Just Cause or Impediment?

A report from the Review of Aspects of Marriage Law Working Group

October 2001

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Preface

The origins of the Working Group whose report is attached are amply described in the introduction to their report. The context in which that report is published is also clearly set out. The desire on the part of the Church of England to review alternatives to the calling of banns, along with certain other aspects of marriage law, has coincided with a Government review of the civil registration system. The Church thus finds itself engaged in a wider dialogue with Government, and other interested parties, including its partners in other Churches, about the future shape of the law surrounding marriage.

The Working Group's report is being published at this point as a contribution to that dialogue. It does not represent the settled view of the Church of England on these complex matters. Rather the Working Group has helpfully set out a range of options on which the Church will wish to reflect as the dialogue with Government and other partners continues. That dialogue will be further informed by the publication of the Government's White Paper on its proposals for the reform of civil registration, expected around the turn of this year.

At their meeting in November 2001, members of the General Synod will have the opportunity to hear of the thinking behind the Working Group's report and to be informed of continuing contacts with Government about the issues. They will also have the opportunity to offer their views on those issues. The matter will then be taken forward by the House of Bishops, in association with the Archbishops' Council, between November and next July. A further report will be made to the meeting of the Synod in York in July next year, when, informed by the publication of the Government's White Paper and reactions to it, the Church will be able to confirm its wishes and intentions as regards its place in future arrangements and, in the light of this, to consider further specific issues relating to arrangements within the Church of England.

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Secretary General of the General Synod
& the Archbishops' Council

October 2001

Introduction

1. The proposal to review certain aspects of the law of marriage in the Church of England originated in a Private Members' Motion passed by the General Synod in November 1996, which called for the possibility of an alternative to the calling of banns to be investigated. There have been a number of calls in recent years to review different aspects of marriage law and a Southwell Diocesan Synod Motion on the residential qualifications for marriage is currently 'parked' at the head of the list pending the outcome of this review.

2. In response to the 1996 motion, the Standing Committee of the General Synod considered the matter in 1997 and agreed that there were a number of other aspects of the law relating to the solemnisation of marriage and the preliminaries to it which could and should be reviewed at the same time. These included the possibility of universal civil preliminaries, residence qualifications, the use of non-Anglican rites in Anglican churches and the hours between which a marriage may be solemnised.

3. A short time after the Standing Committee discussion, the Government announced a review of the civil registration system, including the registration of marriages. A consultation document was produced with a deadline for comments at the beginning of December 1999. The Government's intention was that the consultation process would be followed by a White Paper on its proposals for the reform of civil registration, which was likely to include suggested amendments to the Marriage Act 1949, and would in turn be followed by legislation.

4. At the beginning of 1999 the National Institutions Measure 1998 came into force, and the Archbishops' Council replaced the Standing Committee. The Council therefore looked again at the Standing Committee's decision at its meeting in April 1999 in the light of the Government's proposals to review the civil registration system. In order to take forward a review of the aspects of marriage law which the Standing Committee had identified in a way that allowed for these and the Government's proposals to be considered together, and in order to ensure that the timing of any legislative changes the Church wished to make could be tied in with the Government's own legislative programme, the Archbishops' Council set up a Working Group. The present Report is the result of that Group's considerations. The Group has been assisted by consultants from the Faculty Office, the Ecclesiastical Law Association and the Church in Wales, and has also had

assistance from senior staff of the General Register Office (GRO), which is part of the Office for National Statistics (ONS) (the Government department responsible for conducting the review of civil registration) and the Constitutional Unit at the Home Office (now located in the Lord Chancellor's Department).

5. The issues surrounding the state and place of marriage in society have always exercised the Church of England and never been far from its visible agendas. The doctrine of marriage according to English law and the obligation of the Church of England to marry all parishioners who are not divorced was last fully considered in the 1988 report *An Honourable Estate*, produced by a Working Party established by the Standing Committee of the General Synod[1]. Prior to that report the question of universal civil marriages had been raised by Canon Douglas Rhymes in a Private Members' Motion, but rather than subjecting the question to Synod debate it was included within the brief of Sir Timothy Hoare's Working Party, which published *An Honourable Estate.*

6. The present Working Group was given more limited terms of reference than its predecessor. The Group's terms of reference are attached as ***Annex 2***, and fall under three broad headings:

   (i) reviewing certain specific aspects of the law relating to marriages according to the rites of the Church of England and marriages in Church of England churches (including banns, the possibility of universal civil preliminaries, the rules governing the places where marriages may take place and the other matters identified by the Standing Committee in 1997);

   (ii) considering possible implications for marriages according to the rites of the Church of England of current Government proposals; and

   (iii) reporting with recommendations for legislation or other action as appropriate.

7. The terms of reference specifically excluded certain issues of theological or constitutional significance, notably:

   (i) the fundamental nature of marriage[2],

   (ii) the right of parishioners to be married in their parish church[3]; and

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[1] *An Honourable Estate* – The doctrine of Marriage according to English Law & The obligation of the Church to perform marriages (GS 801, 1988). See particularly Chapters 1-3, pp.6-43.

[2] The fundamental nature of the institution of marriage in English Law, which applies to all marriages in England and Wales, irrespective of where and before whom they are solemnised, was summed up by Lord Penzance in 1866, in the case of *Hyde v. Hyde,* in the following words: 'I conceive that marriage, as understood in Christendom, may … be defined as the voluntary union for life of one man and one woman to the exclusion of all others'.

[3] At the Group's request, the Legal Advisory Commission of the General Synod has produced a detailed opinion on this subject which will be published in the next edition of the Commission's book *Legal Opinions concerning the Church of England.* In the meantime, copies are available on request (accompanied by an A4 stamped addressed envelope) from the Secretary to the Commission at Church House, Great Smith Street, London SW1P 3NZ. An electronic version can also be obtained from the Secretary at ingrid.slaughter@c-of-e.org.uk

(iii) the further marriage in church of a divorced person whose former spouse is still living. This issue is the subject of a separate working party under the chairmanship of the Bishop of Winchester.

8. Thus the Group's work has to be seen in the context of the wider picture of marriage and the law relating to marriage as a whole. Another aspect of this is the relationship between the Group's work and that of the Government's review of the civil registration system. To a large extent Marriage Law, as it stands today, has grown out of the legitimate concerns of both Church and State in the regulation and formation of marriage. At present, most of the legislation relating to the preliminaries to, solemnisation and registration of marriages in England and Wales is to be found in the Marriage Act 1949, as amended subsequently, although in general terms the provisions in the 1949 Act regarding marriages according to the rites of the Church of England or the Church in Wales are separate from those relating to other marriages. The Home Office has consistently indicated over a substantial period that it considers amendments to that Act should be made by civil legislation and not by the Synod, even when they relate solely to marriage in the Church of England. It was, therefore, clear from the outset that if any proposals to change the existing law which resulted from the Church's review were to have any realistic prospect of being enacted in the reasonably near future, they would have to tie in with the Government's legislative proposals in terms of timing, so that the two could be brought forward together. Moreover, the substance of what the Church decided was in its interests, including the interests of those whom it served and those who served it, would need to be put forward in a legal form that was not incompatible with the Government's proposals and policies.

9. Fears have been expressed in some quarters that the Government already has proposals in mind for transferring the control of preliminaries in Anglican marriages from the Church to the civil registrars and that its object has been to persuade the Church of England to agree to this. The experience of the Group could not have been more different and at no point were any such proposals put forward. (In fact, the Group did consider the possibility of universal civil preliminaries, under which the whole of the preliminaries to marriage would in all cases be dealt with solely by the civil authorities. This was because its terms of reference required it to so do, but its conclusion was that it did not favour that course.) The ONS representatives were, however, extremely helpful in keeping the Group informed of the thinking of the civil work, in the discussion of proposals formulated by the Group and its staff in the interests of the Church, and in collaborating with them in exploring how such proposals could be brought forward in the way described in paragraph 8 above.

10. Very briefly, the course which the process in relation to the civil review has taken is that the Government issued its first, general, consultation document on the matter in 1999, and the Secretary General, assisted by staff, responded to that document on behalf of the Archbishops' Council. In October 2000 the ONS consulted the Church of England and others, including the Churches Main Committee and the Church in Wales, about the possibility of introducing a 'celebrant-based' model (rather than the present 'place-based' model) as a means of introducing greater flexibility in the choice of the places where marriages can be solemnised. (Under this model, the outcome of the preliminaries would be that a specified celebrant could solemnise the marriage concerned without any

particular place for the marriage being specified.) The Group understands that this would be linked in with proposals regarding both the preliminaries to marriage and registration of marriages so as to facilitate a computer-based system of registration. The Secretary General responded with some immediate observations, but made it clear that the Group would need to consider the points raised in this second round of consultation and that the Archbishops' Council and the Synod would need to consider the Group's report before the Church could give a full response.

11. The Group has in fact considered various aspects of the 'celebrant-based' model, and how the substantive provisions which it wishes to recommend to the Church, and the possible alternatives, could be linked in with that model. These appear in later sections of this report. The Government had hoped to be able to publish its conclusions on the policy issues arising from its review in a White Paper on its place for the civil registration system in the 21st century in the latter part of 2000. The plans for publishing the White Paper were, however, delayed by the General Election and publication is now expected toward the end of 2001. In view of that, the Group has not been able to 'round off' the whole of the work under the second part of its terms of reference as explained in paragraph 6 above. However, the Group has been helped in this respect by the receipt by the Secretary General of a joint letter from the Lord Chancellor and the Home Secretary on the changes proposed to marriage law in England and Wales by the Government. This, and subsequent correspondence, has confirmed that the Government's preferred option is to remove the emphasis from the place of marriage and move instead to a 'celebrant-based' system. The Government would accept, however, that venues for marriages according to the rites of the Church of England would be subject to the Church's own legal requirements, so leaving it open to the Church to retain its place-based system.

12. In those circumstances, and given that the Group has completed its very extensive consultation exercise on the issues raised in the first part of its terms of reference and reached its conclusions on what it wishes to recommend to the Church, the Group considers that it should now report to the Synod. That will give the Synod and the wider Church an opportunity to consider the Group's proposals at this stage, rather than waiting until July 2002, when the Government's processes for implementing the result of the review of the civil system will have moved on. However, particularly in view of the interest which both Church and State have in the law of marriage as a whole, some Bishops have expressed concern that greater consultation is needed between Bishops and Ministers before the Government advocates that the 'celebrant-based' model is adopted for both civil and religious marriages. At the time of writing meetings between Bishops and Ministers are being arranged so that these wider issues can be discussed.

The present context

13. In the present context the most striking factor is the decline in the number of marriages being contracted alongside the rising rate of marriage breakdown. At the same time there have been changes in legislation which allow civil weddings to take place in a wider variety of buildings and other 'approved premises' and there has been dramatic growth in marriages in this area. This trend has had the effect of changing people's understanding of where and in what form a marriage ceremony can take place and, therefore, a change in expectation of what might reasonably be expected from the Church. An indication of

the force of this latent feeling emerged when a Sunday newspaper mistakenly ran a story that the Church of England was about to abolish parish boundaries. On the following Monday morning a number of parish priests were on the receiving end of pressing demands for marriage bookings.

14. Another factor in the civil scene is the Government's desire to modernise civil registration with the increasing use of computerisation for registration procedures and records. This is in addition to closer scrutiny and monitoring to prevent abuse of the marriage system.

15. Within the Church of England itself there is a wide variety of influencing factors and different views. Most significantly there is a considerable difference between the rural viewpoint on the one hand and that in urban and suburban areas on the other. Rural parishes generally feel that their boundaries still have some genuine significance in practice and want to emphasise them. They also prefer to preserve the traditional patterns, including the reading of banns. By contrast urban and inner city parishes often express exasperation with the way that parish boundaries, which now seem very artificial in practice, complicate the preliminaries. They would like to do away with a system which requires the reading of large numbers of banns for people with no visible connection with the parish church and who are in any case not going to be married within it. The consultation process revealed that many clergy would prefer to give more time to the pastoral care of those whom they are going to marry rather than to have to give time to what can feel like rather pointless administration for people with whom they are to have little or no effective contact.

