DRAFT CHURCH OF ENGLAND MARRIAGE MEASURE

SUMMARY OF MAIN CHANGES MADE BY THE REVISION COMMITTEE

(Clause numbers are as in GS 1616A. Figures in square brackets refer to relevant paragraphs in the Report.)

Clause 1(3) and (4) - The Committee has narrowed what constitutes a qualifying connection to the following cases: [56]-[85]

The person seeking to marry in the parish:

- has been enrolled on the church electoral roll of the parish – the date of entry on the roll must have been after the Measure comes into force and within the last 12 years before the request for publication of banns
- was baptised in the parish
- was presented for confirmation by a minister with a cure of souls in the parish, and the confirmation was entered in the parish registers on that basis (Where a person is baptised and confirmed in a combined rite, the provision on confirmation rather than baptism applies)
- has or has had his or her usual place of residence in the parish for at least 12 months
- habitually attends public worship in the parish or has done so in the past

A parent of the person concerned (including an adoptive parent or a person who has undertaken the person's care and upbringing), during that person's lifetime:

- has or has had his or her usual place of residence in the parish for at least 12 months
- has been enrolled on the church electoral roll of the parish – the date of entry on the roll must be as above

Clause 1(8) and 3 - provide for the **House of Bishops to produced guidance** for the minister (and those granting common licences) on **deciding whether the information provided by the applicant is sufficient to establish a qualifying connection**; ministers and others must **have regard to this guidance** when reaching their decisions [94]-[99] and [128]-[133]

Clause 1(11) – the **meaning of "minister"** has been amended to enhance the role of **team vicars** and others with a **special cure of souls** for a particular area [117]-[118]

Clause 1(12) and (13) - deal with the more straightforward cases of **changes in parochial structure or boundaries** [119]-[121]

Clause 4(3) and Schedule - Amendments to the Church Representation Rules to require parishes to keep details of information on a church electoral roll which comes into force in or after 2007 for at least 12 years after the roll ceases to have effect [135] and [139]

GENERAL SYNOD

DRAFT CHURCH OF ENGLAND MARRIAGE MEASURE

REVISION COMMITTEE REPORT

Chair:	Mr Geoffrey Tattersall QC (Manchester)
Ex officio members: (Steering Committee)	The Very Reverend George Nairn-Briggs (the Dean of Wakefield) (Northern Deans) (Chair) The Reverend Gillian Calver (Canterbury) The Right Worshipful Dr Sheila Cameron QC (the Dean of the Arches and Auditor) (Ex-officio) The Right Reverend Nigel Stock (the Bishop of Stockport) (Northern Suffragans) Canon Stella Vernon (York)
Appointed members:	The Reverend Canon David Bailey (York) The Reverend John Cook (London) Ms Jacky Humphreys (Bristol) Mr Rupert Shelley (Winchester) The Reverend Canon Glyn Webster (York)
Consultants:	
Diocesan Secretaries:	Mrs Louise Gilbert (Rochester)
Diocesan Registrars (Ecclesiastical Law Association):	Mr Derek Wellman (Lincoln)
Mission and Public Affairs:	Mrs Sue Burridge (Marriage and Family Policy)

INTRODUCTION

1. The Draft Church of England Marriage Measure ("the draft Measure") received First Consideration from the General Synod ("the Synod") at the July 2006 Group of Sessions. The period for the submission of proposals for amendment under Standing Order 53(a) expired on Friday 11th August 2006.

2. In addition to proposals made at meetings of the Committee by Committee members (in particular proposals from the Steering Committee), proposals for amendment submitted in accordance with Standing Order 53(a) were received from the members of Synod listed in Appendix I. Submissions were also received from those non-Synod members or bodies listed in Appendix II; all of these were considered by the Revision Committee ("the Committee"). All those who attended and addressed the Committee are indicated in Appendix I.

3. In addition, the Committee received and considered about 40 submissions from clergy (and others) in the Diocese of Oxford who were not Synod members. These had been submitted in response to an invitation by the diocesan registrar to the clergy of the diocese to comment on the draft Measure, sent at the request of the Bishop's Council. The Venerable Norman Russell, the Archdeacon of Berkshire, who attended a meeting of the Committee to speak to his own submission as a Synod member, explained in advance that he and the Reverend Dr Andrew Bunch, the Chair of the House of Clergy of the Oxford Diocesan Synod, who had himself made one of the submissions in question, had consulted widely with clergy in the diocese. In the course of making his submission to the Committee, the Archdeacon therefore also wished to address the submissions from and views of the Oxford clergy, and asked that Dr Bunch should be allowed to accompany him when he did so. The Committee agreed to this.

4. The Committee met on two occasions. The decisions made by the Committee were agreed *nem con*, except where indicated otherwise.

5. The amendments agreed by the Committee to give effect to the proposals that it accepted are shown in the version of the draft Measure (GS 1616A) now before the Synod. As required by Standing Order 54(b), Appendix III contains a summary of the proposals received which raise points of substance and of the Committee's consideration of them. Appendix IV contains a destination table relating the provisions of the draft Measure at First Consideration to those in the draft Measure as now returned to the Synod; where a provision in the draft Measure at First Consideration was renumbered, this is indicated in references to it in the text of the report. Appendix V lists matters (other than those covered by clause 1(7), renumbered as 1(8), and clause 3), which were identified in the course of the Committee's discussions as ones on which it might be necessary or desirable to provide guidance material, in particular for the clergy.

6. The Committee noted that object of the draft Measure was to make it possible for couples to marry according to the rites of the Church of England, without the need for an Archbishop's Special Licence, in certain parishes where they could not do so under the existing law, if one or both of them could demonstrate that they had a "qualifying connection" of one of the types specified in the Measure.

7. The Committee had before it a transcript of the Synod debate on First Consideration of the Measure. In general the speakers had welcomed the legislation and saw it as providing an opportunity to further the mission of the Church. A number of the speeches emphasised the need to welcome couples, the importance of the pastoral connection between the parish and the couple, and the provision of marriage preparation. However, some concern was expressed that the qualifying connections specified in the Measure were so widely drawn that they could cover cases where there was no genuine connection with the parish. While some speakers saw the Measure as simplifying the clergy's task, there were also concerns about the importance of consistency between parishes in deciding what was needed to demonstrate a qualifying connection, and the implications of conferring the new rights on those wishing to marry, in particular the pressure it could place on parishes and

their clergy where the parish Church was an attractive one or near to an attractive venue for wedding receptions. On the other hand, some speakers drew attention to the role that the laity, or clergy from outside the parish, could play in supporting or assisting the parish priest. Other speakers addressed issues regarding cathedrals and large parish churches, fees, ecumenical considerations, and the relationship between the Church and State in relation to marriage. The Committee noted that all these considerations also figured in the proposals and submissions to the Committee.

8. The proposals and submissions before the Committee fell into three broad categories:

(a) **General issues and matters of principle** Some of those who put forward proposals or submissions argued that the present law was adequate, or adequate with only very limited changes, or suggested a different approach from that in the Measure. There were also proposals regarding the legal structure and drafting of the Measure as a whole, and general issues and issues on matters of principle relating to more than one specific provision of the draft Measure. The Committee began its work with this group of issues, and its consideration of them is dealt with in paragraphs 9 to 39 below.

(b) **Consideration of the legislation clause by clause - proposals and submissions relating to specific provisions of the draft Measure** The Committee's consideration of these is dealt with in paragraphs 40 to 141 below. At an early stage the Steering Committee explained that they had already given careful consideration to the speeches in Synod and the proposals and submissions. As a result, in addition to some more technical amendments, it wished to put forward a group of amendments which would:

(i) narrow the criteria for what constituted a qualifying connection, in particular so as to reduce the possibility of merely tenuous connections with a parish giving rise to a right to marry there; and

(ii) make provision for guidance on how clergy (and those issuing Common Licences) were to reach a decision as to whether a qualifying connection had been established.

The Committee's discussions of the other possible amendments which were put to it on these issues therefore took place in the light of these proposals, which are dealt with more fully in paragraphs 57-58 below and in the paragraphs dealing with individual provisions of the clauses 1(3) and (4) (paragraphs 59-85, paragraph 1(8) (renumbered as 1(9)) (paragraphs 94-100) and new clause 3 (paragraphs 128-133)).

(c) **Proposals for additional provisions and submissions on additional topics** which did not flow directly from the discussion in (b) above. The Committee's consideration of these is summarised in paragraphs 142 to 162 below.

GENERAL ISSUES AND MATTERS OF PRINCIPLE

Present law adequate

9. A number of clergy in the diocese of Oxford argued strongly against the changes in the law set out in the draft Measure on the ground that the present law was adequate. Most of them referred to the possibility of applying for an Archbishop's Special Licence in cases where a couple from outside the parish were seeking to be married there on the basis that one of them had a genuine connection with the parish. The Steering Committee did not agree with this proposition and pointed out that by giving the Measure a first consideration and resolving that it should go forward to a Revision Committee the Synod had made clear that it did not regard the present law as adequate and thought that some change was desirable. The Steering Committee also drew attention to the fact that no Synod member had made a submission to this effect. The Committee agreed and therefore rejected these submissions.

Present law adequate with very limited changes

10. The proposals from some Synod members, in particular the Reverend Canon Michael Ainsworth and the Venerable Norman Russell, the Archdeacon of Berkshire, as well as submissions from a number of clergy in the diocese of Oxford, put forward the general proposition that the draft Measure went further than was either necessary or desirable and that only much more limited changes were needed. The Steering Committee recognised that there were concerns over the extent of what constituted a qualifying connection under the draft Measure as it stood, but argued that they did not undermine the rationale of the Measure as a whole. The Steering Committee hoped that these concerns (and others) would be allayed by the amendments that it would be proposing. The Committee agreed that the way forward was to examine the individual provisions of the draft Measure and amend them if and as necessary rather than to "go back to the drawing board" and substitute a completely fresh set of provisions.

Views of clergy of the diocese of Oxford and the possibility of developing the existing licence procedures rather than the procedures of the draft Measure

11. As agreed by the Committee (see paragraph 3 above) the Venerable Norman Russell, the Archdeacon of Berkshire, with the Reverend Dr Andrew Bunch, the Chair of the House of Clergy of the Oxford Diocesan Synod, spoke to the submissions from the Oxford clergy and the results of the Archdeacon's and Dr Bunch's own consultations with clergy in the diocese. The Archdeacon said that in general terms the feedback from Oxford clergy had demonstrated that most clergy found frustrations in the present situation and would be grateful for something that gave more flexibility and avoided putting what appeared to be unsympathetic and bureaucratic obstacles in the way of those who came to the Church seeking marriage. Beyond that, opinion appeared to be quite evenly divided. Some clergy were looking for a fairly conservative change in the legal provisions and were deeply concerned about what they saw as new and extensive rights with respect to marriage. On the other side were those who, broadly speaking, appeared content that people should be allowed to get married wherever they chose.

12. The Archdeacon reported that both he and Dr Bunch had talked with a good proportion of those who wrote in and what became clear was that most of those who advocated the second view had not given much serious thought to the implications of giving new and widely drawn rights, enforceable in law, to those wishing to be married outside their own parish. In conversation it became fairly clear that what many had in mind was an opportunity for the clergy to exercise wider pastoral discretion when approached for a marriage service, rather than the full implications of new and extensive rights in law. Therefore he and Dr Bunch were inclined to think that developing the existing licence procedures might be a better way to proceed under the draft Measure than granting widely drawn new rights. Dr Andrew Bunch also spoke of clergy concerns over the evidence that would need to be provided to demonstrate a qualifying connection.

13. As regards the suggestion that development of the existing licence procedures might be a way forward, the Committee recognised that clause 2 of the draft Measure as it stood would make it possible to obtain a Common Licence using the "qualifying connection" criteria, as an alternative to the procedure using banns under clause 1. However, the Committee was advised that, as a matter of law, the Common Licence procedure as currently established did not give a member of the parochial clergy a discretion over which marriages could and could not take place in his or her parish. A Common Licence was granted by a surrogate or the diocesan registrar on the authority of the diocesan bishop. The discretion was the bishop's and was exercised according to settled principles. In practice applications for Common Licences normally came to those acting on behalf of the bishop through or at the suggestion of the parish, but there was no legal requirement to obtain the consent of the incumbent or priest in charge. Furthermore, a Common Licence was in essence an exercise of the bishop's power to dispense with the need for banns rather than a permission to marry in a particular place where that would not otherwise be lawful. On the other hand, the Committee was advised that the Archbishop of Canterbury's Special Licence could be (and was) used to authorise a marriage in any place. If what the Archdeacon had in mind was an extension or variation of the criteria at present applied by the Faculty Office in dealing with applications for Special Licences that would not require legislation.

