

## **LEGAL ADVISORY COMMISSION OF THE GENERAL SYNOD**

### **BAPTISM OF CHILDREN: PARENTAL RESPONSIBILITY AND SAME SEX COUPLES**

#### **The Issue**

1. The Legal Advisory Commission has been asked to give its opinion as to the proper completion of baptismal registers in the increasing number of cases where those bringing a child to baptism are a same sex couple. This question also raises further issues due to the great changes in parenting that have occurred over recent years.

#### **Parochial Registers and Records Measure 1978**

2. Section 1(1) of the Measure provides that a register of public and private baptisms must be provided for every parish or, if the parish has more than one parish church, such a register must be provided for each such church. Section 1(3) provides that—

“Such register books shall be of durable material and the heads of information required by this Measure to be entered therein shall in the case of each book provided after the commencement of this Measure be printed on every leaf thereof.”
3. Section 2(1) then provides:

“Where the ceremony of baptism according to the rites of the Church of England is performed—

  - (a) in the parish church or, in the case of a parish having more than one such church, any parish church thereof, or
  - (b) in any other place in the parish by a minister of the parish, the person by whom the ceremony was performed shall as soon as possible thereafter enter in the appropriate register book of baptism the particulars required in Form 1 in Schedule 1 to the Measure and shall sign the register in the place provided.”
4. If the ceremony has been performed in a place other than the parish church and by “a person who is not the minister of the parish” such person must as soon as possible thereafter send to the incumbent or priest-in-charge a signed certificate certifying when and where the ceremony was provided and containing “the other particulars required in Form 1”: section 2(2). Similar provisions are laid down in relation to baptisms in extra-parochial places: section 2(3). In these circumstances the incumbent (who is given a wide definition by section 2(5)) must enter the particulars in the register and add specified words to identify the giver of the certificate: section 2(4).
5. Form 1 has 11 columns two of which require the Father's and Mother's Christian names, two more of which require their occupations and a further column requires the names of the godparents. Moreover, Canons B 23 and 24 provide that where persons of riper years are baptised they shall have sponsors rather than godparents.

#### **Who may initiate baptism?**

##### **The Civil Law**

6. The civil law draws a distinction between parenthood and parental responsibility. However, the law is not always consistent in this distinction as 'parent' in private family law usually refers to the biological parent whereas in the context of adoption it refers to a biological

parent who in law holds parental responsibility. Moreover, the 'parent' may not in fact be looking after, or bringing up, the child. A number of persons may hold parental responsibility at the same time but by section 2(7) each of them may act alone in exercising that responsibility unless there is any enactment to the contrary. "Parental responsibility" is defined by section 3(1) of the Children Act 1989 as–

“all the rights, duties, powers and responsibilities and authority which by law a parent of a child has in relation to the child and his property.”

7. The presentation of a child for baptism is without doubt an exercise of parental responsibility and, if one person holding parental responsibility objects to another such person presenting the child, he or she may seek a “specific issue order” restraining the latter from making such presentation (see also below).
8. The terms 'parent', 'mother' and 'father' are not given statutory interpretations by the Children Act 1989 or the Adoption and Children Act 2002. It is therefore necessary to glean their meaning from the contexts in which those words appear. Generally, they refer to the biological parent whether or not they hold parental responsibility. (However, only a parent with parental responsibility may give consent to an adoption: Adoption and Children Act 2002, section 52(6).)
9. Section 67(1) of the Adoption and Children Act 2002 provides that–

“an adopted person is to be treated in law as if born as the child of the adopters or adopter.”

The actual order may be made in favour of one person or a “couple' (defined by section 144(4) as including civil partners and same-sex couples in a long-term relationship).
10. Similarly, sections 35-38 of the Human Fertilisation and Embryology Act 2008 give rise to the concept of a non-biological parent being “treated” as the father when certain conditions are fulfilled. Section 38(1) states that–

“where a person is to be treated as the father of the child by virtue of this Act, no other person is to be treated as the father of the child.”
11. In addition, where surrogacy has occurred either here or abroad, section 54 of the Human Fertilisation and Embryology Act 2008 permits the making of a “parental order” on the satisfaction of a number of conditions. The order may be made in favour of a single person or a couple (again including civil partners and same-sex couples in a long-term relationship). The effect of a parental order is that the child is to be treated in law as the child of the applicant or applicants.
12. If a person has acquired a new gender under the Gender Recognition Act 2004 his or her status as the father or mother of a child is nevertheless unaffected: see section 9 of the Act.
13. There are thus situations where a person who is not the biological parent is to be treated in law as a parent and the person who is the biological parent is wholly excluded in law from such parenthood.
14. In addition there are children who have been placed in care under a court order and who live in residential care or with official foster parents. A local authority who holds a care order is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility over that child. However, in practice, a local authority will not initiate

presentation for baptism and, unless the care plan is for adoption, will not usually seek to prevent baptism where all those holding parental responsibility agree. If a child is subject to a special guardianship order the special guardian is similarly entitled to exercise exclusive parental responsibility.: section 14C(1)(b) of the Children Act 1989. This is called “enhanced parental responsibility”. There are also children living with relatives who are not their parents (often referred to as 'kinship care') but such persons do not themselves hold parental responsibility unless it has been granted by the court.