16. Perhaps the most significant factor of all is the level of mobility within society which makes parochial boundaries seem increasingly irrelevant. The Church of England functions on a geographical basis with a focus on place and the communities within a specified area. It is an important function, but it is at a tangent to the experience of an increasing number of people who are finding that their understanding of community has less and less to do with living in a particular place over a period of time. An interesting corollary is that people are increasingly looking for some sense of connection with a place or community in order to establish a sense of stability and rootedness. This is apparent in relation to requests for baptism where a family may return regularly to the one place with which they have felt some affinity or sense of belonging in the past, however tentative that may appear to be. For many young couples who come to the Church for marriage the place where they are to set up home together after the marriage may well be their first reasonably permanent 'base' since they began their working lives. It would be unrealistic to ignore the fact that some couples set up home together before they marry, or will continue living in the same parish for other reasons, but there are also many who regard their present place of residence as no more than temporary, and feel no motivation at all to become involved with the worshipping community in the parish.

17. One of the effects of this trend is a confusion and frustration with the legal requirements of residence as a qualification for arranging a marriage service. This has been recognised by the State and is reflected in the ONS consultation document on civil registration – *Registration. Modernising a vital service.* Even earlier in 1990 the White Paper *Registration: Proposals for Change,* recommended that there should be no residential restriction for marriages outside the Church of England and Church in Wales. The Group

found that the matter of residence qualifications was the single most critical issue cited in the course of consultation, though even in this respect there is no simple consensus of opinion. On the one hand there is a general desire within the Church to be as welcoming and encouraging as possible to those who seek marriage in church. On the other hand there is a serious concern about the effects of an open system of 'weddings on demand' at any chosen church. Some clergy have indicated that they would welcome a 'marriage ministry', but a greater number have expressed alarm at trying to cope with a flood of requests.

18. Although the terms of reference for this Group are quite tightly limited to certain aspects of marriage law preliminaries, the issues raised are far reaching in terms of the way in which the Church understands itself and ministers to people in a rapidly changing society. How does a parochially based Church with geographical boundaries respond to people in an increasingly mobile society? To what extent is the Church able to minister within a less place-based society and serve the people of this land for whom a settled geographical pattern is increasingly not the norm? These questions are pursued further in the next section on theological considerations.

19. The Group was conscious that an excellent theological chapter formed part of *An Honourable Estate* and there seems no point in either repeating it here or attempting an alternative version. The theological considerations which follow relate to some of the key underlying questions which faced the Group in terms of appropriate preliminaries for marriage in society as it is today.

Theological considerations

20. It is often a matter of popular perception that 'law' and 'regulation' infer prohibition. People may think about law in respect of its infringement – what is 'against the law' or 'forbidden by law' – rather than the possibilities offered to them 'within the law'. Despite the deep social and cultural understanding that law protects and sustains the community for its common good, in many people's minds law upholds a frustrating boundary. Transgression (the crossing of boundary) equates with restriction, refusal, penalty. In today's western society, people are encouraged through social and media pressure to think in terms of making personal choices about what is best only for them, and what is best in terms of lifestyle choice, which includes spiritual choice. Forms of restriction go up against this pressure for self-determination, choice-making and self-expression.

21. This need to make choices and to determine 'what is right for me' also drives perceptions about Church. The Hay-Hunt research on *The Spirituality of People who don't go to Church*[4] shows that some people reported perceptions of Church as a controller, a judge or a prohibitor. Many of the commandments, written up in so many of our churches, open with prohibitions in the form 'Thou shalt not…'. For those with often only a peripheral relationship to the Church, a picture obtains of a God with a big stick, a tyrannical and oppressive God who smacks naughty children, a God who deals in negatives, restrictions and in punishments. Both Christians and people outside the Church often have real and

[4] David Hay and Kate Hunt, *The Spirituality of those who don't go to Church*, Centre for the Study of Human Relations, Nottingham University, August 2001.

debilitating experience of refusal, or of controlling conditions and, because of this, may explore their spiritual journey within the Christian Church no further.

22. This suggests that a missionary Church, committed to witness, outreach and concerned for all people, has a difficulty. A Church committed to preaching Our Lord's Good News cannot be in the business of simply and unquestioningly giving people whatever they say they want, however genuinely they believe that it would make them happy or fulfil their dreams and desires. Moreover, a Church committed to ecclesiological and theological integrity must be an ordered Church, and that involves accepting the discipline of some form of rules, while the Church of England as the Established Church must also accept that it is governed by the law. Thus ministers of the Church of England must act within the law of the parish church and this means that many people encountering the Church through the occasional offices immediately run foul of regulation whether this is baptism requirements, cemetery regulations, or marriage law. A parish priest can then be torn between the opportunity for connection, dialogue and pastoral care, and the exercise of the proper authority of the Church's rules. This can mean opportunity for Christian witness is lost, and, no matter how sensitively the matter is treated, the Church is heard to say 'no'.

23. Yet Jesus refocused the Law of Moses [5] to teach people that the essential nature of God is not as one who desires prohibition and punishment for transgressors, but a God of overflowing love, whose desire is to welcome home with open arms all who seek relationship with the Creator. Indeed, mission theology argues that God sends out into the world a word of profound affirmation, a 'yes' to a partnership between human beings and the divine will in relationship to the whole creation.[6] Theologically, then, we have a mandate, not simply to give in to, or to satisfy people's personal desires, but to give *assent*, at a much deeper level, to the purpose which brings them to the threshold of the Church for the occasional offices. In the case of marriage, the document *An Honourable Estate* makes this clear: 'If Christians can hope to transform the institution of the secular world, it is by filling whatever they do with the Christian spirit, not by claiming a monopoly of God's grace for their own activities'. [7]

The welcoming of strangers

24. The question of *assent* to the purpose which brings people to church for marriage raises some further theological questions. *An Honourable Estate* refers to the powerful desires to set three aspects of a love relationship between a man and a woman within the Church: comfort and help for each other, bodily union and the procreation of children to be raised in the love of God. [8] *An Honourable Estate* also argues that human marriage can illumine the divine reality, creating a reflection of the love binding Christ and the Church, such that marriage has a sacramental character capable of profound witness to the world.[9] It further points out that in marriage, those marrying are the ministers themselves, and the

[5] e.g. Mark 10:17-22; 12: 28-31.
[6] See John V Taylor, *The Uncancelled Mandate,* CHP 1998, p4.
[7] *An Honourable Estate*, p13.
[8] Ibid, p7.
[9] Ibid, p11.

priest the prime witness to their ministry. Their affirmation of love for each other, constancy of that love in adversity and promise of faithfulness, makes present a sign of God's own affirmation of love for the creation.

25. It follows then, that people coming to church for marriage are offering *the Church* an opportunity for witness to commitment, love and promise, a re-uttering of God's own 'yes' to the creation. In a culture where many people postpone this decision or make other decisions as they sift among the many choices available to them concerning their relationship, this offering may have perhaps even more significance than in times when it was simply the done thing. How does the Church of England recognise this? Problems ensue, because many couples coming to a parish church for marriage often do not come from that parish, do not worship there, and may have no intention of living there or being part of that community. They come as strangers to that parish church. Saying 'yes' or 'no' to them has particular consequences and implications, especially for the home community of that parish church, extra parochial place, chapel or other place where people ask for marriage.[10]

26. Marriage law as enacted in the Marriage Act 1949 makes it necessary to say 'no' to such couples, unless they can fulfil particular requirements. All these requirements have had to do with becoming (even temporarily) part of the community. Residence in the parish confers qualification to marry in the parish church, regular worship (signified by being on the Electoral Roll) also confers qualification. This upholds the important fact that marriage is not some private ceremony agreed between the minister and the couple, but a public act of promise and commitment which has wider implications of theological and missiological statement and understanding for the whole of the worshipping community in that place. The historic concept of parish in the Church of England has been instrumental in establishing and keeping that link between the use of the parish church for worship and the distribution of the sacraments and the consequence of that use for the whole of the people of the parish.

27. The fundamental ecclesiological principles which define the relationship of the diocesan bishop and the minister of a church to the cure of souls within a particular boundary underlie this sense of the need to build up the whole community in faith. Yet we now live in a society where parish boundaries are of necessity crossed every day. In a world where people from Britain can fly to Europe and back for a day's meeting, parochial boundaries may seem entirely meaningless. People may not know in which parish they reside, or in which they work, nor have any knowledge of, nor connection to, their parish church. Increased mobility and ease of travel, mean that people form connections in many different ways, yet in an increasingly rootless society the idea of roots, origins and a sense of settlement may become increasingly important. Visitors' books in churches sometimes record the thoughts of people who have been married there years ago, or whose parents, or other family members lived, died, or were otherwise connected by the

[10] A fuller discussion of this issue is contained in *The Search for Faith and the Witness of the Church*, CHP 1996 pp9-12.

sacraments of the church in that place.[11] The need to make pilgrimage to places of personal memory and to tell it as a fragment of their story is expressed in many such books. People may express powerful evocations of memory and sense of connection to churches for a variety of reasons and these reasons may become the basis on which they choose a church for their own marriage and sense of a new beginning.

28. What should the Church of England do about this? The parish church has a duty to its own community. How can the parish priest exercise a continuity of pastoral care in a relationship with a couple which may end as soon as the confetti has blown away? What role does the parish now play in the support of the married couple, and is the whole notion of the parish community to be redefined if people who do not currently qualify in law as being part of the community are now to be treated as if they do?

29. The theological point which gets to the heart of this is the matter of hospitality to strangers among us. Jesus himself made a point of posing sharp questions about who we think are those who truly belong among us. The question 'who is my neighbour?' is a poignant one. In the parable of the Good Samaritan, the neighbour is the despised foreigner, the one who would not be expected to have shown hospitality and care and to whom it would not be shown. Jesus himself talked to foreigners as to friends and made a point of speaking about the love of God both to his own community and to hated others. St Paul, similarly, argues for the Good News to be as accessible to the Gentiles as it is to the Jews. The universality of the Gospel makes it possible for all to be one in Christ. The further theological point, then, is that not only do we have a duty of hospitality to strangers, to minister to them and receive from them, but we also have a duty to dispel the strangeness from strangers and recognise them as part of ourselves. Both hospitality and the offering of witness carry some risk: for hospitality may be exploited and witness may be ignored. Yet this very risk has always been at the heart of the Church's mission to share the love of Jesus Christ unconditionally.

30. For many then, the desire to celebrate marriage in a church which has this sense of connection and which is willing to extend missionary hospitality to strangers makes new sense in a society which is increasingly networked. This is not to dissolve the concept of parish, or the cohesion of the worshipping community, but to ask the community to accept responsibility for the memory of significant moments in the lives of others who have come as strangers, but hopefully left as friends. Nor does this mean that other parishes should be deprived of their relationship to those who live and work within them because they have chosen to be married elsewhere. The missionary witness of a church where a couple is received, prepared for marriage and where marriage takes place should encourage couples who have found meaning here to create roots for others and to live out their promises made in marriage within the *koinonia* of their own Christian communities.

[11] So the American T S Eliot, discovering the graves of his English ancestors, imagines them 'daunsinge, signifying matrimonie-/A dignified and commodious sacrament' in *East Coker* (*Four Quartets*).

The present law

31. In order to understand the issues which the Group has had to address and the possible solutions it is necessary to be aware, at least in general terms, of the existing law on the matters covered by the Group's terms of reference. Almost all of this is laid down by Parliament in the Marriage Act 1949. In broad terms that Act deals separately with marriages according to the rites of the Church of England and the Church in Wales on the one hand, and all other marriages on the other.

32. The two main issues which the Group found it needed to address concerned the place where a marriage may take place and the preliminaries to the marriage. So far as the place of the marriage is concerned, and leaving aside the possibilities of marriage by Special Licence (see paragraph 37 below) and marriage in Forces chapels (see paragraph 82 below), the only places where the marriage may take place are parish churches, parish centres of worship and buildings licensed by the Bishop for marriages. (As regards cathedrals, see paragraphs 73-74 below).