14. In response to this, the Archdeacon of Berkshire explained that what he was asking the Committee to do was to consider the proposition that a revision of the licence procedure was preferable to the provisions of the draft Measure as they stood as a means of providing more flexibility in the system. He was not proposing any specific changes and had no preference as to whether the revised procedure should be based on the Common Licence or the Special Licence or both.

15. The Dean of the Arches and Auditor (who is also the Master of the Faculties) spoke against this. It was her view that without effectively creating a new type of licence the Common Licence procedure could not be substituted for clause 1 so as to achieve the objective of the draft Measure. As far as the Special Licence was concerned, it was currently performing a function that would be 'passed' to the draft Measure, when in force, in the sense that marriages in the types of cases for which the draft Measure was

intended to be used were being authorised at present by Special Licence. The Dean did not see how the Special Licence could be adapted to give the clergy some discretion as the Archdeacon seemed to be advocating. It might be possible to alter the way in which the licence procedure operated, either by reducing the Archbishop's discretion, which was currently effectively unfettered as a matter of law, or by altering the criteria used by the Faculty Office. However, she saw no advantage in either course as no criticism had been levelled at the system as it currently operated and to do so would not achieve the clerical discretion at a parochial level that the Archdeacon sought.

16. The Dean of the Arches stressed that, irrespective of whether or not the draft Measure became law, the Special Licence route would still be available for couples who wanted to apply for such a Licence to marry in a particular place. Nevertheless, the view of the Marriage Working Group, now endorsed by the Synod through its decision to give this draft Measure first consideration, was that it would be better both pastorally and administratively for there to be a parish based system, operated by the local clergy, giving a person with one of a number of defined types of connection with a parish a right to be married there.

17. The Committee agreed that it did not see any scope for substituting amended versions of the current procedures for granting either a Common or a Special Licence, as an alternative to the provisions of the draft Measure as it stood, in order to help meet the concerns on the part of the clergy to which the Archdeacon had referred. (The issue of granting parochial clergy a discretion rather than creating new rights is dealt with in paragraphs 41-44 below.)

Allowing the couple to marry in any church of their choice

18. The Reverend Canon Chris Lilley proposed that the draft Measure should be amended to allow marriage in any Church of England church. One of the clergy in the diocese of Oxford took the same view (and another suggested allowing a couple to marry in any church "with which they have connections"). However, there were clearly some other Oxford clergy who had made submissions who would have been strongly opposed to this. The Steering Committee resisted the proposal, which would be a major policy shift from the arrangements that would be introduced under the draft Measure. As Canon Lilley recognised, this possibility had been considered by and rejected by the Synod two years previously, albeit by a close vote, and all the indications from the First Consideration debate on the draft Measure were that the Synod did not wish to pursue it now.

19. The Committee saw Canon Lilley's point as a fundamental one and concurred fully with the Steering Committee. In particular the Committee was concerned that meaningful pastoral contact with the couple should be maintained and that this would be made more difficult if couples could be married in any church of their choice. Moreover, it failed to take account of the implications of giving a couple a legal right to marry in any church they wished. The proposal was therefore rejected.

Universal civil preliminaries/ universal civil marriage

20. The Revered Stephen Trott argued that moving away from the residential requirement for marriage by banns and granting those with a 'qualifying connection' with a parish the right to be married there would have a very serious impact in practice, in particular because of the difficulty of verifying the applicant's claim. He also considered that once the residential requirement was removed the concept of a qualifying connection was so tenuous that it would prove unenforceable, and that anyone whose application met with a refusal would be able to challenge it under the Human Rights Act. For this and other reasons, notably his concerns that the status quo had ceased to be tenable in present-day conditions, he proposed that the draft Measure should be amended to abolish banns and require all those who wished to be married in the Church of England to complete civil preliminaries. However, he saw this as only a partial solution to the problems, and went on to propose that in the new situation created by the Human Rights Act all couples should be married by a civil ceremony, followed if they wished by a religious ceremony. The Reverend Canon David Bird supported the latter proposal, and there was also some support for the Reverend Stephen Trott's two proposals in submissions from two Oxford clergy who were not Synod members.

21. The Committee noted the legal advice given to it that it would be out of order for the Committee to amend the draft Measure so as to give effect to either of these proposals, as they were not relevant to general purport of the Measure as required by Standing Order 53(e). The general purport of the present Measure was limited to allowing for marriage according to the rites of the Church of England, without a Special Licence, in certain places where that was not possible at present because neither party had a residential qualification and it was not the usual place of worship of either of them. The Committee accepted this advice and consequently did not consider these proposals.

22. However, that left the Reverend Stephen Trott's argument that, in the light of the considerations he had set out, it would be undesirable to proceed further with the 'qualifying connection' concept. The Committee considered this, and noted that although he reached the same conclusion as the submissions referred to in paragraph 9 above he did so on different grounds. The Steering Committee again resisted the proposal, for the same reasons, and again the Committee agreed and rejected the proposal.

Concerns as to the potential impact and effect of the Measure

Impact on parishes and clergy

23. A number of the proposals and submissions expressed concern at the potential impact of the Measure on parishes and their clergy, particularly if the church was an attractive one or near to an attractive venue for receptions. As well as increased pressure on the clergy, and the resulting effect on the pastoral care of parishioners and the clergy's other duties in the parish, the proposals and submissions also referred to increased pressure on organists, bellringers and those in the parish who gave their time and efforts on a voluntary basis. Other points that were made included comments on the

"consumerist" attitude of some couples, who appeared to see coming to the Church for marriage much the same light as "booking" a purely secular venue, and on the potential loss of marriages to "not so pretty" churches. The submissions by Synod members referring to one or more of these aspects included those from the Reverend Canon Michael Ainsworth, Mr Nigel Chetwood, the Reverend Chris Strain, the Reverend Stephen Trott, and the Venerable Norman Russell, the Archdeacon of Berkshire; they also figured in many of the submissions from the Oxford clergy.

24. The Venerable Normal Russell spoke from personal experience in his own ministry. He referred, for example, to the pressure put on the local community by weddings in particular attractive locations, such as rural areas where there was a lack of adequate parking space. This led him to be concerned about the widely drawn rights in the draft Measure, because he considered that they could add to this pressure in some parishes and could inhibit rather than enhance mission by alienating the local community. He therefore floated the idea of some form of "graduation" of rights to be married in a church, with priority being given to local parishioners. The Committee noted that this proposal was akin to the proposal by the Reverend Dr Peter Ackroyd, and they are dealt with in paragraphs 45- 46 below.

25. The Steering Committee felt that these concerns might to some degree reflect a reluctance on the part of some clergy to conduct additional weddings rather than opposition to the provisions of the draft Measure as such. The Steering Committee also pointed out that there were ways of alleviating local pressures: for instance by making couples aware that a wedding on a particular date would mean no bells, organist etc.; that incumbents and priests in charge were not under a legal obligation to conduct the ceremony themselves, provided they (or the couple) could arrange for another cleric to officiate; and finally, as pointed out in the Synod debate on First Consideration, that the laity could always assist with marriage preparation. The Committee concurred. However, it took these points and the other general issues and concerns referred to in paragraphs 26-29 below into account when it came to consider the Measure clause by clause, and in particular in its detailed examination of the qualifying connections under clause 1(3) and (4) (paragraphs 55 to 85 below refer).

Impact on proper marriage preparation

26. Mr Adrian Greenwood emphasized the importance of marriage preparation. He was concerned that if the qualifying connections were drawn too widely then adequate marriage preparation was less likely to be provided; he therefore wished the qualifying connections to be narrower and based on a real participation in church life. Others who raised similar or related issues regarding marriage preparation included the Reverend Canon Michael Ainsworth, Mrs Gill Morrison, the Bishop of Hereford, the Venerable Norman Russell, the Reverend Chris Strain the Reverend Stephen Trott and clergy from the diocese of Oxford. The Committee accepted the importance of marriage preparation and of the concerns that Mr Greenwood raised and the Committee's consideration of a proposal to make mandatory provision for marriage preparation is dealt with in paragraphs 149-151 below. However, apart from that, the Committee agreed that these concerns should be addressed by taking them into

account during the consideration of the Measure clause by clause, and in particular of the amendments proposed to 'narrow' the qualifying connection.

Need for pastoral care/ relationships/ continuing pastoral care after marriage and need for couple to be part of/ connected with Christian community

27. Mrs Sarah Finch stressed the need for qualifying connections to have some current validity, so that there was some prospect of a continuing relationship between the couple and the local worshiping community. The more restricted the qualifying connections, the more likely it was, in her view, that meaningful pastoral care would be provided and maintained. She did not see this as necessarily to be provided exclusively by the clergy. Concerns over the same or similar matters were expressed in other submissions to the Committee, including those from the Reverend Canon Michael Ainsworth, Mrs Gill Morrison, the Bishop of Hereford, the Venerable Norman Russell, Mr Clive Scowen, the Reverend Chris Strain, the Reverend Stephen Trott and a number of clergy in the diocese of Oxford. Here again, the Committee agreed that these considerations should be taken into account in the consideration of the Measure clause by clause, and in particular in considering the tests for a "qualifying connection".

Possible impact on other occasional offices

28. The Committee considered the points made on this by the Reverend Canon Michael Ainsworth and by clergy from the diocese of Oxford. Canon Ainsworth referred in particular to the "knock-on effect" of requests for baptisms in the church where the parents were married, which he saw as leading to "creeping congregationalism". He also considered that the specific provision in clause 1(3)(b) giving a person a right to marry in the church where he or she was baptised would turn this into a "self-perpetuating system", and that the long term impact of that had to be considered. He asked whether the Church was also to become more liberal as regards the place of baptism and if not why not.

29. The Steering Committee noted that the draft Measure would not affect the legal position as regards baptism or other occasional offices[1]. It could possibly lead to a couple who had been married in a particular church where they were not parishioners asking for their child to be baptised there, but they had no right to insist on this. The Committee's consideration of clause 1(3)(b) is dealt with in paragraphs 62-65 below. Apart from that, the Committee was content that this was a matter to be addressed by guidance and explanation and not in legislation. Indeed, it was not a new issue, as Canon Ainsworth recognised; it could already arise in other contexts (for example a couple requesting baptism for their children in the parish where the parents of one of them were resident, even though the couple and child were resident elsewhere).

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[1] The Committee had before it an explanation of the legal position under paragraph 5 of Canon B22, which provides that before a minister baptises a child whose parents are not resident within the minister's cure and neither of whom have their names on the church electoral roll there, the minister is to seek the good will of the minister of the parish in which the parents reside.

General conclusions

30. In conclusion, the Steering Committee did not consider that any of the issues or concerns raised in the submissions referred to in the preceding paragraphs 23 to 29, of themselves, warranted amendment of the draft Measure. The Committee concurred. However, as already explained, the Committee continued to take account of these matters when it considered the specific provision of the draft Measure (and particularly the tests for a "qualifying connection") and the proposed amendments to them.

Position where divorced person with former spouse still living seeks marriage

31. The Committee considered submissions on this subject from the Reverend Canon Michael Ainsworth, Dr Graham Campbell, the Reverend Prebendary Colin Randall, Reverend Dr Andrew Goddard [2] and from the Bishop of Winchester, who had seen Dr Goddard's submission. They expressed concern about the effect of the proposals both on the integrity of the House of Bishops' Advice for clergy on marriage in church after divorce and the arrangements made by the House and the Synod some years previously for such cases, and on the workload of the clergy in this regard. Among the other concerns expressed were the danger of couples "shopping around" for a parish where the incumbent or priest in charge would agree to marry the couple, the difficulty for clergy of spending sufficient (or any) time in personal interviews with the couple and thus giving their case proper scrutiny, and the particular problems of dealing with cases where neither of the applicants had any current link with the church or the parish and might live some distance from the parish.

32. The Steering Committee pointed out that the draft Measure would give a divorced person with a former spouse still living no greater right to insist on being married in any given church than was currently the case. Clause 1(1) expressly gave a person seeking to marry in a parish on the basis of a qualifying connection "the like, but no greater, right" to do so than he or she would have to marry in the parish where he or she was resident or on the church electoral roll. Thus the right of a member of the clergy to refuse to conduct such a marriage, or to allow it in his or her church, on the grounds of conscience[3] would not be affected. It was true that the provisions of the draft Measure would in most cases increase the potential number of churches where such a couple might seek to be married, but in each case the incumbent or priest in charge would retain the right to refuse on the grounds of conscience. Equally, clergy could, and should, still insist on the personal interviews and other steps set out in the House of Bishops' Advice when approached by such couples. Some clergy were likely to receive more of these types of requests than at present, including requests from couples not previously known to them, and therefore it was more important than ever that they received full guidance about how to deal with them. It was also true that if a member of the clergy was willing to consider such requests he or she might have to interview a greater number of couples than would otherwise be the case, and that there

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[2] A non-Synod member of the clergy from the diocese of Oxford.

