims to attract more couples to choose a church wedding and identify ways of caring for them to encourage a lasting relationship with the Church. This runs alongside a public advocacy strategy which aims to build a growing sense in the general population that the Church is enthusiastic about marriage.

19. The Weddings Project has found that the fact that a couple's banns are to be read not only makes them more likely to attend, but operates as permission for them to do so, enabling them to overcome feelings of hesitancy and hypocrisy about attending church which the Project has found is a significant factor for those who are not regular churchgoers but who welcome being given an opportunity to approach the church.
20. The Weddings Project has also observed that when banns are published in the parish church of a couple who are marrying elsewhere (on the basis of a qualifying connection), it provides an opportunity for the parish church to come into contact with its parishioners. Often it will be the only point of contact.
21. The staff of the Weddings Project are of the view that the abolition of banns as a legal preliminary to marriage would make it far less likely that couples who do not regularly attend church would choose a church wedding. This would be not only because of the additional bureaucratic processes they would have to engage with at the register office, but also because they have found that the existence of the legal right to marry in church after banns makes couples much less hesitant to approach the church than would otherwise be the case.
22. The staff of the Weddings Project consider that the abolition of banns would have a negative effect on mission and evangelism.
23. Were the Synod to support Mr Trott's proposals, it would be necessary to secure the agreement of the Government before any steps were taken to implement them. One question would be whether the proposals could be given legislative effect by Measure or would require an Act of Parliament. If the latter, their prospects would depend entirely on the Government being prepared to give Parliamentary time. In any event, Government support would be needed for such a substantial change in the law. The Government would also need to obtain the necessary assurances from local registration authorities that they had the resources to increase the number of marriages dealt with by them by up to 25%.
24. At this stage, the judgement for members would seem to be whether the advantages in terms of reducing bureaucratic burdens on the clergy identified by Mr Trott in his background note outweigh any negative impact on opportunities for mission and evangelism that the abolition of banns would have.

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