33. Subject to the exceptions explained in paragraph 79 below – relating in particular to a person who is divorced and whose former spouse is still living – a couple have a legal right to be married in the parish church of one or both of them. The right is one to be married in the parish church of:

    (i) the parish where one or both of them are resident. (The Marriage Act 1949, together with the Pastoral Measure 1983, also deals with a series of 'special cases' – for example, where there is no parish church available for marriages, and also where there are two or more parishes within the same benefice – when couples are given limited rights to be married elsewhere); or

    (ii) (if the couple wish) the parish where one or both are entered on the church electoral roll.

34. This right is essentially the corollary of the duty of the incumbent (or priest in charge) to allow the marriage to take place there and to solemnise it or arrange for another member of the clergy to do so. Disciplinary proceedings can be taken against a member of the clergy for breach of that duty.

35. The effect of (ii) above is that a couple could marry in any parish church if they were able and willing to take the necessary steps for one or both of them to be entered on the church electoral roll of the parish. In particular, this requires one or both of them to have habitually attended public worship in the parish during a six-month period immediately prior to enrolment. A problem here is that some clergy interpret this to mean regular weekly attendance at worship: this is not regarded as necessary under the Church Representation Rules for those seeking entry on the roll in other circumstances, and may be impossible for some couples to fulfil because of distance from home.

36. The Bishop may license a building other than the parish church for use for public worship. The building may then be designated as a parish centre of worship, which for many purposes relating to marriage is treated on the same footing as a parish church, or it may be licensed by the bishop for the marriage of those living within a specified district.

37. Where a couple are married according to the rites of the Church of England on the authority of the Archbishop of Canterbury's Special Licence[12] it is possible as a matter of law for the licence to authorise a marriage in any place at all in England or Wales – for example, a Special Licence could in theory be granted for a marriage in a parochial or non-parochial place of worship, a place of worship of another denomination, a secular building or even the open air. The jurisdiction is sparingly exercised, and is used only in cases where a clear justification is shown. The Faculty Office, which has responsibility for issuing the licences, normally only grants them so as to permit marriages in buildings customarily used for Anglican worship. In addition, the Faculty Office operates within specific criteria[13] which exclude certain cases. In general terms the criteria reinforce the current position that marriages should normally take place in the parish in which one or other of the couple resides, and that a Special Licence would only be granted to allow the marriage elsewhere if one of the parties had a clear connection with the place in question. Special Licences are not granted in cases where neither party is baptised nor where a party is divorced and has a former spouse still living.

38. A Special Licence can also be used for the marriage of a detained or housebound person at the place where he or she is detained, living or receiving treatment. However, it is also possible to arrange for this, subject to fairly strict conditions, on the authority of a Superintendent Registrar's Certificate – please see paragraph 40 (iii) below.

39. There are also special provisions regarding marriages in Forces chapels – please see paragraph 82 below.

40. So far as the preliminaries to marriage are concerned, there are four different forms of preliminary at present available for couples wishing to marry in church. These are explained in more detail in *Anglican Marriage in England and Wales – A Guide for the Clergy*[14] but the following is a brief summary:

(i) Banns

These are intended to give notice of a couple's intention to marry and to provide an opportunity for an impediment to the marriage to be brought to light. They are used where a couple intend to marry in the parish church, parish centre of worship or licensed building of the parish or district where one or both of them are resident or have their name on the church electoral roll (or in another church in the special cases mentioned at the end of paragraph 33 (i) above and marriages in Forces chapels). The residence qualification need only be satisfied at the point in time when a formal application is made for the banns to be called.

[12] Granted under dispensing power, originally exercised by the Pope, which devolved on the Archbishop of Canterbury by the Ecclesiastical Licences Act 1553 and is recognised by the Marriage Act 1949.

[13] The criteria are summarised on the Faculty Office's website: www.facultyoffice.org.uk

[14] This booklet, published by the Faculty Office, contains a practical exposition of the law. It is obtainable from the Faculty Office, at 1 The Sanctuary, London SW1P 3JT, on payment of a modest charge.

The minister performs the same function as the civil registrar in checking the couple's legal capacity to marry[15] and testing this through the banns process. The banns must be read in each church concerned; in the parish(es) or district(s) of residence – whether or not the marriage is to be solemnised there – and, if the marriage is to take place in a church in a parish where one or both of the couple are entered on the church electoral roll, in that church also. In general, the banns must be read at the main service in each church involved on three Sundays prior to the marriage according to a specified form of words, the last publication being no more than three calendar months before the intended marriage is to take place; there is no legal requirement for the couple to be present when the banns are published

(ii) Common Licences

These are used where a couple intend to marry in the parish church of the parish where one or both of them have had their usual place of residence for 15 days immediately before the grant of the licence, or of the parish where one or both have their names on the church electoral roll. Again, there are special provisions for cases such as those indicated in paragraph 33 (i) above.

The licence dispenses with the need for banns and is issued by the Diocesan Registrar on the authority of the diocesan bishop. (The Archbishop of York also has jurisdiction to issue a Common Licence for a marriage anywhere within his Province, and the Archbishop of Canterbury may issue one for a marriage anywhere in England or Wales.)

An application must be made to the Registrar or a surrogate (a member of the local clergy appointed for the purpose by the Chancellor in his or her capacity as the Bishop's Vicar-General). The licence is issued only after the applicant has confirmed in a sworn affidavit that the details furnished to the Registrar or surrogate are true – these include, in particular, the identity of the parties, the necessary residence, the parties' ages and any necessary consents where one of them is a minor – and that no legal impediment to the marriage is known.

The Common Licence procedure can be used if there is no time for banns or in 'emergency' cases where banns for one reason or another have not been properly read. Its use is strongly advised in cases where one of the partners is a national of a country outside the Old Commonwealth, the EU and the USA, so that a proper check can be made as to whether the marriage will be recognised in his or her country.

Common Licences are not granted where a party to the proposed marriage is divorced and has a former spouse still living, and in most dioceses they are not issued where neither party is baptised.

[15] Canon B 33 requires a minister, when application is made to him for matrimony to be solemnised in a church or chapel of which he is the minister, 'to inquire whether there be any impediment to the marriage or the solemnisation thereof'.

(iii) The Superintendent Registrar's Certificate

A civil preliminary, this is not often used for marriages according to the rites of the Church of England, and a member of the clergy is not under a duty to solemnise a marriage authorised by a such a licence. However, some clergy encourage its use, in place of banns, where they have agreed to marry a divorced person whose former spouse is still living. It can also be used, subject to fairly stringent requirements, where one of the parties is detained or is housebound and cannot be moved.

Normally the marriage must take place in a parish where one of the parties has resided for at least seven days before giving notice of the marriage, or is on the church electoral roll, and that person must also have resided for at least seven days within the civil registration district concerned. After obtaining the agreement of the minister who is to marry them, each of the couple must then attend before the civil registrar, and notice of the proposed marriage is posted in the register office for 15 days before the certificate is granted. However, the special provisions regarding housebound and detained persons provide an exception to the usual requirements.

Under the Immigration and Asylum Act 1999, the civil registrar is under a duty to notify the Secretary of State if he or she has reasonable grounds for suspecting that the marriage will be entered into for the purpose of avoiding immigration controls.

(iv) The Archbishop's Special Licence

So far as the Group is aware, there is no intention for any changes to the law arising out of the Government's review of civil registration to affect the Archbishop of Canterbury's separate jurisdiction to authorise Anglican marriages to be solemnised anywhere in England and Wales. As regards this, please see paragraphs 37 and 38 above.

Marriage in the Church of England/Church in Wales by preliminary

				Preliminary							
	all marriages	marriages in CoE/ CiW	as % of all marriages	banns	as % of CoE/ CiW	Common Licence	as % of CoE/CiW	Special Licence	as % of CoE/CiW	SRC	as % of CoE/CiW
Year											
1989	**346697**	118956	34.3%	107557	90.4%	6434	5.4%	3445	2.9%	1520	1.3%
1994	**291069**	90703	31.2%	82475	90.9%	4559	5.0%	2363	2.6%	1293	1.4%
1999	**263515**	67219	25.5%	60739	90.4%	3562	5.3%	1867	2.8%	1051	1.6%

Note: In 1994 there were 13 marriages in the Church of England/Church in Wales for which no preliminary was notified.

41. Two other legal rules laid down by the Marriage Act 1949 which the Group considered in the course of its work were that a marriage according to the rites of the Church of England or the Church in Wales:

(i) (like most other marriages) must be solemnised between the hours of 8 a.m. and 6 p.m. (A Special Licence may authorise a marriage at some other time, but the Faculty Office do not normally permit this except in case of medical necessity.); and

(ii) must be solemnised by a Clerk in Holy Orders of the Church of England or the Church in Wales (although other legislation makes it possible, subject to certain requirements, for other clergy whose Orders are recognised by the Church of England to solemnise marriages).

The legal framework and possible amendments

42. Over a substantial period, the Home Office has made it clear that it considers that any amendments to the 1949 Act should be made by secular legislation and not by the General Synod. Thus any changes to the law, now or in the future, would need to be implemented by the civil legislative processes by means of detailed amendments to the Marriage Act 1949.

43. However, as indicated in paragraph 3 above, the Government's review of civil registration and the legislation to which it might lead offers the Church an ideal opportunity to review the legalities surrounding marriages according to its own rites. The Group has therefore been working very closely with the ONS and GRO, who are responsible for the review of the civil registration system. While the Government has yet to publish its White Paper – this is expected in the late autumn 2001 – it has consulted the Church of England on its proposed changes to civil marriage law and how this might affect the Church, and indeed the ONS representative has discussed the implications of the Government's proposals in detail with the Group. However, in the absence of a definitive policy statement on the changes proposed to marriage law in England and Wales (other than Anglican marriages), a joint letter from the Lord Chancellor and the Home Secretary has been sent to the Secretary General confirming the Government's approach as set out in the paragraph below and also confirming the Government's willingness to continue consulting with the Church on these matters.

44. The thrust of the Government's proposals is that marriages using rites other than those of the Church of England and the Church in Wales will move from a 'place-based' system to a 'celebrant-based' system akin to that employed in Scotland, which in general terms contains no restrictions on the place where the marriage is to take place. (This change, taken alone, would, among other things, mean that the present restrictions under the civil law governing where non-Anglican marriages preceded by civil preliminaries can take place would be drastically reduced.) However, the Group understands that the Government review will almost certainly conclude that more rigorous civil procedures introduced recently and designed in particular to detect those exceptional cases where fraud is involved must be maintained, and in particular that the requirement for both of the couple intending to marry to present themselves personally before the Civil Registrar must continue.

45. However, the Government has indicated that it would be prepared to introduce civil legislation on Church of England marriages using the same, or a similar, legal framework to that for the 'celebrant-based' system mentioned above, but with some special provisions regarding the preliminaries, and with provisions for the marriage, and the place of marriage, to comply with the Church's own legal requirements. (These would be laid down by Measure or any other suitable type of ecclesiastical legislation and could, of course, be supplemented by guidelines or guidance as to good practice as the Church thought fit.) The effect of this would, in particular, allow the Church to regulate where marriages according to its own rites could take place. The Group welcomes this as an important opportunity for the Church to take over control of the legislation on such matters and notes that it would also mean that any future changes in this area could to be made without recourse to Act of Parliament.

46. On that basis, the likely legislative path would therefore be amendment or replacement of those sections of the Marriage Act which affect marriages in the Church of England and the Church in Wales through civil legislation. What would be substituted, again by civil legislation, might at first sight appear to be the same as the 'celebrant-based' model. However, it would also require the marriage to comply with the Church's own legislation, so that whatever restrictions on, for example, the place of marriage which the Church wished to impose would apply. It is clear to the Group that the Church would wish to impose some such restrictions, so that the result of the legislation, taken as a whole, would in substance be very different from the purely 'celebrant-based' system. Equally, as regards preliminaries, the Group understands that the Government would regard it as essential for some requirements, notably the couple attending in person before the civil registrar (please see paragraph 44 above) to apply to all marriages within the new model. However, the Group's recommended proposals would not involve wholly civil preliminaries for Anglican marriages, but a joint Church/State system of preliminaries, which is explained in more detail in paragraph 95 below. (At the time of writing it is not clear whether changes to the legislation on that basis would mean that the secular Marriage legislation would continue to deal completely separately with marriages according to the rites of the Church of England or the Church in Wales, or would bring all types of marriage together, subject to some special features for Anglican marriages.)