[3] Under the Matrimonial Causes Act 1965.

might be particular practical problems in arranging this, but that was one particular, albeit significant, aspect of the general issue of pressure on the clergy.

33. Dr Goddard had specific concerns about couples rejected by their parish priest going elsewhere to seek a different response and bringing the system into disrepute. However, the Committee noted that the form which had been published for such couples to be asked to complete already contained the question: "Is this your first application for marriage in church after divorce? (If not, please give the name … of the priest to whom you previously applied.)". That aspect and the need to contact the priest concerned were likely to be of particular importance in a 'qualifying connection' case. Nevertheless, when contact was made with a priest to whom the couple had previously applied unsuccessfully, it might turn out that that priest was opposed in conscience to conducting any marriages at all of this kind, rather than having had reservations about the marriage of the couple concerned.

34. The Committee agreed that no amendment to the draft Measure was necessary in order to take account of these points, although again it was relevant in considering the width of the "qualifying connections". However, the Committee noted that it might be that the House of Bishops' advice to clergy on marriage in church after a divorce would need to be amended or supplemented to take account of the provisions of the Measure before it came into force.

Date and time of marriage

35. The Committee noted that the draft Measure did not in any way change the existing position in law that the right to be married in one's parish church did not include:

(a) a right to insist on the incumbent or priest-in-charge conducting the service personally;
(b) a right to be married at a date and time of the couple's choice; or
(c) a right to the services of an organist, bellringers, choir etc.

The Bishop of Hereford wished this to be spelt out, although in guidance on the draft Measure rather than in the Measure itself, and other submissions to the Committee raised similar concerns. The Committee agreed that it might be helpful to issue further guidance on these matters.

36. Dr Graham Campbell argued that it was right that the couple and their families could not insist on a particular date and time, not least because it might already have been "booked" by another couple. On the other hand, it would not be acceptable for a minister to offer a date say three or four years later as the first available date, thus using this as a means not to solemnize the marriage. He therefore considered that, to deal with cases where agreement could not be reached, an appeal mechanism for the couple was needed (although he accepted that this might be more suitable for inclusion in guidance than in the draft Measure itself).

37. The Steering Committee did not agree with Dr Campbell that an appeal mechanism, whether formal or informal, was either necessary or desirable. The problem was again

one that could already arise, even if in a less acute form. The Marriage Act 1949 ("the 1949 Act") already provided that the marriage must take place within a time limit of three months after completion of the calling of banns, so that the minister had to offer the couple a date before then, even if not the one they would have preferred. In any case clergy would be expected to act reasonably. If they did not, and in effect sought to deny the couple's right to be married, legal remedies already existed[4]; the Committee concurred and rejected this proposal.

The drafting of the Measure

38. Mr Clive Scowen proposed that the provisions of clauses 1 and 2 of the draft Measure should be incorporated into the 1949 Act or that the relevant provisions of the 1949 Act should be amended to make them subject to clauses 1 and 2. The Steering Committee, on advice from Standing Counsel, saw no merit in Mr Scowen's submission. They accepted the advice that there was no need to amend the 1949 Act, as the changes contained in the draft Measure related only to marriages conducted by the Church of England and therefore could be introduced by Measure, and that the basis on which the Measure had been drafted was the appropriate one. The Steering Committee pointed out that to amend the 1949 Act in the way suggested by Mr Scowen would necessarily involve further discussions with Government, which had seen the draft Measure. Even if the Government had no objection, it would almost certainly result in unnecessary delay in introducing these limited proposals. Moreover, there was a further complication with Mr Scowen's proposals, namely that the provisions in the 1949 Act which he wished to see amended also applied to the Church in Wales and would need to be retained in their present form for that Church. The Committee accepted the advice on the legal position and concurred with the Steering Committee's view on Mr Scowen's general proposals, which were therefore rejected.

39. By way of amplification of those proposals, Mr Scowen also tabled some specific suggestions as to drafting, including specific proposals for amendments to the 1949 Act. The Steering Committee gave careful consideration to these points, and on the basis of the advice it received it agreed that two of the points Mr Scowen had raised required further attention. It dealt with these by proposing amendments to the draft Measure which are dealt with in paragraphs 93 and 134 below. Subject to that, the Steering Committee's view, which the Committee accepted, was that no further action was needed on Mr Scowen's suggestions.

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[4] It was suggested that such clergy could be the subject of complaints under the Clergy Discipline Measure 2003.

CONSIDERATION OF DRAFT MEASURE 'CLAUSE-BY-CLAUSE'

CLAUSE 1

Clause 1(1)

40. This provided that a person intending to be married should have "the like, but no greater, right" to have his or her marriage solemnized in a parish church of a parish with which he or she had a "qualifying connection" specified in clause 1(3) as he or she had to have the marriage solemnized in the parish church of the parish where he or she resided or which was his or her usual place of worship. The Committee noted that the references to a "usual place of worship" related to a parish where the person concerned had his or her name on the church electoral roll; it also had before it an explanation of the existing rights of parishioners and those on the church electoral roll as regards marriage, and noted that the Measure did not in any way alter those rights.

Discretion rather than right

41. The Reverend Paul Benfield spoke to his submission that the draft Measure should give the minister a discretion to allow a marriage to be conducted on the basis of a qualifying connection, rather giving the couple a right to be married in a parish with which one of them had a qualifying connection. The Explanatory Memorandum which accompanied the draft Measure when it came to the Synod for First Consideration (GS 1616X paragraph 7) had explained that this had been done on the basis of advice on the implications of the Human Rights Act 1998 ("the 1998 Act"). Mr Benfield was not convinced that the 1998 Act made it necessary to grant such a right and argued that if the draft Measure gave a discretion to the minister rather than a right, it would not be a breach of the 1998 Act to decline to allow a person with a qualifying connection to be married in the parish, so long as the minister treated all couples in the same category in the same way. Mr Benfield was also not clear how, if the 1998 Act required the couple to have a right to be married in a given place, that applied to the system for issuing Common Licences, as this was based on discretion for the bishop to grant or refuse the Licence. The Bishop of Lincoln and members of the Oxford clergy also raised the issue of allowing the clergy a discretion.

42. In response the Steering Committee referred to the advice given on behalf of the Legal Advisory Commission to the Marriage Law Working Group (and recorded in paragraph 7 of GS 1616X) "that if the new provisions left the clergy with a discretion whether to allow or refuse marriage in a particular place on personal or subjective grounds, that would leave them open to challenge under Article 14 of the European Convention on Human Rights (which deals with discrimination)" (and hence under the Human Rights Act 1998). Thus the advice given to the Working Group, which it had accepted, was that any new and extended criteria for churches and parochial places of worship where a marriage could take place should not merely give the clergy a discretion to marry the couple there but should give the couple the right to be married there provided they could prove factually that they came within the criteria.

43. The Steering Committee was not aware that anything had occurred to alter this advice. Furthermore, the Steering Committee was concerned that to give clergy a discretion in this respect could lead to widely divergent practice, and a range of practical difficulties in terms of operation and guidance. The Dean of the Arches and Auditor pointed out that if one of the couple had demonstrated a qualifying connection, and an individual member of the clergy then refused to allow the marriage, it could be well argued that that decision was on grounds which were arbitrary or were discriminatory under Article 14 and the 1998 Act. She explained why the position with regard to Common Licences was different, and did not give rise to the same risks.

44. The Committee agreed with the Steering Committee's views. It therefore agreed that the draft Measure should not grant the minister a discretion on these matters, and did not accept Mr Benfield's proposal.

Restricted right subject to priority for parishioners

45. The Reverend Dr Peter Ackroyd spoke of his concern that attracting a significant number of non-resident and non-worshipping couples for marriage in a parish would disadvantage resident or worshipping members of the parish, to the detriment of pastoral relationships within the parish and the sense of "ownership" which many communities felt towards "their" parish church. He therefore asked for a restricted right to be married in the parish for persons who were neither resident in the parish nor had their usual place of worship there, but who had a qualifying connection, with that right being subject to priority for residents and regular worshippers. A somewhat similar suggestion was put forward by the Venerable Norman Russell (see paragraph 24 above).

46. While the Steering Committee saw the initial attractions of this idea, it opposed any restricted right for couples with a qualifying connection as proposed by Dr Ackroyd. It considered that this would, if anything, make things more difficult for the clergy, in view of the fact that a non-parishioner couple might well seek to 'book' a particular date well in advance, and that a 'parish' couple might then ask for the same date and time weeks or months later. Neither keeping 'reserved slots' for parishioners, which they might or might not use, or cancelling a 'booking' by a non-parishioner couple after it had been made, seemed a satisfactory way forward. The Steering Committee could also foresee legal problems in drafting provisions to provide for this and in its practical application. The Committee concurred with the Steering Committee's views, and considered that it was, and should remain, a basic principle underlying the draft Measure that a person with a qualifying connection should have the same rights (no more, no less) to be married in a parish as a resident or someone on the church electoral roll. The Committee did not see that the arrangements in the draft Measure would necessarily weaken the parish; indeed it could do quite the contrary, by laying the seeds of future involvement with the parish in which the couple were married.

Need for 'opt-out' or similar provision for parishes

47. The Reverend Paul Benfield spoke in favour of a mechanism for an opt-out from the draft Measure for 'busy', primarily inner city, churches. One possibility might be for

the bishop to have a power, on an application from a PCC, to exclude a parish. The Reverend Simon Butler spoke in favour of a parish being given the power to opt out of any of the listed qualifying connections, thereby narrowing the number of qualifying connections dependent on the local circumstances and allowing the parish to target what might be limited resources. He suggested that it might be for the APCM to decide this. The Reverend Dr John Hartley also spoke in favour of an opt-out from the draft Measure for parishes, which could either be a complete opt-out or an opt-out from one or more of the qualifying connections, in either case through a resolution of the PCC. He was concerned that if this was not provided some churches would be "swamped" and this would impede good marriage preparation. All three accepted that if the Committee agreed to some or all of the Steering Committee's amendments to clause 1(3) and (4) (paragraphs 57 to 85 below refer) this would lessen the need for any form of 'opt-out'. Other proposals along similar lines came from the Venerable Norman Russell, who suggested the possibility of a PCC drawing up local rules to restrict the rights in the particular parish because they would otherwise damage the Church's mission there, while the Bishop of Lincoln also raised the question of whether there should be a procedure for churches which needed it to claim exemption from the terms of the Measure. There were also comparable submissions from two Oxford clergy who were not Synod members.

48. The Committee agreed to address these proposals together with the proposals for options for cathedrals and "greater churches", and its consideration of that group of issues is dealt with in paragraphs 102 to 114 below.

Clause 1(2)

49. This provision related to churches and other buildings licensed for public worship which had been designated as parish centres of worship under section 29(2) of the Pastoral Measure 1983 ("the 1983 Measure"). It provided that clause 1 was to apply to such a parish centre of worship, while the designation was in force, in the same way as to a parish church.

50. Mr Clive Scowen expressed concern that the drafting of this provision was ambiguous. In response, the Steering Committee explained that it gave, and was intended to give, a person with a qualifying connection with a parish which had a parish centre of worship the same, but no greater, right to have his or her marriage solemnised in the parish centre of worship as he or she would have under clause 1 to be married in the parish church (if any) of the parish. This was intended to apply whether or not the parish in fact had a parish church. In its view clause 1(2) was clear in this respect and needed no amendment. The Committee concurred.

51. The Reverend Simon Butler spoke to his proposal, which began with a question as to the status under clause 1 of churches that were not parish churches but were integral to parish life. Speaking from the point of view of a single parish team ministry with a number of places of worship, he referred to the position of parish centres of worship under the existing law relating to marriage, and to his particular concern, which was with the position of chapels-of-ease when it came to the solemnization of marriage. He hoped that chapels-of-ease could be in the same position as parish churches and

parish centres of worship, as places where a resident etc. parishioner had a right to be married (to be extended to those with a qualifying connection), because to many who wished to be married in a parish a chapel-of-ease was the 'local' church.