15. There are also some rare occasions (for example when not all the above conditions required in law as to surrogacy have been fulfilled) where there has been no court order, no-one holds parental responsibility and a child remains in the everyday care of a person or persons who is, or are, not his biological parents and with whom he or she has no kinship relationship. In the last situation section 2(5) of the Children Act 1989 provides that he or she may (subject to the other provisions of the Act)–  
“do what is reasonable in all the circumstances of the case for the purposes of safeguarding or promoting the child's welfare.”

In effect such a person stands *in loco parentis* and within a Christian context this would seem to embrace bringing a child to baptism.

16. Unless and until superseded by a court order or by reason of any statutory provision the biological mother has parental responsibility for her child. Unless the parents are married, the biological father has in law no parental responsibility until acquired under section 4 of the Children Act 1989 (as amended). Parental responsibility may also be acquired by a second female (where that female is a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008) or by a step-parent: see sections 4ZA and 4A of the Act.
17. A parent with parental responsibility for a child may appoint another individual to be that child's guardian in the event of his or her death and the court may in certain circumstances also appoint a guardian. Such a guardian has parental authority over the child: section 5(6) of the Children Act 1989.

### The Rites

18. Although there must have been both orphans and foundlings in 1662 the original rubric preceding The Ministration of Public Baptism of Infants stated:

“Where there are children to be baptized, the Parents shall give knowledge thereof ... And then the Godfathers and Godmothers, and the People, with the Children must be ready at the font ....”.

Thereafter, the parents are not specifically mentioned. It is the godparents who are asked to name the children and earlier the priest is required by rubric to–

“speak unto the Godfathers and Godmothers on this wise:

DEARLY beloved, ye have brought *this Child* here to be baptized ....”.

19. Today, although the body of the rite remains the same, the initial rubrics have been altered. It is no longer specified by whom notice should be given and the minister is required to instruct the parents or guardians of the child as to their responsibilities. The final rubric before the commencement of the rite states:

“At the time appointed, the godfathers and godmothers and the parents or guardians

with the child must be ready at the Font ....”.

20. In The Ministration of Private Baptism of Children in Houses, once the child has thereafter been brought to church the minister is required—

“to examine and try whether the child be lawfully baptized, or no. In which case , if those that bring any Child to the Church do answer ....”.

The parents are not specifically mentioned and in the final rubric mention is again made of “they which bring the Infant to the Church”.

21. In Common Worship (Christian Initiation) Holy Baptism the parents and godparents are addressed jointly (see, for example, pages 66 and 88). Note 2 to Emergency Baptism states:

“Parents are responsible for requesting emergency baptism for an infant.”

Although this rubric may suggest that, if there is no person having parental responsibility present or being capable of making such a request, no emergency baptism should take place, such emergency baptisms remain valid even if administered by a lay person. (See, too, *Legal Opinions concerning the Church of England* (Church House Publishing, 8<sup>th</sup> ed., 2007) at pages 332-335). Nonetheless, no such restriction could apply to the emergency baptism of a person who has attained his or her majority.

### The Canons

22. Canon B 22 does not specify by whom notice should be given nor by whom the child should be brought to church but Canon B 22, paragraph 2, implies that it will be by either the parents or guardians. This is especially so in the light of the minister's duty to instruct the parents or guardians as to their responsibilities: Canon B 22, paragraph 3.
23. Although Canon B 22, paragraph 7, is concerned with emergency baptism by a minister, it is clear from both the Book of Common Prayer and Common Worship that emergency baptisms may be performed by members of the laity and that children so baptised, if they live, must be brought to church and received into the congregation. Registration in these circumstances is covered by the provisions of the Measure.
24. Although Canon B 22, paragraph 2, provides for the diocesan bishop to give directions concerning the baptism of infants where the minister refuses or unduly delays baptism, only the parents or guardians may apply for such directions although no doubt the minister may seek guidance.

### Conclusion

25. Whatever the position may have been previously no-one without parental responsibility may now present a child for baptism unless, perhaps, that person falls within the provisions of section 2(5) of the Children Act 1989 (see above). Canon B 22 must therefore be read in this light.

### **Completion of the Baptismal Register**

26. Adoption in England and Wales pre-dates the passing of the Parochial Registers and Records Measure 1978 and it follows that the Measure must have been passed with the knowledge of that possibility. Thus, a “father” and/or “mother” referred to in Form 1 must be taken, at least in some cases, to refer to adoptive parents rather than to biological parents. Similarly, the Measure was passed after the promulgation of Canon B 23 and therefore with the

knowledge that those of riper years would have sponsors rather than godparents. In these circumstances the provisions of Form 1 (and therefore of the register itself) must be given a purposive interpretation. However, the columns relating to fathers and mothers are necessarily gender specific.

27. That being so and in the light of what has been said above:

- (a) the columns referring to fathers and mothers must be read as relating to those currently holding parental responsibility for the child, who may or may not be a biological parent (or in exceptional circumstances to those entitled to exercise the power under section 2(5) of the Children Act 1989);
- (b) where persons of the same sex share parental responsibility their names should both be inserted in the same gender specific column, namely, Father's name or Mother's name;
- (c) in the case of the baptism of those of riper years the sponsors' names should be inserted in the column headed "Godparents". (See, too, Common Worship (Christian Initiation) at page 99, Note 6.)