47. However, it also emerges that there may well be scope for a 'half-way house', in that detailed amendments could be put forward to the provisions on the ecclesiastical preliminaries for Anglican marriages in the 1949 Act, without affecting their wholly ecclesiastical nature, and at the same time a provision could be added to the part of the 1949 Act which deals with the places where Anglican marriages are to be solemnised. This would allow marriages to take place in additional venues which the secular legislation would describe in general terms (for example, on the basis of the Group's recommendations in paragraph 67 below, that the marriage could take place in a parochial place of worship with which at least one of the couple must have a 'demonstrable connection'), but expressly leaving it to Church legislation to 'fill in' the details of where that requirement was to be treated as satisfied, by Measure or otherwise. This would therefore allow the Church to retain wholly ecclesiastical preliminaries while giving it a substantial measure of control over part of the legal rules regarding the place where marriage may take place.

Consultation

48. Included within its terms of reference was a list of interested parties that the Group was required to consult, and this it has done. The list is attached, together with the additional parties consulted, as ***Annex 3***. The consultation included an invitation to the general public to respond to a questionnaire and the fruit of these consultations is set out in ***Annex 4***. While the Group did not regard the consultation process as a referendum on any issue, the responses to the consultation did highlight a number of areas within the Group's terms of reference that many people felt needed to be addressed. This helped the Group both to order its work and to establish guiding principles. The following paragraphs summarise the main themes to emerge from the process and outline the reasoning behind the Group's choice of approach.

'The present law regarding residence and entitlement to marry in a place is a very bad match with the way people actually live and this seems to create many unnecessary problems.' (Respondent)

'People's understanding of which is their church has more to do with where their family weddings, baptisms and funerals have occurred rather than according to lines on the map.' (Respondent)

49. It was immediately clear from the consultation process that the residential qualification was the issue which appeared to cause the most difficulties. The changed pattern of people's lives – increased mobility being not the least of them – and the much less restrictive residential qualification operated by the civil authorities, have changed the perception many people have of the existing legal requirements for marriage in the Church of England from being the norm to being legalistic and restrictive. This view is held by lay people and clergy alike, and many lay people are also under the impression that the requirements are imposed by the Church itself rather than by the law of the land as laid down by Act of Parliament. Pressure is particularly, though not exclusively, being felt in cases where the bride wishes to marry from her parental home but is no longer resident in the parish, or in cases where one or other of the couple feel that they have some other personal connection to the church or chapel where they wish to be married.

50. A Special Licence may be available in such cases, as outlined in paragraphs 37 and 38 above, but it is by no means guaranteed and some respondents perceived the process as something of a lottery and as unnecessarily intrusive and bureaucratic as well as imposing an extra cost. (In any case, as explained above, it is not available to couples where neither is baptised and/or where one or other is divorced with a former spouse still living.) Indeed, the restrictions on the grant of a Special Licence, and the general impression that such restrictions are more stringent and widespread than they actually are, deter some people from going beyond an initial enquiry in the belief that there is little point in continuing with the process.

51. The outcome of the consultation process on this issue is shown at ***Annex 4***, but in summary a majority favoured a relaxation of the residential qualifications. Some wanted

them abolished entirely, so allowing couples to marry in any church or place of worship. Others felt, however, that some firm connection with the local church needed to be established, for example if the church was in the parish where the parents of one of the couple lived or was a church in which one of the couple had worshipped previously. Concern was also expressed that a complete relaxation of residential qualifications might result in 'pretty' churches being flooded by requests for their use for weddings.

52. Many respondents to the consultations wished to see the range of places available for marriage widened, though it was overwhelmingly felt that Anglican marriages should be solemnised in Anglican places of worship. There was practically speaking no feeling that it should be permitted for Anglican marriages to be solemnised, for example, in the open air or in hotels, and the Group did not therefore think it appropriate to pursue any proposals which would allow this.

53. In addition to marriages being solemnised mainly in the Church's parish churches and parochial places of worship, respondents were also generally in favour of the additional use of non-parochial church buildings such as hospital, school or college chapels for marriages in appropriate cases. (The Archbishop's Licence can be used in special circumstances e.g. for the housebound or those who were seriously ill or dying etc.)

54. One of the Group's main terms of reference was to consider the question of preliminaries to marriage, including banns and the possibility of universal civil preliminaries. This issue is intimately linked with the questions of residence and of where people may marry, and the Group accepted that any system of preliminaries which it recommended would have to take this close connection into account.

'In my three years in post here I have conducted three marriages and called fifty sets of banns.' (Respondent)

55. A great deal of dissatisfaction was expressed in the consultations at the way in which banns were required to be administered. This dissatisfaction was felt most acutely in urban areas, partly because, over time, parish boundaries have tended to become less clear here and increasingly do not reflect what are accepted as the 'real' geographical boundaries, and partly because clergy frequently find themselves calling long lists of banns for people who are neither known to the congregation nor intend to marry in the parish church. Clergy also expressed their reservations about being able adequately to fulfil the legal requirements of establishing the eligibility of the couple to marry (see footnote 15 to paragraph 40 (i) above).

'I would dearly love to be able to focus my work with couples on the pastoral, social and religious elements of their marriage. My own anxieties about, and their ignorance of, the legal aspects of it get in the way.' (Respondent)

56. Concern was also expressed at the existence and legal complexities of four possible preliminaries to marriage in the Church of England – banns, Common Licence, Special Licence, and the Superintendent Registrar's Certificate. Some found it difficult to discern which route should be followed and to advise accordingly. There were also complaints that the legal criteria were not applied in a consistent manner as between one parish and

another and, in particular, that there was a marked lack of consistency in the meaning given to the terms 'reside' and 'residence'.

'The publishing of banns has always seemed to me a fairly pointless exercise from a legal point of view – pastorally I know it can be a cause of great pleasure for church-going families.' (Respondent)

'There is something special about the calling out and naming of people in church, and it is part of the process of earthing the hopes and dreams a couple have for their life together with the reality of an event in a particular place.' (Respondent)

57. The consultations revealed that many people, particularly clergy, drew a clear distinction between the legal aspects of preliminaries and their pastoral aspects. Many clergy felt that the legal aspects could be more adequately dealt with by the civil authorities, but they did not wish to lose the pastoral opportunities inherent in the process. Neither was there any overwhelming feeling that these functions should be completely divorced from each other. It was for this reason that the Group rejected the idea of universal civil preliminaries and began to look at ways of redefining the relationship between the Church and the civil authorities in respect of the preliminaries to and the solemnisation of marriage by combining the strengths of both into a *new* form of preliminary for the Church of England.

Guiding principles

58. The Group has been keenly aware of the sharp decline in the number of marriages being celebrated in church. The statistics speak for themselves: the number of marriages solemnised in the Church of England and the Church in Wales in 1999 (the latest year for which figures are available) fell to 67,219, only 56% of the number in 1989, and represented only around 26% of the total number of all marriages in England and Wales, as opposed to around 34% in 1989.

59. At the same time, the number of civil marriages has remained more or less constant (in 1999 it was 97% of the number in 1989). The number of civil marriages conducted in 'approved premises' (a concept introduced in the 1994 amendments to the Marriage Act; only available since April 1995, it includes places such as hotels and stately homes) has soared to around 38,000 and in 1999 accounted for more than 14% of all marriages solemnised in England and Wales. While not all of these will be first marriages, it is surely not unreasonable to assume that the Government's proposed change from a 'place-based' to a 'celebrant-based' system, could lead to a similarly dramatic increase in the number of civil marriages to that seen since the introduction of approved premises in 1995, to the detriment of the number of marriages solemnised in church.

Marriage in England & Wales 1989-1999

Year	**All marriages**	With civil ceremonies		With religious ceremonies		
		All	Approved Premises	All	Church of England/ Church in Wales	CoE/CiW as % of all marriages
1989	**346,697**	166,651	..	180,046	118,956	34%
1990	**331,150**	156,875	..	174,275	115,328	35%
1991	**306,756**	151,333	..	155,423	102,840	34%
1992	**311,564**	156,967	..	154,597	101,883	33%
1993	**299,197**	152,930	..	146,267	96,060	32%
1994	**291,069**	152,113	..	138,956	90,703	31%
1995	**283,012**	155,490	2,496	127,522	83,685	30%
1996	**278,975**	164,158	15,210	114,817	75,147	27%
1997	**272,536**	165,516	22,052	107,020	70,310	26%
1998	**267,303**	163,072	28,879	104,231	69,494	26%
1999	**263,515**	162,679	37,709	100,836	67,219	26%

60. The Group firmly believes that the Church of England should continue to be actively involved in solemnising marriages, a belief which has been widely echoed at all stages in the consultation process, and it is concerned at the perception that the proposed changes in Government legislation may further reduce the contribution of the Church of England in this area. The Group's main guiding principles have been formulated from its terms of reference, its own discussions, and from feedback received from the consultations. They are set out below:

(i) Couples who seek marriage according to the rites of the Church of England should be encouraged to do so; they should be welcomed by the Church and offered the best possible pastoral care. While some legal regulation is clearly required, couples should not be faced with unnecessary restrictions or unduly complex procedures. They should certainly not be left with the impression of the Church as an essentially bureaucratic institution.

(ii) Clergy should be freed, as much as possible, from fundamentally bureaucratic tasks, to enable them to devote their energies to the spiritual and pastoral aspects of the marriage.

(iii) There should be greater flexibility to allow couples to marry in churches and parochial places of worship which are outside the couple's own parish if they are able to demonstrate a genuine connection with the church building in question. To ensure that this is applied consistently, clear rules should be laid down and these

should protect the clergy, as far as possible, from complaints of unfairness made by dissatisfied couples, or from the risk of a potential legal challenge.

(iv) However carefully the rules under (iii) above are framed, there will always be exceptional cases where there are genuine pastoral reasons for allowing a couple to be married in some other place – for example, a non-parochial place of worship or a place of worship where a member of the clergy who has a close personal connection with one or both of the couple is a minister. The Group considers that, if at all possible, a means should be available for allowing this, and in its view the best way of dealing with such cases would be by means of the Special Licence procedure.

61. With these principles in mind, the Group's recommendation is for a model combining a more flexible and welcoming approach to where couples can marry with a system of joint Church/State Preliminaries. These are explained in the following paragraphs.

Marriage venues

Recommendations in respect of marriage venues

62. The outcome of the consultation procedure is summarised in paragraphs 48 - 57 above and shows a clear majority in favour of a relaxation of the present legal requirements. However, in the light of the consultations and its own deliberations, the Group did not think it would be appropriate to allow couples a completely free choice as to where they may be married according to the rites of the Church of England, or to extend any relaxation of the general rules on places of marriage beyond parish churches and other parochial places of worship. In this context, it is important to bear in mind the public nature of the marriage ceremony. This serves to prevent clandestine marriages and offers the opportunity for the public to test the legal capacity of a couple to marry. It also underlines the importance of marriage in the community, and society as a whole, by emphasising the legitimate interest of the community in witnessing the altered relationship between the couple.

63. The Group's recommendation, again in the light of the responses to the consultation exercise and its own careful and detailed discussion, is that in addition to the legal right of a couple to be married in the parish church of the parish where one or both of them resides, or in the parish church on whose electoral roll they are entered, it should be possible for them to marry in any other parish church or parochial place of worship to which they have shown a 'demonstrable connection' as defined in paragraph 67 below.

64. The incumbent, priest in charge etc. would be under a duty to permit the marriage to take place, subject to the issue of divorced persons and those within certain degrees of relationship covered in paragraph 79 below. This, if necessary, should be treated as enforceable as a matter of clergy discipline under the relevant legislation. However, it has to be recognised that, as in the case of marriage in the couple's own parish church, they would not be able to insist on their marriage taking place at a particular date and time.