52. The Steering Committee confirmed that the draft Measure was not intended to change and would not change the current position on the solemnization of marriages in parish centres of worship or in chapels-of-ease of those who had existing rights as parishioners. The Committee concurred. However, it also noted that the renumbered clause 1(9) of the draft Measure recognised that under the existing law, as set out in section 20 of the 1949 Act, the bishop could license a "public chapel" (as defined in the section) for the publication of banns and solemnization of marriages of couples one or both of whom were resident in the "district" specified in the licence. Such a couple would have no need for a Special Licence to marry there. So far as those with a qualifying connection were concerned, clause 1(9) provided for clause 1 to apply in relation to a chapel licensed under section 20 as if it were a parish church of any parish which or part of which was within the district specified in the licence. The Committee agreed that this dealt adequately with the position of chapels of ease under the draft Measure, and that no further legislation was needed on the points that Mr Butler had raised.

53. Mr Clive Scowen submitted that the interaction of clause 1(2) with section 29(3) of the 1983 Measure (concerning a right to elect to be married in an adjoining parish if the parish of residence etc. was one with a parish centre of worship but no parish church) and paragraph 14 of Schedule 3 to the 1983 Measure (relating to directions by the bishop in respect of benefices with more than one parish or parish church as to where banns could be published and marriages solemnized) needed to be clearly spelled out.

54. The Steering Committee agreed with Mr Scowen that the existing position regarding paragraph 14 of Schedule 3 to the 1983 Measure and section 29(3) of the 1983 Measure, and their interaction with the 1949 Act, was complex.

(a) As regards the first of these, the starting point was section 23 of the 1949 Act. This provided that where benefices were held in plurality, the bishop had power to direct where the banns of those who were entitled to be married in any church in those benefices could be published, and where their marriages could be solemnised. However, a person who had a legal right to be married in a particular church would not be deprived of that right by the bishop's direction. Thus if benefices A and B were held in plurality, the bishop could direct that parishioners in benefice A could be married in the parish church in benefice B. Paragraph 14 of Schedule 3 to the 1983 Measure applied the same provisions to cases where there were two or more parishes or parish churches within the area of a single benefice (whether or not there was any team ministry). Those provisions would apply to a person who had the right to be married in a particular parish under the draft Measure in the same way as to a person who had such a right because he or she was resident in the parish.

(b) On the other hand, the special provisions in section 29(3) of the 1983 Measure would not operate here. They applied where a parish had no parish church but has a parish centre of worship, and in substance permitted a parishioner to marry in any adjoining parish he or she chose. The Marriage Law Working Group, which had prepared the draft Measure, took the view that cases where a person had a qualifying connection with a parish which had no parish church and wished to be married in an adjoining parish by virtue of that connection were best left to the Special Licence procedure. The Committee took note and was content with the position.

Clause 1(3) and (4) - General

Explanation of current practice and procedure for Special Licences

55. The Reverend Angus McLeay suggested that it might be helpful to have an explanation of the current procedure for dealing with applications for Special Licences. In particular, he asked how the Archbishop's Faculty Office decided that a sufficient connection with a church had been made out, and whether the current guidelines on this were as broadly drawn as the provisions of clause 1(3) and (4) of the draft Measure. The Committee noted that information about the broad principles applied by the Faculty Office was already in the public domain, and in particular noted the information about these on the Faculty Office web site[5].

Periods for qualification

56. A number of the proposals before the Committee raised the possibility of a minimum period for which some of the connections in clause 1(3) should need to exist in order to qualify, or a provision excluding a connection more than a specified number of years in the past. In broad terms, these arose out the concern to ensure a genuine current connection with the worshipping community (as opposed to one which was tenuous or at best merely historical) and one which was of substantial nature. The same concern was also expressed by other Synod members and in submissions from the diocese of Oxford – see paragraph 27 above. In particular:

(a) Mr Jim Cheeseman spoke to his proposals that the past residence qualification should be restricted to a period "in excess of three years" and that a period "of at least four years" should be required for attendance at a school in the parish. He was concerned that only a "genuine" connection with a parish should entitle a person who was not resident there or on the electoral roll to be married in the parish;

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[5] At www.facultyoffice.org.uk/marriage.html. This explained that a Special Licence was a privilege and not a right, and (leaving aside cases involving school and college chapels) set out the usual requirements as including the requirement that "One of you should be able to show a genuine and long-standing connection with the church or chapel in which you wish to marry. This might be that you or members of your family have regularly worshipped there, or that you have a family home in the parish. Individual circumstances vary and these examples are not exhaustive."

(b) Mrs Sarah Finch spoke to her proposals and shared Mr Cheeseman's concern that only a "genuine" connection should qualify; thus in her view residence should be long-term and not merely temporary. In addition, she argued that the connection should be current or recent, so that it had some current validity, as only thus would there be a prospect of a living and continuing relationship with the parish. She therefore proposed that entry on the electoral roll or attendance at public worship should amount to a qualifying connection only if it was within the past ten years; and

(c) Mr Clive Scowen spoke to his submission that qualifying connections should be "limited to substantial connections with the parish which still had some present reality to them", rather than possibly resting on a "fleeting past connection". To that end, he proposed that entry in the electoral roll should have to be within the previous fifteen years, and that both residence and habitual worship should have to be for at least one year within the previous fifteen years. Mr Scowen relied on the importance of this "real" and "current" connection in terms of the pastoral support that could be provided for the couple and with regard to the practicalities of providing sufficient evidence to demonstrate a qualifying connection.

All these submissions were considered in the context the individual types of qualifying connection under clause 1(3) and (4) (paragraphs 59 to 85 below refer).

Overview of Steering Committee proposals on clause 1(3) and (4)

57. At the request of the Chair of the Committee, and in order to provide the Committee with an overall picture of the issues before it in relation to clause 1(3) and (4) at the outset, the Steering Committee gave a summary of the background to the group of amendments it wished to propose to those provisions and their effect. The Committee noted that the general purpose of the amendments was to 'narrow' the definition of what constituted a qualifying connection so as to take account of a number of the concerns that had been expressed in the First Consideration debate and in the proposals and submissions before the Committee and, in particular, so as to reduce the possibility of 'tenuous' connections with a parish giving rise to a right to be married there. However, they also took account of other issues.

58. The individual amendments are explained below under the relevant provisions of clause 1(3) and (4). However, some of the main aspects of the Steering Committee's proposals were that they would:

(a) limit the qualifying connection by virtue of past entry on the church electoral roll;

(b) limit the qualifying connection by virtue of residence in the parish to cases where the person concerned had had his or her usual place of residence there;

(c) remove the qualifying connection based on having attended a school in the parish; and

(d) confine the cases relating to "relatives" to "parents" (including adoptive parents and those who had undertaken the care and upbringing of the person concerned) and to places with which a "parent" had a connection during the lifetime of the person concerned, and remove the possibility of establishing a qualifying connection merely by virtue of the fact that a relative (or parent) had been married in the parish.

Clause 1(3)(a) – qualifying connection based on past entry on the church electoral roll of a parish

59. The Steering Committee proposed an amendment to clause 1(3)(a) relating to a qualifying connection based on past entry on the church electoral roll. The Steering Committee saw that there was a problem in establishing a right on that basis in the absence, to which the Reverend Chris Lilley had drawn attention, of any legal requirement for past rolls to be preserved, and given the likelihood that most parish electoral officers disposed of old rolls. Unlike the position under the other grounds in clause 1(3) and (4), a person seeking to establish a qualifying connection on this ground would expect the local church to have evidence of the connection rather than to have to provide it him or her self. For the draft Measure to establish a right to be married in a church on this basis when parishes would often be unable to produce the relevant roll could create pastoral problems for clergy and other Church officials in the parishes. The amendment proposed by the Steering Committee would retain the qualification based on entry on the electoral roll but would provide that it would apply only to entry on the roll as from the date when section 1 of the Measure came into force. Thus parishes would be aware of the need as from that date to retain the old rolls or details of the information contained in them. This could be combined with an amendment to the Church Representation Rules to require parishes to do so. For the reasons given by the Steering Committee, the Committee agreed to this amendment.

60. Following up a further suggestion by the Steering Committee, the Committee also agreed that this amendment should be combined with an amendment (to the renumbered and renamed clause 4 of the draft Measure and by the insertion of a Schedule to the draft Measure) to amend the Church Representation Rules so as to require information from old electoral rolls to be kept for a minimum of twelve years (paragraphs 135 and 139 below refer).

61. There was no support on the Committee for imposing a requirement to have been on the electoral roll for a specified period. However, as regards the proposals relating to this provision made by Mrs Finch and Mr Scowen (paragraph 56 above refers), the Committee agreed that, in addition to the Steering Committee's amendment, clause 1(3)(a) should also be amended to require the person concerned to have had his or her name entered on the electoral roll during the previous twelve years. The Committee considered that this period, which lay between those proposed by Mrs Finch and Mr Scowen, was the one that would tie in well with the six-year lifetime of a church electoral roll. Subject to that amendment and that proposed by the Steering Committee, the Committee agreed that clause 1(3)(a) should be retained.

Clause 1(3)(b) – qualifying connection based on baptism or confirmation in a parish

62. The Steering Committee proposed an amendment to the part of clause 1(3)(b) relating to a qualifying connection based on confirmation. This would link the qualification to the parish that had presented (and therefore prepared) a candidate for confirmation and the consequent entry in the register of confirmations for that parish under Canon B39[6]. The purpose of this amendment was to ensure that the qualifying connection would clearly be with the parish where a person was prepared for confirmation and from where that person was presented, and not with another parish where the confirmation might have taken place (e.g. a "large" parish church in the deanery, or the cathedral, where a number of candidates for confirmation from different parishes were confirmed together.) It would be clear from the parish's own register whether the qualifying connection existed. The amendment in effect covered the same ground as proposals put forward by the Reverend Paul Benfield, the Reverend Canon Chris Lilley, the Venerable Clive Mansell, and Prebendary Colin Randall.

63. This amendment did not seek to alter the part of clause 1(3)(b) which allowed a person to establish a qualifying contention with a parish by virtue of having been baptised there. However, both the Reverend Paul Benfield and the Very Reverend Vivienne Faull, the Dean of Leicester, who had also put forward a proposal regarding clause 1(3)(b), identified a further potential problem in relation to baptism at the time of confirmation, when the baptism would take place at the same church or cathedral as the confirmation. The Steering Committee agreed to consider this point, and subsequently brought forward an additional amendment to address it, so that where the baptism took place in a combined rite which included both baptism and formation, it would only be the parish from which the person concerned was presented for confirmation that would be the basis of a qualifying connection under the draft Measure, rather than the parish in which that person happened to be baptized and confirmed. For the reasons set out in this paragraph and paragraph 62 above, the Committee agreed to the amendments proposed by the Steering Committee being made.

64. The Reverend Dr John Hartley spoke to his proposal that administration of a service of Thanksgiving for the Gift of a Child should count as a qualifying connection in the same way as the administration of baptism. He argued that a person should not be discriminated against later in life just because, while he or she was a child, a decision had been made to administer a thanksgiving rather than a baptism, quite possibly because of the current parish policy. The Steering Committee did not support Dr Hartley's proposal. In addition to the difference in substance between a baptism and a thanksgiving, it noted that there was no legal requirement to register or indeed possibility of registering a thanksgiving in the same way as a baptism. If the thanksgiving took the form of a separate service, one would expect a brief description to be recorded in the register of services, but if it took place as part of a normal

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[6] Paragraph 2 of that Canon provides that "the minister presenting [the person presented for confirmation]… shall record and enter the confirmation in his register book of confirmations provided in accordance with paragraph 3 of Canon F11". Paragraph 3 of Canon F11 provides for a register book of confirmations to be kept "in every parish church or chapel".

Sunday service that would not necessarily be the case. Therefore there was a very real risk that no evidence of a thanksgiving could be provided some twenty or so years later. Also it was noted that a person in this position would often have another qualifying connection, say on the basis of his or her own residence or that of his or her parents. The Committee concurred and rejected Dr Hartley's proposal.

65. Subject to the Steering Committee's amendment, the Committee agreed to retain clause 1(3)(b).

Clause 1(3)(c) – qualifying connection based on residence in a parish

66. The Reverend Canon David Bailey considered that proving residence could be so difficult and problematic that it would be better if this provision were removed altogether. He therefore proposed that clause 1(3)(c) should be deleted in its entirety so that a person who was relying solely on past residence to establish a qualifying connection would need to use the route of a Special Licence. The Committee rejected this proposal, voting three in favour and four against with one abstention.