65. If there is to be greater flexibility to marry couples outside the parishes in which they have a right to be married, it is important to ensure that this is exercised on a clear and consistent basis. The absence of consistency (for example as to how the legal requirement

of 'residence' is interpreted) is one of the chief complaints about the present system and must so far as possible be avoided in the future. It is also important to guard the clergy, so far as possible, against the risk of legal challenge.

66. In order to achieve this clarity and consistency, which the Group considers to be essential under a more flexible regime, the circumstances in which a couple will be entitled to marry in a parish church or parochial place of worship on the basis of a 'demonstrable connection' will need to be clearly defined by legislation in terms that are readily comprehensible to the couple concerned and also to the clergy. The Group also considers that the validity of the marriage should not be affected by any innocent mistake but only when there has been some element of fraud or wilful deception.

67. The Group recommends that the 'standard' cases which should be accepted as establishing a 'demonstrable connection' should be those where the couple can show that:

(i) one or both parties have present family homes in the parish (parents/guardians/grandparents/step-parents/foster parents);

(ii) one or both parties has been resident in the parish in the past for a substantial period[16];

(iii) even though neither (i) nor (ii) applies, parents/guardians/grandparents/step-parents/foster parents of one or both of the parties are resident in the parish or have their names on the church electoral roll, or were resident for a substantial period;

(iv) one of the parties was baptised in the church/place of worship;

(v) one or both parties have been regular or habitual worshippers in the past at the church/place of worship, even if not resident in the parish and/or not on the church electoral roll;

Non-parochial places of worship and other special cases

68. It is clear to the Group that there are cases where one of the parties to a marriage genuinely feels a very strong connection with a non-parochial place of worship such as the chapel of a school, college or hospital, and that this may be the case even if he or she has not been a student, patient or member of the staff there for a substantial period and has not been able to continue as a member of the worshipping community there. Indeed, the person concerned may recognise the institution as the place where he or she came to faith, and the increasing mobility of people beginning their working life means that they may find it very difficult to 'put down roots' in a particular parish. Thus there may be strong pastoral reasons for allowing an individual couple to marry in a particular non-parochial palace of worship: if they cannot they may well opt for a civil marriage.

[16] The Group has not come to a firm view on what should constitute 'a substantial period' and would recommend that this issue be addressed by the Follow-Up Group. The Group considered using the analogue of registering on the electoral roll – this would require the individual to have habitually attended public worship in the parish for a period 6 months prior to enrolment. On the other hand, a right to marry could be conferred on the individual if he or she had simply been resident in the parish.

69. On the other hand, the Group recognises that the criteria set out in paragraph 67 above could not all be applied as they stand to non-parochial places of worship and would need to be adjusted, and indeed that slightly different considerations may apply to different types of chapels. Furthermore, non-parochial places of worship are normally on private property and can only be used for marriages if the bodies or individuals who own or manage them consent, and it is essential that the public should be permitted to attend. Even then the local community and possibly even the worshipping community of the place in question will not be fully involved (see paragraph 62 above).

70. In those circumstances, the Group's recommendation at this stage is that marriages in non-parochial places of worship should take place only on the authority of a Special Licence, so that there is an opportunity for all the circumstances to be taken into account by the Faculty Office in reaching a decision. In this connection, the Group recognises that the Archbishop of Canterbury will wish to review his requirements for the issue of Special Licences in such cases dependent upon whether the Group's recommendation for a 'demonstrable connection' approach and new criteria for parochial places of worship are adopted.

71. The Group recognises that the grant of a Special Licence is a matter for the Archbishop of Canterbury personally, and that neither it nor the Synod should attempt to dictate how His Grace exercises that discretion. It also recognises that the Faculty Office, like the parochial clergy, must operate and be seen to operate on a reasonably consistent basis. However, it recommends that there be as much consistency of approach as possible between the criteria used for marriages in parochial and non-parochial places of worship, and expresses the strong hope that there will be some adjustment of the present requirements for a Special Licence in institutional chapels to reflect, if adopted, the more flexible 'demonstrable connection' approach in the parishes.

72. Equally, the Group recognises that there will always be a few exceptional cases, involving parochial or non-parochial places of worship, which do not fit readily within the normal criteria, but where there are very strong pastoral reasons for permitting a dispensation from the normal rules. For example, the case may be one where there is a strong personal connection between one or both of the couple and a member of the clergy or the lay leadership in the church concerned. Here again, while accepting the need in general terms for consistency of treatment, the Group very much hopes that the Faculty Office would be able to adopt criteria flexible enough to accommodate these exceptional cases. If that does not prove possible, the Group recommends that consideration should be given to finding some other way of achieving the result that is desirable from a pastoral point of view in such cases.

Cathedrals

73. Cathedrals fall very broadly into two groups: those which are (or include) parish churches and those which are not. As far as civil and canon law concerning the solemnisation of marriages are concerned, parish churches which are or are within cathedrals are in the same position as other parish churches. However, cathedrals which are not and do not include parish churches, are generally within extra-parochial places. The bishop may

authorise them under the provisions of section 21 of the Marriage Act 1949 for the calling of banns, and for the solemnisation of marriage by banns or Common Licence of parties both or either of whom reside in the extra-parochial place. (In general terms, this comprises the close or precincts, although the precise extent varies from one cathedral to another.) If a cathedral which is not a parish church has been authorised for marriages under section 21 of the Marriage Act 1949, marriages may also be solemnised there, with the consent of the Dean, on the authority of a Superintendent Registrar's Certificate (Marriage Act 1949, section 17). If they have not been licensed under section 21, marriages may only be solemnised on the authority of a Special Licence.

74. The Cathedrals Measure 1999 section 9(3) provides that 'the constitution of each cathedral which is not a parish church shall provide for the formation and maintenance of a roll containing the names of persons who are members of the cathedral community and apply to be enrolled as such'. 'Cathedral community' is defined as 'persons over the age of sixteen years who a) worship regularly in the cathedral; or b) are engaged in work or service connected with the cathedral in a regular capacity', and includes 'such other persons as may be prescribed' i.e. prescribed by the constitution of the cathedral (section 35(1) Cathedrals Measure 1999). Such a roll is clearly not a church electoral roll for the purposes of the law on marriage, so that people whose names are entered on it but who are not resident in the extra-parochial place in which the cathedral stands are not entitled to be married there by banns, even where the cathedral has been authorised by the bishop under section 21 of the Marriage Act 1949. However, entry on the roll could reasonably be regarded as establishing a 'demonstrable connection' with the cathedral.

75. Consultation with the cathedrals on the question of the 'demonstrable connection' criteria suggested by the Group revealed that there was substantial support for the Group's proposals to include cathedrals, both from those which are (or include) a parish church and from those which are not. It was, however, emphasised that special considerations exist for each individual cathedral – whether parish church or not – and that these should be fully taken into account. In particular, in some cathedrals it would be extremely difficult to make provision for marriages except on very rare occasions. Other cathedrals would find it easier to do so, but might not be able to accommodate everyone who could establish a genuine connection with the cathedral, at any rate at certain times of the year. In the Group's view, except in the case of parishioners in the case of cathedrals which are or include parish churches, and residents within the close or precincts, it is reasonable to regard being able to marry in a cathedral as a special privilege, so that the rules relating to it are more restrictive than in the case of parishes in general.

76. Clearly the criteria for 'demonstrable connection' set out in paragraph 67 above could not apply precisely as they stand, to many cathedrals. The Group therefore recommends that a set of criteria for 'demonstrable connection' which would be suitable for cathedrals, including entry on the cathedral community roll where one exists, should be framed in consultation with the Association of English Cathedrals, taking into account the possibility that where a case does not fall within those criteria a Special Licence may still be available.

77. In recognition of the fact that the legal distinctions between cathedrals which are (or include) parish churches and those which are not are now less important as a result of the Cathedrals Measure 1999, the Group recommends that the 'demonstrable connection'

principle should apply to all cathedrals, whether parish churches or not, in the same way as to non-cathedral parish churches. However, each cathedral should be able to 'opt out' of the 'demonstrable connection' principle completely (so that all marriages which do not fall within the other possibilities set out in paragraph 76 above would need to be by Special Licence), or out of specified categories of 'demonstrable connection' cases laid down by the general criteria referred to above. This decision should be one for the Chapter, should be taken only after consultation with the cathedral community, and should be taken on the basis of general guidance which would be issued centrally after consultation with the Association of English Cathedrals. Full information about it should be made available to the public.

78. The recommendation set out above would have the effect of allowing cathedrals to 'opt out' of, or limit, the 'demonstrable connection' criteria if local conditions made their application impractical. Marriage in cathedrals which chose to 'opt out' would continue to be regulated as outlined in paragraph 73 above. Cathedrals which are (or include) a parish church would continue to be obliged to marry parishioners in the same way as before whether or not they had 'opted out' of the 'demonstrable connection' criteria.

Problem areas

79. As matters stand at present, the legally approved rules or criteria outlined above in paragraph 67 would have to make it clear that they did not give divorced persons with former spouses still living (excluded by the Group's terms of reference) the right to be married in any particular church. Thus the general safeguard for clergy in such cases in the Matrimonial Causes Act 1965 would need to apply to them, and the criteria would need to 'leave room' for the application of whatever emerges from the work of the Bishop of Winchester's Group and its consideration by the General Synod. When that becomes clear, it should be possible to form a view about how the present Group's recommendations could be made to apply to marriages of divorced persons with former spouses still living. However, the Group also recognises that the fact that the range of possible venues for marriage would be enlarged under its recommendations may itself be relevant to the work of the Winchester Group.

80. A separate problem area is that, in a few cases, there might be a dispute between the couple and the parochial clergy on whether the requirements for a 'demonstrable connection' or, indeed, for the right to marry in the church as a parishioner had been fulfilled. This would normally involve issues of fact, and the Group is satisfied that they could best be resolved in the diocese. It would recommend investigating the possibility of some form of adjudication, but the Group is not convinced that a complex legal system of appeals would be necessary or indeed desirable.

Summary of recommendations in respect of marriage venues

81. The Group's terms of reference did not include the scope to make any recommendations on the existing rights to marry. Starting from this base, the Group's recommendations are as follows:

    (i) that flexibility should be introduced to allow couples who do not meet the conditions set out above to marry in a parish church or other parochial place of

worship if they can demonstrate a connection with the place in question as set out in paragraph 67;

(ii) the duty on the parochial clergy to solemnise or arrange for the solemnisation of such marriages would be subject to the same exceptions as exist at present in relation to the parishioners' right to marry in his or her parish church – notably as regards those who are divorced and wish to marry again while their former spouse is still alive;

(iii) if consent was refused the matter should be referred to an authority appointed by the diocesan bishop, such procedures being set out in legislation as appropriate;

(iv) the fact that the criteria for 'demonstrable connection' were not in fact complied with should not have an impact on the validity of the marriage or expose the couple to any form of penalty.

Forces' chapels

82. Under the Marriage Act 1949 it is possible for marriages to be solemnised in military, naval and air force chapels which are certified by the Ministry of Defence and licensed by the bishop, provided that:

(i) one of the parties to the marriage resides in (or possibly is on the church electoral roll of) the parish in which the chapel is situated; and

(ii) one of the parties (not necessarily the same one) is a member of the Armed Forces, a former member (other than only in wartime or national emergency), a reservist who has been called up or the daughter of a person who would otherwise qualify.

83. The principal issues affecting Forces' chapels, raised both in correspondence and during the consultation process were as follows:

(i) the need for habitual worshippers at the chapel, who might be serving or former members of the Armed Forces or their families but who might, for example, be resident nearby but not in the parish in which the chapel was located, to have the opportunity to marry in the chapel;

(ii) the desirability of introducing a system of universal civil preliminaries in relation to those entitled to be married in the chapel, and the possibility of a civil marriage followed by a blessing in the chapel; and

(iii) the need to change the criteria for marriages in Forces' chapels to cover the sons, as well as the daughters of qualifying persons who are serving or have served in the Armed Forces.

84. The Group's recommendations for widening the range of venues available for marriage would cover the particular situation outlined in (i) above. The incumbent or the priest in charge would first have to give his or her approval. In addition, the permission of the owner of the chapel, in this case the Ministry of Defence, would also be required. Such permission would of course depend on the rules and regulations applied by the Ministry of Defence.

85. The suggestion that marriages be undertaken by the civil authorities followed by a blessing in the chapel falls outside the Group's terms of reference. However, the expressed need for a system of universal civil preliminaries, occasioned by the mobility of personnel in the Armed Forces, could be met satisfactorily by the arrangements for a Church/State system of preliminaries as set out under paragraph 90 below.

86. As to the need to change the criteria for marriage in Forces' chapels to cover the sons, as well as daughters of qualifying persons, this has been effected by the Armed Forces Act 2001. Its amendment to the Marriage Act 1949 came into effect on 1 October. The Group welcomes this initiative and supports its application to marriages according to the rites of the Church of England.

Preliminaries and registration

Use and efficacy of marriage preliminaries – the response to the consultation

87. The purpose of Banns is to publicise the intention of the couple to marry, and to allow the opportunity for objections to be lodged if there are reasons why the couple do not have the legal capacity to marry each other.

'I've heard it said that the calling of banns in church now is one of the best ways to get married in secret! The assumption that the people will be known is untenable as is the case with banns I am to call later this month. He has lived in the parish for three months and he joked "it's a good job no one knows me".' (Respondent)

88. However, the generality of the respondents questioned the efficacy of banns. Given the extent of social change and the growing mobility of the population, banns were no longer seen by many respondents as an effective method of publicising a marriage. Furthermore, considerable doubt was cast on whether the clergy were best qualified to undertake this task and indeed the clergy face the risk, albeit theoretical, of a 14-year prison sentence for not having dealt properly with the banns. While it was accepted that the civil system, which relies on the display of a notice within the Registrar's office as its sole method of publication, was probably no better, many respondents felt that this was no argument for the retention of a Church system of doubtful efficacy. The Group recognises that methods of publicity could be improved by, for example, the use of the internet, but this raises the question of whether the civil authorities, with dedicated registration machinery, would not be far better qualified to undertake the work and to perform it to a consistent standard. Given that the main impediments to a marriage (leaving aside lack of true consent) are that one of the parties needs but has not obtained parental consent, or that the parties are within the prohibited degrees of relationship, or that one of them is already married, and that in those circumstances the parties may be willing to lie to both clerical and civil authorities, it seems to the Group the use of a computerised registration system, when it is fully established, presents the best and probably the only reliable method of detection.

89. As explained in paragraph 55 above, the consultation also revealed a great deal of dissatisfaction with the present legal requirements regarding the calling of banns. The

Group noted, however, that respondents generally placed great emphasis on the pastoral aspects associated with the calling of banns. It was felt that the process of arranging for banns to be called represented a valuable pastoral opportunity for the clergy to get to know the couple and to explore their reasons for getting married, what marriage meant to them, to place God in the relationship, and to fulfil or at least begin to fulfil their duty under Canon B30[17]. In addition, the actual calling of banns made the couple (if they attended: they are not obliged to do so) feel valued and welcomed into the worshipping community. For these reasons, it was felt that this aspect of the banns system should not be lost.

Recommendations in respect of preliminaries to marriage – parish churches and parochial places of worship[18]

90. The Group's conclusion is that a simplified system of preliminaries is needed, which should among other things take account of the extension in the range of places where marriages could take place.

91. The reason why the Group rejected the idea of universal civil preliminaries is set out in paragraph 57 above. In the Group's view there are three possible alternative models for the simplified system which it considered was needed:

    (i) the retention of wholly ecclesiastical preliminaries with banns as a legal requirement, but with substantial simplification and a substantial easing of the burden on both the clergy and the couple (for example, in making contact with the clergy, applying for banns to be called and providing the necessary information where more than one church is involved);

    (ii) the retention of wholly ecclesiastical preliminaries but with the substitution of a system of notices for banns; and

    (iii) a joint Church/State system of preliminaries.

92. As regards (i) above, one member of the Group favoured the retention of banns. The possible simplifications and modifications which might be made to the existing rules include:

    (i) providing that the banns need only be called once, or possibly might even be replaced by notices, in the churches involved other than that where the marriage is to take place;

    (ii) requiring the banns to be published twice rather than three times in the church where the marriage is to take place;

[17] Paragraph 3 of Canon B 30 provides that 'It shall be the duty of the minister, when application is made to him for matrimony to be solemnised in the church of which he is the minister, to explain to the two persons who desire to be married the Church's doctrine of marriage as herein set forth, and the need of God's grace in order that they may discharge aright their obligations as married persons'.

[18] For proposals concerning non-parochial places of worship and marriages outside places of worship see paragraphs 70 – 72.

(iii) simplifying the legal requirements as to when and by whom the banns may be published, making it clear that the banns need not give the parties' present marital status, and possibly allowing the parish(es) of residence, other than the one in which the marriage is to take place, to be omitted.

93. While they considered that these would be improvements, the majority of the Group thought they did not overcome the basic problem that the banns were not serving their intended legal purpose, and indeed might mean that they were doing so even less than at present (unless it was possible to add on an arrangement with the civil authorities for a check in their computerised records, and this was something the Group considered was best done by the civil authorities themselves). At the same time, the possible changes would do little or nothing to help banns serve their pastoral purpose, a major concern for many respondents in the consultation process.

94. So far as the second option – a change from banns to notices – was concerned, the Group found that this generally met with an unfavourable reaction, and after careful consideration no member of the Group favoured it. It would not substantially reduce the administrative burden on the clergy, or the burden on the couple where more than one church was involved. If the notices were inside the Church there would be little opportunity for the community as a whole to read them; if they were placed outside the church, there was a risk in quite a number of parishes that they would be removed or vandalised, and the chances of non-churchgoers reading them would again be slight. Publishing notices in a local newspaper would again involve time and trouble, as well as possible costs. In time, the possibility of 'posting' notices on the Internet might be a helpful way forward but, as indicated in paragraph 88 above, it was thought that the civil registrar would be far better equipped to deal with this and with any check on the civil computerised records.

95. The model produced by the Group, and the one which it commends to the Synod, is set out below:

(i) A couple wishing to marry according to the rites of the Church of England in a parish church or parochial place of worship would first approach the incumbent and the member of clergy by whom they wished to be married – if that was a different person – in order to obtain a certificate that the marriage could take place. The certificate would confirm that:

(a) one or both of the couple, as parishioners, or as persons entered on the church electoral roll, had the right to be married in the church or place of worship in question; or,

(b) if the recommendation in paragraph 81 above is accepted, that one or both of the couple have satisfied the legal requirements for showing that they have a 'demonstrable connection' to the church or place of worship in question; and

(c) the member of the clergy who is to conduct the service is willing to do so, and the incumbent or priest in charge (if different from the person who is to conduct the service) agrees to that person solemnising the marriage in the church in question.

(ii) The member of the clergy would be able to take this opportunity to get to know the couple (if he or she does not already know them), discuss when they would be available for marriage preparation, and begin looking at the practical details concerning their marriage in church.

(iii) The couple would then take the certificate issued by the member of the clergy to any civil registrar's office to deal with some aspects of the preliminaries as in the case of a civil marriage. The legal requirement for each of the couple to attend personally before a civil registrar already applies to non-Anglican marriages. The Government attaches great importance to it in dealing with the rare cases of attempted abuse of the institution of marriage, and the Group understands that the Government would regard it as an essential element in a system of joint Church/State preliminaries. The process is set out below:

(a) the civil authorities would check the couple's legal capacity to marry and publicise the marriage by displaying a notice in the Office of the Superintendent Registrar or by any other means that the civil authorities may introduce. The civil authorities would only begin this process of preliminaries for marriage in the Church of England on the authority of the certificate issued by the member of the clergy;

(b) a 'schedule' including the details of the couple would be issued to one of the couple for delivery to the member of the clergy who is to conduct the marriage;

(c) the schedule would not be an instruction from the State to the minister to marry the couple, but simply an acknowledgement of the couple's legal capacity to marry. Authority to solemnise the marriage would rest with the minister and so, if the details of the schedule did not correspond with the details disclosed at their initial meeting – perhaps one of the couple had not disclosed that he or she had been divorced and his/her former spouse was still living – the minister would be under no obligation to marry the couple;

(d) immediately following the marriage the schedule would be completed by the officiant and the couple as evidence of the marriage and returned to the civil authorities for inclusion in the registration system (it is envisaged that this will be computerised and form part of a wider, modernised registration system).

96. The benefits that would flow from this system are:

(i) the civil authorities could not process a notice to marry in the Church of England without the authority of the certificate issued by the member of clergy who was to conduct the marriage (this provision would be enshrined in the Marriage Act as amended);

*'I believe it is very important that in exploring the possibility of a church marriage the couple's **first** approach […] should be to the church in which they hope to marry.' (Respondent)*

(ii) the Church would therefore be both the first port of call and the final port of call before the marriage. This is important both to clearly establish that the preliminaries are a joint Church/State function, and to ensure that the pastoral opportunities afforded by contact with the couple at this stage are not lost. Only strictly limited functions and a strictly limited part of the process would be carried out by the civil authorities;

(iii) the marriage would be solemnised by an ordained minister of the Church of England (or of another Church who is permitted to do so by law – for example, a member of the clergy of the Church in Wales or a member of the clergy from elsewhere in the Anglican Communion who has permission under the Overseas and Other Clergy (Ministry and Ordination) Measure 1967 to officiate in the province). There would, as now, be no need for any civil registrar, or any person acting on behalf of the civil authorities, to be present;

(iv) the member of the clergy solemnising the marriage would remain responsible for checking the details of the couple on the schedule for obvious mistakes and later arranging for its completion, so recording that a valid marriage had taken place. However, it would be for the civil authorities to enter the details in the modernised registration system.

97. Such a system would also represent a sensible rationalisation of marriage preliminaries.

98. The possible disadvantages of this system are:

(i) the Church of England would no longer be providing a 'one stop shop' for marriage. However, it should be borne in mind that a 'one stop shop' under the present system applies only in cases where both members of the couple reside in the same parish and marry in that parish church. (In all other cases the couple would need as a minimum to visit one other church to arrange for banns to be called.) Furthermore, given the numbers of people now marrying in approved premises, and given that the process involved in doing so and in marrying in any Church other than the Church of England or the Church in Wales already involves this, and has apparently not given rise to any substantial inconvenience for couples, the Group does not believe this will present a serious problem. In such cases, in the same way as the system the Group is proposing, couples have to arrange their marriage first with the venue they have chosen and then with the civil registrar. Indeed, it would simplify the arrangements for the couple in some cases, particularly where the marriage is taking place in a parish in which neither of them reside, and under the Group's recommendations regarding the place of marriage there would, of course, be more of these;

(ii) by referring couples to the civil registrar to complete part of the legal formalities, it is suggested that the member of the clergy risks the couple not returning for marriage in church. Again the process does not appear to deter couples from marrying in other Churches or in approved premises, and the Group therefore does not believe that this represents a serious risk.

99. This approach dispenses with the need for banns as a legal requirement, and means that a limited part of the process is carried out by the civil registrars rather than the clergy. The

Group recognises that both these features would probably generate some controversy within the Church and, as explained in paragraph 92 above, one member felt that banns should be retained. Both the Group's own discussions and the results of its consultations, however, indicated that significantly more importance was attached to the calling of banns in rural rather than in urban areas and that respondents in either case drew a distinction between the legal and the pastoral function of banns and placed much greater emphasis on the latter. Thus the Group's view is that its approach would leave all the functions which it is important for the Church to perform with the Church. Indeed, the responses to the Group's consultations revealed that there would be a positive welcome among some in the Church for the State to take over the relevant part of the process, and a substantial body of opinion that this part of the process is better performed by the State. It was hoped that relieving the clergy of it would leave them with more time to perform their pastoral functions.