67. The Steering Committee proposed an amendment to clause 1(3)(c) which would substitute a qualifying connection based on "usual place of residence" for one based on "residence". The Steering Committee recognised that concerns had been expressed about the precise meaning of the term "residence" (for example by the Reverend Prebendary Colin Randall) and as to how it could be proved. The Steering Committee nevertheless considered that a provision based on past residence in the parish should be retained, although the clergy would need guidance on how it should operate. It had decided against offering an amendment with a specific definition of "residence" for the purposes of the Measure, as Standing Counsel had advised that this might be interpreted as creating a distinction between the meaning of residence in this Measure on the one hand and in the 1949 Act or other legislation on the other. Rather, the Steering Committee had agreed to propose a change to clause 1(3)(c) so that it used the phrase "usual place of residence". This would provide a 'tighter' test which reflected more clearly what was intended and which would clearly exclude very short-term presence in the parish. It was already used in the Marriage Act 1949 in relation to the Common Licence procedure, and the Steering Committee considered that it would be possible to provide the clergy with adequate guidance about how to apply it. For the reasons given by the Steering Committee, the Committee agreed to this amendment being made.

68. Notwithstanding this amendment, Mr Jim Cheeseman confirmed that he wished to pursue his proposal for a minimum period of more than three years to be attached to a qualification based on residence. Mrs Sarah Finch also repeated her support for requiring the residence to have taken place not more than a given period in the past and took the view that the insertion of the word "usual", although helpful, was not by itself sufficient to meet the concerns she had expressed. Mr Clive Scowen also welcomed the insertion of the word "usual" but he also did not think that this was enough to meet his concerns, and wished to pursue his proposal for residence to be of at least one year, although he was prepared to reduce his original proposal of "within the previous fifteen years" to "within the previous twelve years", in order to be

consistent with the twelve year provision regarding electoral rolls which the Committee had already agreed (paragraph 61 above refers). The Committee also noted the submissions on this provision from the diocese of Oxford.

69. The Committee agreed to Mr Scowen's proposal that the residence qualification should be restricted to "at least one year", voting five in favour and four against, but did not accept the longer period originally proposed by Mr Cheeseman. However, the Committee rejected Mr Scowen's revised proposal that the period of residence should be "within the previous twelve years", voting two in favour and seven against, and also rejected the other proposals for a maximum period before the marriage within which the residence qualification must have been satisfied.

Clause 1(3)(d) – qualifying connection based on habitual attendance at public worship in the parish

70. The Reverend Dr Peter Ackroyd spoke to his proposal that the qualifying connection based on habitual attendance at public worship in the parish should be deleted in its entirety. He saw this as one amendment that was required (alongside others) to address what he saw as the "unacceptably and unworkably" wide definition of qualifying connection in the draft as it stood. He drew attention to the difficulties in establishing habitual attendance in the past. Mrs Sarah Finch now spoke in favour of deleting this provision entirely rather than imposing a time limit (of no more than ten years) as she had proposed in her original submission. In his written submission the Reverend Canon Michael Ainsworth also questioned the purpose of this provision and how habitual attendance could be proved.

71. Mr Clive Scowen indicated to the Committee that he still wished to pursue his proposal for habitual attendance to be for at least one year, although he was again prepared to reduce the period in his original submission requiring the attendance to be "within the previous fifteen years" to twelve years. He suggested that habitual worship would be almost impossible to prove further back than this and even if it could be proved it would be unlikely to reflect a current and real connection (paragraph 56 above refers).

72. The Committee also noted submissions on clause 1(3)(d) from the diocese of Oxford.

73. On the other hand, the Reverend Simon Butler spoke in favour of keeping this provision as currently drafted, as he had experience of ministry in parishes with a large ethnic community where, for members of the worshipping community, habitual attendance would be the primary 'connection' to a parish (rather than say, entry on the church electoral roll).

74. The Steering Committee was content for this sub-clause to remain in the draft Measure unamended, as it could envisage people who would be covered by this provision who would not otherwise be able to demonstrate a qualifying connection. For example, there were some people, such as those referred to by the Reverend Simon Butler, who for whatever reason did not apply for entry on the church electoral roll, and people who had been entered on the roll in the past but who could not rely on

clause 1(3)(a) because the entry would date from a time before the Measure came into force. The merit of the phraseology of clause 1(3)(d) was that it was used in the Church Representation Rules and was familiar. The Committee accepted that reasoning and concluded that past or present habitual attendance at public worship should remain a 'qualifying connection'; it therefore rejected the proposal to delete clause 1(3)(d) in its entirety. The Committee also rejected Mr Scowen's proposal that clause 1(3)(d) should require the habitual attendance to have been for "at least one year", voting one in favour and eight against, and also rejected Mr Scowen's revised proposal that habitual attendance should be "within the previous 12 years", voting one in favour and seven against, with one abstention.

Deleted sub clause 1(3)(e) – qualifying connection based on attendance at a school in the parish

75. The Steering Committee proposed an amendment to delete clause 1(3)(e) as it stood in its entirety. The Steering Committee shared the concerns expressed in a number of proposals and submissions about "attendance at a school in the parish" as a qualifying connection. If this were included then logically there was a strong case for also including attendance at colleges or universities. The Steering Committee was clear that what was being sought here was a meaningful connection with the parish church during school years through the person's school. The Steering Committee did not disagree with this objective, but recognised that it was very difficult if not impossible to draft a provision that covered such cases without also applying far more widely and covering situations where there had been no genuine connection with the parish or parish church. Moreover, the Steering Committee had come to the conclusion that in general the cases at which clause 1(3)(e) was aimed would already be covered through sub-clauses (b), (c) or (d). Therefore sub-clause (e) was not essential and was better deleted.

76. The Committee noted that the Revered Dr Peter Ackroyd, the Reverend Paul Benfield, Mrs Sarah Finch, Mr Clive Scowen and the Reverend Chris Strain were putting forward essentially the same proposal, that it was supported by some of the Oxford clergy who had made submissions, and that a number of other Synod members and Oxford clergy had also expressed concerns about, or suggested restrictions on, clause 1(3)(e).

77. For the reasons put forward by the Steering Committee and others mentioned in paragraph 75 above, the Committee agreed to this amendment being made. As a result, the proposals merely to restrict clause 1(3)(e) (see paragraph 76 above) fell.

78. However, the Committee accepted that attendance at worship as a pupil at a church school in the parish might give rise to special considerations and asked whether it would fall within clause 1(3)(d). The Committee was advised that there were a number of reported decisions by the courts on the meaning of "public worship", and that the courts had given rather different meanings to that expression in different legal contexts. In view of the case-law, it seemed at best doubtful whether an act of worship which took place on the school premises themselves could regarded as "public worship" within the meaning of clause 1(3)(d). However, the Steering Committee was

of the view that regular attendance by the school body at acts of public worship in a parish church (say, three times a year, at the Christmas and Easter seasons and Harvest) would qualify under clause 1(3)(d), provided the person concerned had in fact attended on those occasions while he or she was a pupil at the school. The Committee noted this and was content with the position.

Clause 1(3)(f) (renumbered 1(3)(e)) and clause 1(4)

79. The Steering Committee proposed an amendment that would substitute a new renumbered clause 1(3)(e) and a new clause 1(4). The Steering Committee had come to the conclusion that these provisions ought to be narrowed down. The Marriage Law Working Group had decided to include a number of categories of persons other than parents in clause 1(4) - for example grandparents - because they might have been responsible for the care of the person concerned at some time during his or her childhood. However, the provision as it stood was much wider. In order to restrict renumbered clause 1(3)(e) to cases where the person seeking marriage had some real connection with the parish, past or present, the Steering Committee's amendment would confine clause 1(4) to a parent (including an adoptive parent) or any other person <u>who had undertaken the care and upbringing of the person</u> now seeking to marry. This was to the same effect as a proposal from Chancellor John Bullimore, and Mrs Sarah Finch and Mr Clive Scowen had put forward similar proposals. It would mean that a grandparent or godparent would only provide a qualifying connection if he or she had undertaken the care and upbringing of that person. The Committee noted that there were a substantial number of other proposals from Synod members, as well as submissions from the diocese of Oxford, for restricting the scope of clause 1(4) in various ways.

80. In addition, the Steering Committee proposed that there should be a restriction in renumbered clause 1(3)(e) on the time when the "parent" had been resident in that parish or on the church electoral roll, namely that it must be during the lifetime of the person seeking to establish a qualifying connection. It would thus include parents who were now resident in the parish but who had moved there after the person seeking marriage had become an adult, but not a parish where one of the parents had lived before the child was born. Following the same principle, the Steering Committee proposed deleting the provision in the original clause 1(3)(f) which would allow a qualifying connection to be established by virtue of the relative having been married in that parish. This was also intended to prevent the perpetuation of qualifying connections from one generation to another based solely on marriage in a particular church.

81. To be consistent with the Committee's previous decisions on entry on the electoral roll and 'residence' (paragraphs 59 - 61 and 67-69 above refer), the Steering Committee proposed that the same qualifications as had been agreed for clause 1(3)(a) and (c) should also apply in relation to a "parent".

82. Here again, the Committee noted that there were a large number of submissions from Synod members and others questioning or proposing amendments to clause 1(3)(f); the Steering Committee's proposals covered some of the same ground as a number of

them, although some of the other proposals went further. Thus the Reverend Paul Benfield in his original submission had considered this provision to be too widely drawn and proposed that it should be deleted; however, he indicated to the Committee that he was content with the Steering Committee's proposed amendment. (Canon Michael Ainsworth had also proposed such an amendment.). The Reverend John Hartley, who had proposed substituting the concept of parental responsibility for what appeared in the original clause 1(4), was also content with the amendment proposed by the Steering Committee.

83. Mr Clive Scowen, in line with his original submission, proposed that only the current residence of a parent should be a ground for establishing a qualifying connection; similar amendments were also put forward by the Reverend Peter Ackroyd and Mrs Sarah Finch. The Steering Committee opposed this as it considered that a person should be able to establish a qualifying connection with a parish where his or her parents had lived in the past during his or her lifetime (for instance during that person's childhood). It could also be the case that a person might wish to establish a qualifying connection on the basis of past residence of parents who were now both deceased, and Mr Scowen's proposal would prevent that. The Committee rejected Mr Scowen's proposal for those reasons.

84. Mr Scowen also questioned the removal of the provision for establishing a qualifying connection on the basis of parents having been married themselves in a parish (although he had advocated this himself in his original submission as did Chancellor Bullimore and Mrs Gill Morrison), but was content with the Steering Committee's explanation (paragraph 80 above refers).

85. For the reasons given by the Steering Committee, the Committee agreed to the amendments which the Steering Committee had proposed being made, and also agreed that clause 1(3)(f) and (4), as amended, should be retained in the draft Measure. The other proposals for amendments fell.

Other possible qualifying connections

Qualifying connection based on place of work, in team ministries or multi-parish benefices or based on distance

86. The Committee considered a submission from Mr Tim Barnard (a reader in the diocese of Oxford who was not a Synod member), which raised the possibility of a qualifying connection based on place of work. A practical example given to the Committee was that of a teacher working and worshipping in a school in the parish. The Committee recognised the importance of the workplace as a possible centre of a person's membership of a Christian community, but decided that it was not necessary to provide for a specific qualifying connection based on this, as a person who might wish to rely on it would almost certainly be able to establish a connection based on one of the existing qualifications. If not, the route of a Special Licence would remain open.

Team ministries or multi-parish benefices

87. The Bishop of Dorchester and others had made submissions on this subject, and the Bishop had expressed concern that if existing legal arrangements for anyone within a benefice to be able to marry in "any of the churches" in the benefice were extended to those with a qualifying connection difficulties might arise. The Steering Committee pointed out that the introduction of the draft Measure would not affect the existing legal position, and that this and the position as it would be under the Measure were as explained in paragraph 54 above. The Committee confirmed it was content with this and that no further amendments were needed to take account of it.

Qualifying connection based on distance

88. The Steering Committee was not in favour of amending the draft Measure to give a qualifying connection based on residence within a certain distance of a particular church, a proposition that had been put forward by clergy from the diocese of Oxford. The Committee agreed, and considered that this was unnecessary (as someone travelling to worship from a distance would be covered by habitual attendance and/ or, possibly, past residence) and undesirable, as it would widen the scope of qualifying connection too much.

Qualifying connection based on ' deanery' or 'historical connection'

89. Mr Gavin Oldham put forward two proposals on this:

(a) The first was that it should be possible to establish a qualifying connection to a deanery (i.e. a qualifying connection in relation to any parish in a deanery should extend to all other parishes in that deanery). He gave practical examples of where this might operate (e.g. certain churches in a deanery having better facilities than others) and argued that such a provision would reflect the increased importance of the deanery in Church life and provide a greater mission opportunity; and

(b) He also spoke in favour of his second proposal that it should be possible for a qualifying connection to be a 'historical connection', such as a past benefaction. He was concerned that the draft Measure (and the proposals and submissions for amendment received) were unduly reflective of the concerns of the clergy and that this was at the expense of the views of the laity and the opportunities for mission that a 'wider' qualifying connection would bring.

90. The Steering Committee resisted both these proposals, which it considered would 'dilute' the value of the qualifying connection to an unacceptable degree. The Reverend Canon David Bailey also opposed these proposals and put forward the contrary view that a narrower and 'more meaningful' qualifying connection in accordance with the draft Measure (combined with the continuance of the existing route of qualification through entry on the electoral roll on the basis of habitual worship) was preferable in terms of mission opportunity to that envisaged by Mr

Oldham. The Committee rejected both of the proposals from Mr Oldham, voting none in favour, eight against, with one abstention.

Clause 1(5)

91. Clause 1(5) would give a person who had the right to have a marriage solemnized in accordance with clause 1(1) the like right to have the banns published in the parish church where the marriage was to be solemnised. No proposals or submissions were received on it and the Committee agreed that it should stand part of the Measure.

Clause 1(6)

92. Clause 1(6) provides that the publication of banns under clause 1(5) was in addition to the requirement to have them published in the parish or parishes where the couple reside. The only proposal or submission on this was from Mr Clive Scowen, who withdrew his proposed amendment, and the Committee agreed that clause 1(6) should stand part of the Measure.

New sub-clause 1(7)

93. The Steering Committee proposed an amendment to address one of the concerns raised by Mr Clive Scowen in his submissions on the drafting of the Measure (paragraphs 38-39 above refer). This new sub-clause would apply section 11(2) and (4) of the 1949 Act to marriages conducted under the Measure, in the same way as they applied to a marriage in a parish where neither of the couple was resident but where one or both of them were on the church electoral roll. The effect of the amendment was that a certificate or certificates that the banns had been called in the parish or parishes where the couple were resident must be produced to the member of the clergy who was to officiate at the marriage. Mr Scowen indicated that he was content with this amendment, and the Committee agreed to it being made.

Clause 1(7) (re-numbered clause 1(8))

94. Clause 1(7) (re-numbered as clause 1(8)) originally provided that a person wishing to have his or her marriage solemnized in accordance with clause 1(1) must provide such information, written or otherwise, as the minister of the parish may require in order to satisfy himself or herself that the person concerned has a qualifying connection. It also provided for the application of section 8 of the 1949 Act, requiring a couple who wished to have banns published to give written notice beforehand to the member of the clergy concerned.

95. The Steering Committee proposed an amendment to this provision which would retain the additional provisions but would also require the minister, when considering whether any information provided to him or her was sufficient for this purpose, to have regard to guidance issued under clause 3. (The Steering Committee explained that it would also propose an amendment to insert a new clause 3 providing for the House of Bishops to issue such guidance - paragraphs 128 to 133 below refer.)

96. The Steering Committee's reasons for proposing this pair of amendments lay in part in a number of submissions and proposals to the Committee expressing concern that the clergy would have difficulty in deciding whether a qualifying connection had been established, that investigating these cases would involve them in additional work, and that this therefore would increase the pressure on them. It also arose out of the concern that there would be a serious lack of consistency between different parishes in dealing with these cases, and that they could lead to pastoral difficulties between clergy and laity, informal or formal complaints and even legal proceedings.[7]

97. The Steering Committee recognised that clause 1(8) as it stood placed the onus of establishing the qualifying connection on the person who wished to marry in the parish in reliance on clause 1. Nevertheless, the Steering Committee considered it was important for, and in the interests of, all concerned that the clergy should have clear, practical and uniform guidance on how to reach their decision on whether a qualifying connection had been established in a particular case and that the legislation should impose a duty on them to have regard to that guidance.

98. In this connection, the Reverend Paul Benfield had been concerned in his original submission that clause 1(7) was "a recipe for different requirements to be introduced in different parishes" when clergy considered information provided to them to support a qualifying connection. He was however content that the amendments proposed by the Steering Committee would fully meet his concerns. Mr Jim Cheeseman was similarly re-assured by this amendment. His concern had been that clergy should not be overburdened with the requirements of establishing a qualifying connection. Dr Graham Campbell's concerns about these matters had led to his raising the possibility of some form of appeal procedure for cases where a minister had decided that there was no qualifying connection or for this matter to be addressed in a Code of Practice. As explained in paragraph 37 above, the Steering Committee did not favour any form of appeal procedure and therefore opposed Dr Campbell's proposal, and the Committee took the same view. However, the Steering Committee considered that the issues which had led to the proposal could and should be addressed by providing for guidance on good pastoral practice for clergy in reaching their decision (and in informing a couple of an adverse decision) as provided for in the amendments the Steering Committee was proposing.

99. The Committee concurred with the Steering Committee, and therefore agreed to the amendment being made.

100. The Reverend Canon Chris Lilley in his submission had raised the possibility of requiring an applicant to provide evidence on oath in support of a qualifying connection. The Committee considered whether the draft Measure should make it mandatory for a person seeking to establish a qualifying connection to provide information on oath in all cases, or at least give the cleric concerned a discretion as to whether or not to require a sworn statement. The Committee noted that requiring an oath would mean either authorising the parish priest to administer the oath or requiring the person who was seeking to establish a qualifying connection to go to

[7] The considerations dealt with in paragraph 109-110 below are also relevant here.

some other person who was able in law to do so. Quite apart from this, the Committee concluded that neither option should be pursued: the first option would be contrary to the 'pastoral ethos' of the Measure and in the vast majority of cases would rightly be seen as 'heavy handed' and unnecessary and the second option could open clergy up to legal challenges based on discrimination if, in the same circumstances, one couple were asked to take an oath and another not (by the same cleric or by different clergy)[8]. Rather, the Committee took the view that the guidance (to be produced under the new clause 3) would assist clergy on the exercise of the functions given to them in clause 1(8) and that this guidance would need to direct clergy to consult their diocesan registrar for assistance if they needed it on the question of the credibility of the evidence and the possibility of asking for evidence on oath.

Clause 1(8) (renumbered clause 1(9))

101. This provision dealt with public chapels licensed by the bishop for marriages, and had already been discussed - paragraph 52 above refers. No proposals or submissions were received on it.

Clause 1(9) (renumbered clause 1(10)) – Cathedrals, "opt-in" and "opt out"

102. Under this provision, the word "church" in clause 1 does not include a cathedral.

103. As regards cathedrals, the Committee had before it a summary, provided by Ms Sarah King, the co-ordinator of the Association of English Cathedrals ("the AEC"), of the views of 10 cathedrals which had sent comments to the AEC on the subject. Ms King had also written to the Committee to explain that the prevailing view among the cathedrals was that cathedrals should be excluded, but subject to a provision allowing those that wished to do so, whether or not they were parish churches, to "opt in" to the new provisions. At the meeting on which it dealt with the provision on cathedrals, the Committee also had before it a further letter from Ms King in which she had conveyed the view of the AEC's Executive Committee "that it would be better for all cathedrals to be excluded from the Measure [rather] than for some cathedrals to be forced to apply the rules [i.e. the draft Measure] against their will", which could create "significant problems and costs".

104. The Committee noted that, in general, the non-parish church cathedrals which had expressed views on the subject were concerned that giving those with a qualifying connection the right to be married there would detract from other key aspects of a cathedral's ministry (including its responsibilities to the diocese as a whole). Such marriages would make additional calls on the time of cathedral clergy which could otherwise be devoted to other aspects of the cathedral's ministry, and also that of cathedral lay staff, who might need to work additional hours. The non-parish church cathedrals therefore tended to favour retaining the existing arrangements under which a couple could apply for an Archbishop's Special Licence if they had a genuine connection with the cathedral and the cathedral itself supported the application. For example, the Committee had before it a submission from the Very Reverend Nicholas

[8] As regards this, see also paragraphs 109-110 below.

Coulton, the Sub-Dean of Christ Church, Oxford, saying that Christ Church would wish to continue with the existing legal arrangements.

105. On the other hand, the Committee noted there were at least some cathedrals, in particular some which were parish churches, which would welcome the opportunity to conduct more marriages and to use the "qualifying connection" criteria (or at least some of them), while recognising that other cathedrals might not be in a position to do so.

106. The Reverend Paul Benfield spoke to his submission that the provision excluding cathedrals should be deleted on the grounds it would be unfair to parish church cathedrals. (The Reverend Canon David Bird had put forward a similar proposal.) He also argued that if cathedrals were to be excluded then 'greater churches' should be treated in the same way as they were often at least as busy as cathedrals and often had fewer staff. This could be achieved by means of an application to 'opt-out'. The Reverend Simon Butler spoke to his submission that provision should be made for cathedrals to 'opt-in', if they so desired, to reflect their "own particular circumstances" and to the "benefit [of] local mission and ministry". The Reverend Dr John Hartley also spoke in favour of an 'opt-in' provision for cathedrals, because some cathedrals would "welcome the opportunity to minister more widely".

107. The Committee also considered the proposal from the Very Reverend Vivienne Faull, the Dean of Leicester for an amendment to allow cathedrals, particularly those that had a parish, to be included, and also the proposal from the Reverend Canon Stephen Lake, the Sub-Dean of St Albans, for each cathedral to be allowed to create its own admissions policy within the spirit of the legislation.

108. The Reverend Canon David Bailey spoke from his experience as Vicar of the 'greater church' of Beverley Minster in favour of the principle of all parish churches being treated the same. On that basis he was content for 'greater churches' such as his own being included in the draft Measure (with no opt-in or opt-out) but alongside that he would also strongly argue for all parish church cathedrals to be similarly included in the draft Measure, with no opt-in or opt-out. Mr Andrew Presland had put forward a similar view, while the Reverend Canon David Bird had proposed that all cathedrals be included. On the other hand the Dean of Wakefield, speaking as the dean of a parish church cathedral rather than as the Chair of the Steering Committee, urged the Committee to note however that all cathedrals, whether parish cathedrals or not, had special diocesan responsibilities that no parish church, however large, had to accommodate and that to add an extra burden of more potential weddings to this timetable would, for some cathedrals, be particularly onerous. This consideration, in his mind, led him to the view that all cathedrals should remain excluded from the draft Measure (it being noted that the route of a Special Licence for a marriage service to be conducted at a cathedral remained open).

109. The Dean of the Arches and Auditor, on behalf of the Steering Committee, reminded the Committee that any provisions for cathedrals or other churches to opt-in or opt-out of the draft Measure would need first to satisfy the Ecclesiastical Committee of Parliament from the viewpoint of fairness to the citizen, and secondly the courts,

bearing in mind the risk of any discretion to opt-in or opt-out giving rise to challenge on the basis of discrimination under Human Rights legislation. To that end any such discretion would have to be demonstrably exercised on reasonable grounds which provided an objective justification for the decision, and that would be difficult to establish. The Dean of the Arches also pointed out that if there were a provision to allow cathedrals to 'opt-in', this would almost inevitably lead to inconsistency of practice between the cathedrals of different dioceses, which could lead to a challenge to the decision of a particular cathedral not to opt in, and indeed would be undesirable even if it did not lead to legal challenge on the grounds of discrimination.

110. The Committee was advised that however carefully the grounds for an opt-in or opt-opt might be drafted there would always be a risk of legal challenge on the grounds that certain actions were discriminatory. It also noted that legal issues of discrimination as well as more general issues of consistency could arise in relation to differences between cathedrals, and that if the Measure was amended to provide an option of this kind, both groups of issues would be likely to put those cathedrals which did not wish to come within the Measure under pressure. The Committee also noted that any provision for non-parish church cathedrals to 'opt-in' would require extensive additional clauses to be inserted into the draft Measure to provide criteria for establishing a qualifying connection in relation to the cathedral rather than in relation to a parish.

111. On the position of 'greater churches', the Steering Committee was clear that the absence of a legal definition of what constituted a 'greater church' would create major problems in making special provision for them, and for the sake of clarity and consistency these churches should be treated no differently from other parish churches. Likewise, taking account of the legal issues as regard discrimination which had already been explained in relation to cathedrals, the Steering Committee wished to resist the possibility of any churches other than cathedrals being allowed to "opt out" of the Measure. (This was relevant not only to the "greater churches" but also to the proposals and submissions on "opt out" summarised in paragraphs 47-48 above, on which the Committee had still to reach a decision.).