100. In summary, the Group's main reasons for its recommendation to dispense with banns as a legal requirement are:

(i) the acknowledgement that they no longer serve their original purpose of publicising the intended marriage amongst those who would be most likely to know if there were any legal objection to it. (The civil procedure for displaying notices at the Superintendent Registrar's Office is probably no more effective in this respect, but improvements in the method of publicising are being considered, including the use of the Internet. Proposals for a comprehensive computerised system of registration are likely to come forward and would present the best long-term solution.);

(ii) the wish expressed by many clergy to be freed from the burden of reading large numbers of banns for those who are to be married in other churches and the administration involved in that process; and

(iii) the fact that in a significant proportion of cases (particularly in those urban areas where parish boundaries do not coincide with any obvious geographical areas and in cases where banns need to be called in as many as three separate churches), the law imposes a considerable burden on couples who wish to marry and this is difficult to justify.

101. It may be, despite the Group's recommendation, that Synod does not accept the case in favour of the joint Church/State preliminaries and wishes instead to retain the system of banns. Under those circumstances it would be as well to consider how the greater flexibility in the choice of venue offered by the introduction of the 'demonstrable connection' approach might be accommodated.

102. The banns system could be used to accommodate the new system. However, it would inevitably mean that a greater number of banns would have to be read, given that many marriages would not necessarily take place in the parish in which one or both of the couple are resident. This would mean a greater administrative burden to the Church and to the couple. In addition, the efficacy of the system of banns would come under greater scrutiny as, over time, the effectiveness of the civil system improved. The only other alternative would be the 'notices' option outlined in paragraph 91 above.

103. In any event, it would be quite reasonable for the Government to expect that the Church met the same standards in the future as the civil authorities in publicising marriages, and it would be irresponsible of the Church to do otherwise given the legal function it performs. Thus the consequence of introducing computer technology would create pressure in the longer term for the Church to improve its own preliminaries. It would seem preferable to the Group to take the opportunity of making limited changes now and produce a system which takes more account of present day social conditions. The Church would therefore be in a much stronger position to resist any demands for more radical changes at a later stage.

Marriage announcements

104. The Group took particular note that many respondents placed great emphasis upon possible pastoral opportunities presented in connection with the calling of banns. Whilst all the Group agreed the pastoral opportunities surrounding the entry into marriage were considerable, not all agreed that the machinery of the banns was a major enabling factor in this respect.

105. The Group recommends that if banns as such are discontinued, then for possible pastoral reasons, announcements of forthcoming marriages may be made in church and should be made if the parties concerned desire it.

Registers

106. The law relating to the Church's registers of banns and registers of marriages forms part of the civil system of registration, and those registers are thus on a different footing from other parochial registers and records. A result of the Group's recommendation to dispense with the system of banns would necessarily be that there would no longer be any need to keep a register of banns. Similarly, the creation of a modernised registration system for all marriages, with the authoritative legal evidence of a marriage held by the civil authorities on a computerised database, would replace the existing system of 'paper' registers.

107. The Group is nevertheless of the firm view that the Church should continue to maintain its own set of marriage registers – even though they would not be admissible as legal evidence of the marriage in the same way as at present – and that 'signing the register' should continue to be a feature of the marriage ceremony. It would also be possible – and this would be a matter for the Follow-Up Group – to issue an attractively produced record of the marriage, comparable to 'baptism cards', possibly including appropriate prayers.

Summary of recommendations in respect of marriage preliminaries

108. The Group's recommendations are summarised below:

(i) that a system of Church/State preliminaries (as set out under paragraph 95) is adopted, with clear legal provisions that the couple would require a certificate from the appropriate member of the clergy before the civil registrar could deal with the civil preliminaries;

(ii) that a system of marriage announcements (as set out under paragraphs 104 and 105) may be made in church and should be made if the couple desire it;

(iii) that, although they will have no legal force, Marriage Registers are retained and maintained by the Church, and that 'signing the register' remains part of the marriage ceremony.

109. The Group's recommendations would dispense with the need for the Common Licence. However, bearing in mind the purposes for which it is used (see paragraph 40 (ii) above), it is worth noting that the civil authorities would be able to advise foreign nationals of whether their proposed marriage in England would be recognised in their own country.

110. In future any 'emergency' cases which might previously have been dealt with by a Common Licence could be dealt with under the civil authorities' own procedures or, following jointly agreed guidelines between the Faculty Office and the civil authorities, by the Archbishop's Special Licence.

Residential qualifications

'I spend more time dealing with matters of residence with couples than any other issue so far as preliminaries are concerned'. (Respondent)

'Residence: the present law is honoured much in the breach.' (Respondent)

111. Under the current arrangements, it is the residential qualification which largely determines in which church or churches a couple are able to marry. Although the qualifications are laid down by law, the consultation exercise revealed widespread concern at the lack of consistency exercised in the application of the legal rules. This was partly the outcome of the differing ways in which the clergy interpret the rules, and there was a general call, particularly from the clergy themselves, for clearer guidelines on the application of the system. The qualifications also need to be reviewed in the context of the Group's two major recommendations that a new system of joint Church/State preliminaries should be introduced and that greater flexibility should be permitted regarding the place of marriage, so that couples are able to marry outside their own parishes where they can prove a 'demonstrable connection' with the particular church.

112. There are no universal criteria for 'residence' in relation to marriage. The criteria vary with the preliminary used, and differences exist between the civil and ecclesiastical models. The existing criteria are set out in a simplified form below.

113. The term 'resides' (which relates to banns and is therefore relevant to the 'right' of a parishioner to marry in his or her parish church) is interpreted differently from the term 'usual place of residence' and this provides for differences of treatment between the types of preliminary used.

Preliminary	**Qualification**
Banns	Parish in which one of the parties **resides** or where his/her name is entered on the electoral roll. *No qualifying period of residence specified – residence merely has to exist at time of application for calling of banns.*
Common Licence	Parish in which one of the parties has his/her **usual place of residence** for *15 days* immediately prior to the granting of the Licence or where his/her name is entered on the electoral roll of the parish church.
Superintendent Registrar's Certificate (from 1 January 2001)	'The registration district in which one of the parties **has resided** for *7 days* immediately prior to giving of notice of intention to marry.' (In the case of a marriage according the rites of the Church of England, that party must also have resided in the parish in question for the seven-day period or have his or her name on the church electoral roll of the parish.)

114. The table shows that the residential qualifications vary from case to case. The Group has also learnt that the criteria are interpreted differently by those applying them and that consequently there is little consistency of application. This means not only that the criteria (and the interpretation of the criteria by the authorities) vary with the type of preliminaries chosen, but also that couples who use the same type of preliminary can receive different treatment. As preliminaries apply to all forms of marriage, a consistent approach on residence would make for a fairer operation of both the ecclesiastical and civil systems. However, in deciding how far it is possible to achieve these aims within the Group's recommendations the issue of residence needs to be seen in its differing contexts. These are:

(i) The residence requirements which would apply to the new Church/State preliminaries

The administration of the system would lie largely in the hands of the civil authorities. It follows that the legal tests which will apply are those which Parliament decides to impose in relation to civil preliminaries in any amendment to the Marriage Act 1949. This is likely to include a specified period of residence, even if only 7 days. Given the universal difficulties faced in defining the term 'residence' it seems unlikely that an attempt will be made to define the term in civil legislation. However, the Group recommends that the General Register Office should be asked to provide more definite guidance to registrars on how to interpret it consistently.

(ii) Residence in a parish as a basis for the right to marry in the parish church

The Group's terms of reference exclude reconsideration of the rights of parishioners to marry in their parish church. In consequence even if the Group were to suggest any changes here, it could not suggest a change which would

make it more difficult than at present to establish a right to marry in a given parish. It is likely that any move to require residence for a period, even a short period, such as 7 days, would be regarded as such a change. It follows, therefore, that it would not be possible to bring the test into line with that in (i) above.

However, it is not unreasonable to suggest that the clergy should have more guidance than at present on how 'residence' is interpreted in a particular case and the Group recommends that the Follow-Up Group takes this up. Such guidance would need to be framed in a way that was no more restrictive than the present law governing a parishioner's right to marry in his or her parish church but, subject to that, it should seek to simplify and remove distinctions which exist in different contexts in relation to marriage.

(iii) Any use made of the concept of residence, whether in the past or the present, in establishing a 'demonstrable connection'

As the whole thrust of the Group's recommendations is to introduce greater flexibility as to where a couple can marry – subject to establishing a 'demonstrable connection' – the introduction of a rigid definition of residence in this context would be counter productive. This will, however, need to be settled by the Follow-Up Group when the relevant legislation or guidelines are framed.

Summary of recommendations in respect of residential qualifications

115. These are as follows:

(i) the General Register Office is asked to provide more definite guidance to registrars on how to interpret the term 'residence' in any legal tests relating to civil preliminaries which Parliament may impose in any amendment or replacement of the Marriage Act 1949;

(ii) the Follow-Up Group should be requested to provide the necessary guidance in relation to 'residence' as it affects parishioners and their rights to marry in their parish church;

(iii) the Follow-Up Group should settle whatever guidelines are needed in relation to the definition of 'residence' to retain the flexibility required in relation to those couples seeking to marry outside their parish by proving a demonstrable connection with the relevant church.

Time of marriage

116. The hours between which a marriage may be celebrated was an issue included in the Group's terms of reference. As the law stands, marriages are required to be conducted between the hours of 8.00 a.m. and 6.00 p.m. This is laid down in Part I of the Marriage Act 1949 and applies to all marriages (with special exemptions being made for the marriages of Jews and Quakers). Canon B35.3 makes the same provision in respect of marriages according to the rites of the Church of England. A further consideration to be borne in mind is the public nature of marriage. In order to allow the public the

opportunity to attend marriages the ceremony must be held at reasonable times to allow public access.

117. Those responding to the consultation process were generally in favour of retaining the current rules as regards the hours between which a marriage may be solemnised. These were felt to provide a generous span of time in which to allow marriages to take place while protecting the clergy and lay participants – the organist, choir, verger etc – against having to attend at unreasonable hours.

Recommendation in respect of time of marriage

118. The recommendation is that the hours during which marriages may be solemnised should remain unchanged.

Ecumenical issues

119. The main issues which have arisen in correspondence, consultations and discussion are as follows:

(i) the use of Church of England parish churches by other denominations for marriages according to their own rites;

(ii) wider participation in marriages according to Anglican rites, or solemnisation of such marriages, by ministers of other denominations;

(iii) the solemnisation of non-Anglican marriages by Anglican clergy.

120. The Group has been guided by the general principle that the Church of England's policy is to seek visible or organic unity between currently separated Churches by a series of defined stages. As the Church of England will be at different stages with different Churches at any given time, a blanket policy on ecumenical marriage matters would be inappropriate (see ***Annex 6***).

Summary of recommendations in respect of ecumenical issues

121. The Group's recommendation on the issue raised in paragraph 119 (i) above is to seek a change in the rules at present laid down by the civil law. The current law in effect makes it impossible for a marriage according to the rites of another Church to take place in an Anglican place of worship, other than a building covered by an agreement under the Sharing of Church Buildings Act 1969. (This is recognised in section 8 of the Church of England (Ecumenical Relations) Measure 1988, which provides that 'Nothing in this Measure shall affect the operation of any provision of the Marriage Acts 1949 to 1986 as to the place in which any marriage or class of marriages may be solemnised'.) The change recommended in the civil law would make it possible for the incumbent to use Canon B43.9 to allow a church in the parish to be used for marriages according to the rites of other Churches which fall within the scope of the Church of England (Ecumenical Relations) Measure 1988, subject to the approval of the parochial church council and the bishop.

122. It is clear that our ecumenical partners see a need for this, particularly in cases where the Anglican church is now the only functioning place of worship in a given locality and

where a Christian belonging to another Church wishes to be married according to the rites of that Church, but near his or her own home. In the Group's view, as Canon B43.9 already makes it possible to allow the Churches to which the 1988 Measure applies to use Anglican places of worship for all other types of worship – provided the necessary consents are obtained – there can be no objection in principle to treating marriage in the same way.