112. The Committee noted that the Measure would not affect either the existing rights of parishioners of a cathedral parish or the possibility of a person having his or her name added to the church electoral roll of such a parish after six months' habitual worship. Likewise, the Measure would not affect the possibility of obtaining a Special Licence for a marriage in a cathedral. From the point of view of many of the cathedrals, the Special Licence procedure had the advantage that a licence would only be granted if the cathedral supported the application. If there were any particular issues regarding the Special Licence procedure in these cases, it would be open to the cathedrals to discuss them with the Faculty Office, and the Committee would wish to encourage them to do so.

113. On the basis of this discussion the Committee proceeded to vote on the following three propositions:

(a) that all parish church cathedrals should be included in the draft Measure – a proposal that was lost, four voting in favour and five voting against;

(b) that all cathedrals (parish church and non-parish church) should remain outside the draft Measure as currently provided by renumbered clause 1(10) – a proposal that was carried, eight voting in favour and one against; and

(c) that there should be a provision for all cathedrals to 'opt-in' to the draft Measure – a proposal that was lost.

The Committee also agreed that no other option provisions should be provided for parishes (or particular types of parish), either in terms of a complete opt-out or an opt-out from one or more of the qualifying connections.

114. The Committee therefore rejected the proposals for clause 1(9) (renumbered as 1(10)) to be amended in relation to cathedrals, or for an opt in or opt out for cathedrals or any other churches.

115. The Committee also considered a submission from the Sub-Dean of Westminster Abbey, seeking confirmation that the Abbey was not subject to the provisions of the Measure. The Committee could see no basis for suggesting that the Measure would impose a right to be married on the basis of a "qualifying connection" on the Abbey; the reason why express provision had been made for cathedrals by the renumbered clause 1(10) was that some of them were parish churches, which Westminster Abbey was not.

Clause 1(10) (renumbered clause 1(11))

116. This provision sets out the meaning given to a number of specific terms in the context of clause 1.

117. In his submission relating to the meaning given to the term "minister", the Reverend Paul Benfield had asked that the precedence of the team vicar with a special cure of souls for an area including the church in question should be raised to first, so that a person holding such an office would be the "minister" under the Measure, rather than, as the Measure was originally drafted, leaving him or her to be the "minister" only if there was no incumbent or priest in charge. He also asked that if there was no such team vicar, and no incumbent or priest in charge, if the acting team rector (if there was one) or the longest serving team vicar should be the "minister", rather than the rural dean, although the rural dean should continue to act as the minister if there was no-one in any earlier category to do so.

118. The Committee favoured this idea and asked to Steering Committee to bring forward a suitable amendment. In response to this, the Steering Committee proposed an amendment under which:

(a) "minister" would mean any priest with "a special cure of souls" for the area including the church, whether in a team ministry or not (thereby

including, say, an assistant curate licensed with a special cure of souls under clause 61 of the draft Dioceses, Pastoral and Mission Measure when in force);

(b) where (a) did not apply "minister" would mean the incumbent of the benefice;

(c) where neither (a) nor (b) applied, "minister" would mean the priest-in-charge of the benefice;

(d) where none of the above applied (and therefore where there was no incumbent or priest-in-charge), it was to mean the "acting team rector" appointed under section 20(14) of the 1983 Measure (if there was one) or the longest serving team vicar; and

(e) where none of the above applied, it would mean the rural dean.

Mr Benfield welcomed this amendment, and the Committee agreed to its being made.

New clauses 1(12) and (13)

119. The Steering Committee proposed two amendments to insert two new sub-clauses (12) and (13) into clause 1:

(a) The purpose of the first of these was, in relation to qualifying connections based on sub-clause 1(3)(b), (c), (d) and (f), to provide that where pastoral re-organisation had taken place and a parish had ceased to exist, or there had been a change in parish boundaries, which resulted in the place where a person had been resident, or the church where a person had worshipped or been baptised, being located in another parish then a qualifying connection on the basis of the place or parish church relocated by this reorganisation (which to the couple concerned would be more meaningful than a connection to a particular parish) would continue and would "attach" to the parish which now included the place or church.

(b) The second sub-clause applied this to those presented for confirmation from a parish which had ceased to exist or had undergone a change of boundaries, with the connection "attaching" to the church in whose register the confirmation was recorded.

120. The Steering Committee explained that these provisions did not deal comprehensively with cases of pastoral re-organisation, and that to attempt to do so would be unduly complex, but any cases not covered by them, if they arose, could be addressed by the Special Licence procedure. (The amendments dealt so far as practicable with the point raised by the Reverend Paul Benfield on cases where a new parish had been created.)

121. The Committee agreed to both these amendments being made.

122. The Committee agreed that clause 1 (as amended) should stand part of the Measure.

CLAUSE 2

123. This clause made it possible to grant a Common Licence for the marriage in a church or chapel of a person who could be married there under clause 1. It also dealt with some aspects of the Common Licence procedure in such cases.

124. The Reverend Dr John Hartley in his original submission had asked that this clause be deleted from the draft Measure. He was concerned that the effect of the clause would be to allow a person who had failed to provide sufficient evidence to satisfy the minister of the parish that he or he had established a qualifying connection to apply for a Common Licence, which involved swearing before an appropriate authority that he or she had such a connection, and thus to override the minister's decision. The Steering Committee was advised that Dr Hartley's concerns were not necessary; in practice there was no question of the decision of the minister being overruled. If it was possible for the marriage to take place on the basis of publication of banns the evidence would be submitted to the minister concerned, who would decide whether a qualifying connection had been established. If there was some reason (apart from the adequacy or otherwise of evidence of a qualifying connection) why the marriage could not proceed by banns – for example, if one of the couple was temporarily resident abroad and could not have banns called where he or she was resident, or if there had been some defect in publishing the banns - the persons concerned might be able to make an application for a Common Licence. However, clause 2 made it clear that in that event the evidence would have to be submitted to the person who had the authority to grant a Common Licence, and he or she would need to be satisfied by it; merely asserting on oath that the qualifying connections existed would not be sufficient.

125. Mr Derek Wellman, on behalf of the diocesan registrars, supported the Steering Committee's analysis and pointed out that if, in the circumstances described above, an application for a Common Licence was received from a couple who could on the face of it have been married by banns, that fact would be picked up. He was also confident that the Ecclesiastical Law Association would wish to issue guidance on this to registrars (and possibly include a discussion of this on an agenda of one of its meetings) before the draft Measure came into force.

126. On that basis, Dr Hartley confirmed to the Committee that he was content for this clause to remain in the draft Measure unamended and that he did not wish to press his original proposal for its deletion.

127. The Committee agreed that clause 2 should stand part of the Measure.

NEW CLAUSE 3

128. The Committee had already decided to amend renumbered clause 1(8) so that the minister, when considering evidence provided to support a qualifying connection,

would be under a duty to have regard to guidance issued under clause 3 (paragraphs 95-99 above refer).

129. The Steering Committee now proposed the insertion of a new clause 3 into the draft Measure which would provide for the House of Bishops to issue guidance as to the exercise of any functions by a minister under section 1(8) or by the authority having power to grant a licence under that section as applied by section 2. The Steering Committee explained that it had given careful consideration to what body would be appropriate to issue the guidance. In view of the need for consistency throughout the Church, the Steering Committee was clear that it needed to be a national Church body, and it had come to the conclusion that the appropriate body, and the only appropriate body, was the House of Bishops. This was not only because of the authority guidance from the House would carry, but because the subject matter was bound up with pastoral care and pastoral relations between clergy and laity. Because it also related to the legal obligations of the clergy, there was also a link with the enforcement of those obligations. What was envisaged was a brief piece of practical guidance, and on the basis that a draft of the guidance would be prepared for the House to consider the Steering Committee did not believe it should take up an undue amount of the House's time.

130. The Committee concurred, and agreed that this clause should be inserted into the draft Measure.

131. The Steering Committee also put forward, for the purpose of discussion, a further provision for inclusion in the new clause 3, giving the House power to issue such other guidance as to the implementation of the Measure generally as the House thought fit. This would be purely permissive; unlike the amendment already agreed, it would not impose any duty on the House to issue guidance.

132. A number of the submissions and proposals to the Committee had referred to the need for guidance for the clergy. Some – for example the Reverend Dr John Hartley – had emphasised the need for guidance on deciding whether a qualifying connection had been established. As regards this, Dr Hartley confirmed to the Committee that what he had heard in discussion and the Committee's amendments to the draft Measure satisfied him that this would be produced. However, others, including the Reverend Angus McLeay, Mrs Gill Morrison, Mr Andrew Presland and the Bishop of Hereford, saw the need for guidance as extending more widely. (For example, Mrs Morrison referred to pastoral issues, including the importance of the incumbent of the parish where the couple live being contacted and the church in that parish being prepared to support the couple after marriage.)

133. The Committee noted that the House of Bishops did not need any express power in order to issue guidance on the implementation of the draft Measure generally if it thought that appropriate. Although the inclusion of such a provision would serve to highlight and reinforce the oversight of the House, on balance the Committee agreed that if it was not needed then it should not be included, voting none in favour, eight against, with one abstention. On that basis, the Committee was content that nothing further was needed to address the submissions regarding guidance in terms of

amendments to the legislation. However, it was agreed that the Revision Committee report should record the matters on which it had been suggested in the course of the Committee's work that guidance was necessary or desirable, while leaving open how and by whom it should be produced.[9]

CLAUSE 3 (RENUMBERED CLAUSE 4) AND RENAMED "SUPPLEMENTARY PROVISIONS"

134. The Steering Committee proposed an amendment to address a second concern raised by Mr Clive Scowen in his submissions on the drafting of the Measure (paragraph 39 above refers). This amendment would insert a new sub-clause (2) into the renumbered clause 4 that paralleled a provision in the 1949 Act regarding marriages in a parish where one or both of the couple were on the church electoral roll. It ensured that where a marriage had been solemnised, after banns or under a Common Licence, under the Measure, and an issue subsequently arose as to whether there had been a valid marriage, it would not be necessary to prove that one of the parties had had a qualifying connection with the parish where the marriage took place, nor could anyone disputing the marriage bring forward evidence to show that had been no qualifying connection. Mr Scowen indicated to the Committee that he was content with this amendment and the Committee agreed that this amendment should be made.

135. The Steering Committee also proposed an amendment to insert a new sub-clause (3) to provide for the Church Representation Rules to be amended as provided in a Schedule to the draft Measure (paragraphs 60 above and 139 below refer). The Committee agreed to this amendment being made.

136. The Committee agreed that renumbered and renamed clause 4 (as amended) should stand part of the Measure.

CLAUSE 4 (RENUMBERED CLAUSE 5)

137. The Steering Committee proposed an amendment to renumbered clause 5(2), which dealt with the coming into force of the Measure. Now that the draft Measure was more complex than at First Consideration, the Steering Committee was of the view that it would now be prudent to include in the draft Measure the standard provision which allowed for different provisions of the Measure to come into force on different days. The Committee agreed to this amendment being made.

138. The Committee agreed that renumbered clause 5 (as amended) should stand part of the Measure.

NEW SCHEDULE

139. Further to and in support of the amendments that the Committee had already agreed (paragraphs 60 and 135 above refer), the Steering Committee proposed an amendment to insert a Schedule to the draft Measure to amend the Church Representation Rules

[9] See Appendix V below.

so as to require the maintenance of a record of the contents of any electoral rolls that came into effect in or after 2007 and the retention of this record for a minimum period of twelve years after the roll in question ceased to have effect. The Committee agreed to this amendment being made.

LONG TITLE

140. The Steering Committee proposed amendments to the Long Title to insert the additional words "in a parish" and to insert the words "and for connected purposes" (the former for clarification and the latter to cover amendments to the Church Representation Rules as now provided for in the draft Measure as amended by the Committee). The Committee agreed to these amendments being made.

141. The Committee agreed that the Long Title (as amended) should stand part of the Measure.

ADDITIONAL POINTS CONSIDERED

Fees

142. The Reverend Paul Benfield in his original submission had proposed that the draft Measure "ought to state whether [different fees for weddings where there is residence and where there is not] are or are not permissible". Mr Adrian Greenwood in his submission had spoken in favour of a "two (or multiple) tier system of wedding fees" giving preference to 'resident' couples. The possibility of setting up a system of two (or more) levels of fees was also raised in other proposals and submissions, including those from Mr Nigel Chetwood and the Reverend Canon Chris Lilley and clergy from the diocese of Oxford. The Venerable Clive Mansell, the Archdeacon of Tonbridge, and the Reverend Canon Michael Ainsworth were however opposed it.