123. As regards paragraph 119 (ii) above, the present legal position is that it is already possible for clergy of Churches which are in communion with the Church of England and other clergy whose Orders the Church of England recognises to solemnise Anglican marriages provided they obtain the Archbishop's permission under the Overseas and Other Clergy (Ministry and Ordination) Measure 1967. (Clergy of the Church in Wales are able to solemnise marriages in the Church of England under the Marriage Act 1949 as it stands, and special provisions apply to Anglican clergy from Scotland and Ireland.) At present a minister of a Church to which the Church of England (Ecumenical Relations) Measure 1988 and Canon B43 apply may 'assist' at the solemnisation of matrimony (i.e. solemnisation by a member of the clergy of the Church of England or of one of the other Churches mentioned above) provided certain conditions are satisfied, and this makes it possible for him or her to take a substantial part in the service[19]. (The same principle applies under Canon B43 to a member of another Church participating at an Anglican baptism or funeral.)

124. The Group feels that difficult theological, ecclesiological and ecumenical issues arise which are outside its own terms of reference and which need further examination before progress can be made in this area. These include the issues which would arise in relation to the solemnisation of matrimony by ministers of other denominations whose Orders the Church of England does not recognise at present, and the differing understandings of the role and functions of the minister at a marriage, which is also relevant to paragraph 119 (iii) above. Indeed, in the case of some denominations, marriages can be solemnised by lay officiants who are 'authorised persons' under the terms of the Marriage Act 1949, section 43. The issue of inter-faith marriages was also raised in responses to the consultation exercise. Given these considerations and the policy outlined in paragraph 120, the Group has concluded that it should not recommend any change at present on paragraph 119 (ii) or (iii) above.

Recommendations for other action in relation to the Church's provision for marriage

Marriage preparation

125. Although not covered by the Group's terms of reference, it is strongly recommended that good quality marriage preparation is made available to all couples. Attending a course of marriage preparation should not be mandatory where a couple do not have a right to

[19] What this covers is discussed in the Legal Advisory Commission's opinion on marriage at pp.172-173 of *Legal Opinions concerning the Church of England*.

marry in a particular church or place of worship, any more than in cases where they do, but it is strongly recommended that they are encouraged to take advantage of it.

Marriage training

126. To ensure that these recommendations are implemented to the greatest advantage and are operated to a consistent standard, the Group would recommend that training is made available to the clergy in the pastoral and practical aspects of solemnising marriages, as well as dealing with marriage preparation. Such training would need to be offered both by Theological Colleges and Courses, and as part of continuing ministerial education.

Marriage pack

127. In order to assist clergy with the proposed changes to the system, and to promote consistency of application, it is suggested that a marriage pack should be produced for use by the Clergy. The pack would contain the guidelines produced in respect of marriage venues, information on how to obtain a Special Licence, a model notice for prayers to be read at churches in place of banns where requested, and reference to recommended material for marriage preparation.

Fees

128. The Group has considered the impact on the fee structure of its recommendations in respect of the new systems of preliminaries.

129. The fees payable as a matter of law are fixed by Parochial Fees Orders made by the Archbishops' Council, subject to approval by the Synod, under the Ecclesiastical Fees Measure 1986. The Council receives recommendations on the terms of the Orders from the Deployment, Remuneration and Conditions of Service Committee of the Ministry Division. Current practice is to provide for two different sets of fees for marriage preliminaries in addition to those for the actual marriage service (and any extras such as the organist and a choir, which are not covered by the legal fee structure): fees for the publication of banns payable to the incumbent and the PCC (the latter in recognition of administration and other costs), and a fee payable to the incumbent for a document (a 'banns certificate') confirming that banns have been called.

130. On the assumption that most marriages require two sets of banns and one banns certificate, the usual cost of Church preliminaries, at present fee levels, would be approximately £39.00. Under the proposals set out in paragraph 89, the incumbent would need to issue a certificate confirming that the couple was allowed to marry at the church in question. The minister who was to perform the marriage would then check the 'schedule' provided by the Superintendent Registrar's Office for any obvious errors, and after the marriage, together with the couple, would complete the marriage 'schedule' before it was returned to the Superintendent Registrar. The PCC would still be required to bear administration and ancillary costs.

131. On balance the Group accepts that the level of work undertaken if the proposals set out at paragraph 95 are adopted will not be dissimilar to that currently undertaken and recommends that the overall quantum of the fees should, therefore, remain unchanged and provide an outcome which is broadly cost neutral. While it will rest with the

Deployment, Remuneration and Conditions of Service Committee of the Archbishops' Council to recommend the actual level of fees, the Group would recommend that the fee structure is rationalised to provide two fees only: one payable to the incumbent; and the other payable to the PCC.

132. One consequence of moving to a joint Church/State system of preliminaries is that the couple would have to meet the costs of the civil registrar's fees in addition to the traditional fees for Church preliminaries. The Group acknowledges that this will be an additional, though modest, cost to couples marrying in church. However, in the context of the overall costs associated with modern marriages, the additional fee is not considered to be a significant extra burden.

Summary of recommendations in respect of other matters

133. These are:

(i) that the Church should give serious consideration to the Group's suggestion that good quality marriage preparation should be made available to all couples wishing to marry in a Church of England church or place of worship;

(ii) that in order to ensure that the Group's wider recommendations are implemented to the greatest advantage, that the clergy should receive training in the pastoral and practical implications of the changes and in effective marriage preparation; and

(iii) that a marriage pack is produced along the lines set out in paragraph 127 to promote consistent practice throughout the Church.

(iv) The Group accepts that a fee should continue to be charged for preliminaries, and that the amount of work and cost involved would justify an overall fee at the level currently charged. However, the Group would recommend to the Archbishops' Council that the basis on which the fee is calculated be rationalised with a view to producing two fees: one payable to the incumbent; and the other payable to the PCC as suggested in paragraph 131 above.

Process and resource implications

134. If the recommendations of this report are accepted either in whole or in part, the next stage of the process would be for the Church to liaise with the Government as to how the recommendations are enacted. To this end it is recommended that a Follow-Up Group should be appointed to take this forward with the Government.

135. On the basis set out in paragraphs 62 – 133 above, much of the legislation needed to implement the recommendations in this report would take the form of civil legislation. The Follow-Up Group would obviously need to be very closely involved in this process, but from a resource point of view it would mean less expense to the Church, in terms of Synod and staff time and associated expenses, than if the legislation had been dealt with solely by the Synod. However, the Follow-Up Group will also need to formulate the changes that are needed to ecclesiastical legislation, so that these can be brought to the

Synod, and will need to consider the process for dealing with any implications for the liturgy.

136. Under Standing Order 98 the Synod is required to be informed of the financial implications of any business included in its agenda. At the time of writing it is not clear how the Church will take this matter forward, and such costs will be reported to the Synod when appropriate. If a Follow-Up Group is constituted expenditure will include the costs of meetings of the Group and the cost of staff time – one senior member of the Legal Office and an administrator – together with other administrative support.

Summary of recommendations

137. For ease of reference these are brought together below:

Marriage venues

138. Parishioners are entitled to marry in their parish church or place of worship, or in a church on whose electoral roll one or both of the couple are entered. Starting from this base, it is recommended that:

(i) flexibility should be introduced to allow couples who do not meet the conditions set out above to marry in such parochial places of worship if they can demonstrate a connection with the building in question, as set out in paragraph 62;

(ii) the duty on the parochial clergy to solemnise or arrange for the solemnisation of such marriages would be subject to the same exceptions as exist at present in relation to the parishioner's right to marry in his or her parish church – notably as regards those who are divorced and wish to marry again while their former spouse is still alive;

(iii) if consent was refused the matter should be referred to an authority appointed by the diocesan bishop, such procedures being set out in legislation as appropriate;

(iv) the fact that the criteria for 'demonstrable connection' were not in fact complied with should not have an impact on the validity of the marriage or expose the couple to any form of penalty.

Non-parochial places of worship and other special cases

139. The Group recognises that there are clear cases where a couple might wish to marry in a non-parochial place of worship, but accept that the criteria relating to the 'demonstrable connection' may not apply as they stand to non-parochial places of worship, and indeed that slightly different considerations might apply to different types of chapel. In those circumstances the Group recommends:

(i) that marriages in non-parochial places of worship should take place only on the authority of a Special Licence so that the Faculty Office has every opportunity to consider the particular circumstance of each case;

(ii) while recognising that the grant of a Special Licence is a matter for the Archbishop of Canterbury personally, expresses the strong hope that the criteria under which such licences are granted are reviewed to take account of the Group's recommendations for a 'demonstrable connection' if that recommendation is adopted;

(iii) if the recommendation (ii) above is accepted by the Archbishop of Canterbury, that there will be as much consistency of approach as possible between the criteria used for parochial, and non-parochial, places of worship;

(iv) that a Special Licence be used in exceptional cases, involving parochial or non-parochial places of worship, which do not fit readily within the normal criteria but

where there are very strong pastoral reasons for permitting a dispensation from the normal rules. While accepting the need in general terms for consistency of treatment the Group expresses the hope that the Faculty Office would be able to adopt criteria flexible enough to accommodate such cases; and

(v) if it does not prove possible to achieve (iv) above, it is recommended that consideration be given to finding some other way to achieve a desirable pastoral outcome in such cases.

Forces chapels

140. The Group recommends that the proposals for the introduction of a 'demonstrable connection' set out in paragraph 62 should also apply to Forces chapels. This would be subject to the following conditions:

(i) that the incumbent or the priest in charge would first have to give his or her approval;

(ii) that the permission of the owner of the chapel, in this case the Ministry of Defence, would also be required. Such permission would of course depend on the rules and regulations applied by the Ministry of Defence.

Cathedrals

141. The recommendations are:

(i) That a set of criteria for 'demonstrable connection' which would be suitable for cathedrals, to include entry on the cathedral community roll where one exists, should be framed in consultation with the Association of English Cathedrals for use by the cathedrals taking into account the possibility that where a case does not fall within those criteria a Special Licence may still be available; and

(ii) That each cathedral should be able to 'opt out' of the 'demonstrable connection' criteria completely, or out of specified categories of 'demonstrable connection' as set out in paragraph 77 above.

Preliminaries to marriage

142. The recommendations are:

(i) that a system of Church/State preliminaries (as set out under paragraph 89) is adopted, with clear legal provisions that the couple would require a certificate from the appropriate member of the clergy before the civil registrar could deal with the civil preliminaries;

(ii) that marriage announcements (as set out under paragraphs 98 and 99) may be made in church and should be made if the couple concerned desire it; and

(iii) that, although they will have no legal force, Marriage Registers are retained and maintained by the church, and that 'signing the register' remains part of the marriage ceremony.

Residential qualifications

143. These recommendations are:

(i) that the General Register Office is asked to provide more definite guidance to registrars on how to interpret the term 'residence' in any legal tests relating to civil preliminaries which Parliament may impose in any amendment or replacement of the Marriage Act 1949;

(ii) that any Follow-Up Group should be requested to provide the necessary guidance in relation to 'residence' as it affects parishioners and their rights to marry in their parish church; and

(iii) that any Follow-Up Group should settle whatever guidelines are needed in relation to the definition of 'residence' to retain the flexibility required in relation to those couples seeking to marry outside their parish by proving a demonstrable connection with the relevant church.

Time of marriage

144. The recommendation is that the hours during which marriages may be solemnised should remain unchanged.

Ecumenical issues

145. The recommendation is that changes be made to civil law to make it possible to use Canon B43.9 to enable the incumbent to allow a church in the parish to be used for marriages according to the rites of other Churches which fall within the scope of the Church of England (Ecumenical Relations) Measure 1988, subject to the approval of the parochial church council and the bishop.

Other matters

146. Although not covered by its terms of reference, the Group also makes the recommendations listed below:

Marriage preparation

147. That good quality marriage preparation is made available to all couples. Attending a course of marriage preparation should not be mandatory where a couple do not have a right to marry in a particular church or place of worship, any more than in cases where they do, but it is strongly recommended that they are encouraged to take advantage of it.

Marriage training

148. That in order to ensure that the Group's wider recommendations are implemented to the greatest advantage, that the clergy should receive training in the pastoral and practical implications of the changes and in effective marriage preparation; and

Marriage pack

149. That a marriage pack is produced along the lines set out in paragraph 127 to promote consistent practice throughout the Church.

Fees

150. The Group would recommend to the Archbishops' Council that the basis on which the fee is calculated be rationalised with a view to producing two fees: one payable to the incumbent; and the other payable to the PCC as suggested in paragraph 131 above.