143. The Committee was advised that it would be relevant to the "general purport of the Measure" within the terms of SO 53(e) for it to provide for the setting of separate fees for marriages based on a qualifying connection. However, the Committee also noted that there was existing legislation in the Ecclesiastical Fees Measure 1986 ("the 1986 Measure") providing a mechanism for the setting of parochial fees, by an Order made by the Archbishops' Council, subject to approval by the Synod. The Archbishops' Council was advised on this by the Deployment, Remuneration and Conditions of Service Committee of the Ministry Division ("DRACSC").

144. The Committee had before it two letters written on behalf of DRACSC. The first explained that DRACSC "does not at this stage have a firm view on whether there should be an additional fee to the incumbent for proving [a qualifying] connection", but indicated that this would not seem appropriate unless additional work was involved. A second letter set out DRACSC's view that "charging an additional fee payable in cases where the marriage is taken by a cleric from another parish", something that was more likely to occur once marriages could be arranged on the basis of a qualifying connection as well as residence, "would represent a fundamental change to the current basis on which fees are charged", and stated that DRACSC "therefore considered that it would not be appropriate to charge an additional fee in

these cases". (The issue of additional fees was also raised in the submission from the Bishop of Dorchester.)

145. The Committee noted all these views. It concluded that the draft Measure should make no provision as regard to fees and therefore, subject to any provision made under the 1986 Measure, the existing fee for a marriage would apply to any marriage service arranged under the present Measure (including the time taken in assessing the evidence of a qualifying connection). There would therefore be no legal right to impose an 'extra' fee on the basis of a qualifying connection. It would not be possible in practice for the draft Measure to set an 'extra' or 'additional' fee for weddings conducted on the basis of a qualifying connection or any other fees (for instance, to be charged by clergy from outside the parish) as these would require an amendment to the draft Measure whenever these fees required upgrading in the future. If any additional fees were to be imposed in cases where the marriage took place on the basis of a qualifying connection, they would need to be provided for in a similar manner to existing parochial fees, by Order made by the Archbishops' Council under the 1986 Measure. However before that could happen a thorough investigation of whether or not any extra or additional fees were justified should to be undertaken. The Committee was clear that it was not the appropriate body to do this and that it should be for those responsible for advising the Archbishops' Council on the exercise of its powers under the 1986 Measure to consider. The Committee therefore rejected the proposals for provision in the draft Measure for a dual level or multiple levels of fees or additional fees.

Designated "wedding churches" and "sharing of fees"

146. Mr Jim Cheeseman spoke to the proposal that there should be designated "wedding churches" (i.e. the most attractive churches in the area) where couples could be married by the local clergy after due preparation, with a sharing of fees "to compensate the PCC whose church is being used in this way". This would be with or without a qualifying connection. Mr Cheeseman explained that he had been asked to put this forward by members of one of his deaneries. The Committee was not in favour of making any amendments along these lines, which, if implemented, would fundamentally change the existing law on marriages conducted in the Church of England and would therefore run contrary to the ethos of the draft Measure. It therefore rejected the proposal.

Possible application of qualifying connection to college/ institutional chapels

147. The possible extension of the right to marry on the basis of a qualifying connection to a school or university chapel or other similar extra-parochial place had been raised by a number of non-Synod members, including the Bishop of Dorchester and Professor Bernard Silverman, Master of St Peter's College, Oxford and the Diocesan Registrar of Oxford.

148. The Steering Committee explained that the Marriage Law Working Group had brought forward some complicated proposals for a scheme for the diocesan licensing of such chapels for marriages. It had necessarily been complex because of the variety

of institutions involved and their special features, in particular the fact that many of them were on private property to which the public did not have access as of right. However, their complexity would inevitably have made them less attractive to the institutions concerned. Moreover, the scheme had been produced in the context of wide-ranging Government proposals that were not now being taken forward. The Steering Committee considered that there was no case for reviving those proposals, and that (except in so far as any of these venues might fall within renumbered clause 1(9)) the qualifying connection provisions should not and could not be extended to them. The Steering Committee had therefore accepted that it would be better for the Special Licence procedure to continue to be used for marriages conducted at these venues, and referred to a submission from a College Chaplain in Oxford commending some features of the Special Licence procedure in these cases. The Committee concurred.

Mandatory marriage preparation

149. Mr Adrian Greenwood in his submission had asked for "a requirement for couples to undergo an appropriate or suitable course of marriage preparation before the wedding" to be incorporated into the draft Measure. In speaking to his proposal, Mr Greenwood went on to say that he would prefer marriage preparation to be mandatory for all marriages, whether solemnized in a parish on the basis of a qualifying connection or solemnized under the existing law. In his submission, the Reverend Angus MacLeay had acknowledged that it would be difficult to enshrine mandatory marriage preparation within the draft Measure but had asked for guidelines to include the "expectation that couples should be strongly encouraged to avail themselves of … marriage preparation". The issue of mandatory marriage preparation was also raised by some Oxford clergy.

150. The Steering Committee was advised that it might possibly be within the general purport of the Measure to include a provision requiring mandatory marriage preparation for all marriages (over and above the very limited existing requirements under Canon B30[10]), as being ancillary to the main provisions of the draft Measure. Whilst accepting the importance of marriage preparation, the Dean of the Arches and Auditor spoke against making it mandatory for any marriages, as that would impose a new limitation, affecting both existing rights and the new rights. She pointed out that this was contrary to the spirit and intention of the draft Measure, which was to extend rights in relation to the place of marriage to equate them with existing rights. The Steering Committee was agreed that if fuller marriage preparation were to be made mandatory, this ought to apply to all couples to be married in the Church of England and would therefore need to be introduced by a different Measure (rather than by the current draft Measure, which dealt only with a right to be married in a particular church). It would also have to be recognised that any such legislation would affect existing legal rights to be married according to the rites of the Church of England. The Committee concurred and rejected the proposal.

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[10] Which required a minister to whom a couple applied for solemnization of their marriage to explain to them the Church's doctrine of marriage and the need for God's grace to fulfil their obligations as married persons.

151. However, the Committee shared the Steering Committee's view that marriages arranged on the basis of a qualifying connection should build upon and use existing best practice that marriage preparation is offered to couples, and noted that the Mission and Public Affairs Division provided guidance on this.

Need to be a current worshipping member etc.

152. A submission from a non-Synod member from the diocese of Oxford had asked that it be a requirement of the Measure that a couple should be a current worshipping members of a church, of whatever denomination, and "should be obliged to become [members] of a Church electoral roll somewhere", before they could be married on the basis of a qualifying connection. It was felt that this would create a "greater sense of belonging" for the couples concerned. The Steering Committee was not in favour of this proposal, which it regarded as too restrictive and inconsistent with the decisions the Committee had already taken. The Committee concurred.

Preliminaries

153. A number of points regarding preliminaries were raised in the proposals and submissions to the Committee. In particular:

(a) A non-Synod member from the diocese of Oxford had proposed that the Measure should require both parties to be present when a marriage is applied for;

(b) The Reverend Stephen Trott had argued that the calling of banns was "no longer appropriate"; and

(c) The Venerable Clive Mansell had raised a point of the wording of the banns when the marriage was to be conducted in a particular church on the basis of a qualifying connection, so that the hearer would be aware of the basis of that qualification.

154. The Steering Committee noted that it was outside the remit of the Committee to revise the existing law on the attendance of the couple or the calling of banns for marriages in general, and did not consider that any special provisions were necessary for cases under this draft Measure. The Committee concurred; it noted the provisions of Canon B30, referred to above, which meant that the minister could insist on talking to both parties to the proposed marriage. The Committee was also advised that any proposal to abolish banns was not relevant to the general purport of the Measure (see also paragraphs 20-21 above).

155. With regard to the current wording of the banns in both the *BCP* and *Common Worship,* the Committee noted that these did not prescribe the wording to deal with cases where neither of the couple was resident in the parish, and that the use of the traditional form of words "*of the parish of X*" would still be applicable for marriages to be conducted on the basis of a qualifying connection. It was often supplemented in

cases where the marriage was solemnised in the usual place of worship of one of the parties, and guidance could be provided as to whether and how this might be done in cases under the draft Measure.

156. The Committee was content on all these points that no further action needed to be taken in terms of any amendment to the draft Measure.

Immigration/ marriage of foreigners

157. A submission from a non-Synod member from the diocese of Oxford stated that "anecdotal evidence would suggest that the present marriage practice leads to proportionally much lower percentage of 'passport' weddings in church than in the Register Office'; it would be a pity if this were jeopardised." The Steering Committee was clear that this point was not relevant to the present draft Measure; rather it related to marriage in general, and no special provisions were needed for cases under the draft Measure. The Committee concurred.

Marriages arranged before Measure receives Royal Assent

158. The Reverend Andrew Body, the Chairman of Family Life and Marriage Education Network (FLAME), had raised the question of how to deal with enquiries about whether couples would 'qualify' for marriage in a particular church before the draft Measure came into force. In this connection, he explained that weddings could well be booked up to two years in advance, because of the pressure on reception venues in some areas, and that parish priests were bound to receive such enquiries in the near future. The Steering Committee pointed out that unless and until the draft Measure had completed its passage through the Synod and Parliament and received the Royal Assent, couples and clergy could not safely assume that it was guaranteed to become law, and even then the date when it was to come into force would need to be fixed by the Archbishops. The provisions of the draft Measure could not be applied before that date, and until then couples and clergy would need to proceed on the basis of the existing law. The Committee concurred.

Time parameters for the conduct of marriage

159. Mr Oldham spoke to his submission regarding the existing time parameters on the solemnisation of marriage. His request was that the draft Measure should provide for more flexible times or abolish such parameters altogether. He could not see why, even if these parameters remained for the civil registration process, they also had to continue for a marriage service conducted according to the rites and ceremonies of the Church of England. He referred to paragraphs 15 and 16 of the Marriage Working Party Report (in the appendix to the explanatory memorandum on the draft Measure (GS 1616X)) and argued that even if the Government had decided not to proceed at this time with a relaxation of the time parameters, that should not hold back the Church from doing so for marriages that it conducted.

160. The Steering Committee remained of the view that this was not an issue that should properly be addressed by the present draft Measure and particularly at this relatively

late stage with no prior debate in Synod and no opportunity for wider consultation. Of particular importance was the point made in paragraph 16 of the appendix to GS 1616X that "the Government would not wish the Church of England to make exceptions to the general rule for its own marriages". The Steering Committee did not wish this draft Measure to be unduly delayed (particularly when it was before Parliament) on this point, especially as the Working Group's report also pointed out that "there appears to be no evidence that the present legislation is causing major problems in practice". The Committee concurred, and rejected the proposal.

Marriages according to the rites of other denominations in Church of England churches

161. Mr Adrian Greenwood had asked for it to be made possible for such weddings to take place in Anglican churches. The Steering Committee was advised that this was a matter that was not relevant to the general purport of the Measure, and that the Committee therefore had no power to make such an amendment. The Committee concurred. However, the Committee noted that there was a reference to possible future work on this subject in paragraphs 12-14 of the Appendix to GS 1616X.

Allow clergy to officiate at secular venues

162. A non-Synod member from the diocese of Oxford had asked for legislation to permit clergy to take weddings for local people at secular "licensed" premises within their parish. The Steering Committee was advised that this was a matter that was not relevant to the general purport of the Measure and that the Committee therefore had no power to make such an amendment. The Committee concurred.

On behalf of the Committee
Geoffrey Tattersall
Chair
17th January 2007

Appendix I Proposals for amendment and submissions and attendance

*Ackroyd, the Reverend Peter	St Albans 197
Ainsworth, the Reverend Canon Michael	Manchester 161
*Benfield, the Reverend Paul	Blackburn 72
Bird, the Reverend Canon David	Peterborough 185
Bullimore, His Honour Judge John	Wakefield 427
*Butler, the Reverend Simon	Southwark 216
Campbell, Dr Graham	Chester 288
*Cheeseman, Mr Jim	Rochester 389
Chetwood, Mr Nigel	Gloucester 322
*Faull, the Very Reverend Vivienne (The Dean of Leicester)	Southern Deans 54
*Finch, Mrs Sarah	London 352
*Greenwood, Mr Adrian	Southwark 416
*Hartley, the Reverend Dr John	Bradford 76
Lake, the Reverend Canon Stephen	St Albans 202
Lilley, the Reverend Canon Chris	Lincoln 145
Lynas, the Reverend Stephen	Bath & Wells 66
MacLeay, the Reverend Angus	Rochester 194
Mansell, the Venerable Clive (The Archdeacon of Tonbridge)	Rochester 195
Morrison, Mrs Gill	Peterborough 370
*Oldham, Mr Gavin	Oxford 378
Presland, Mr Andrew	Peterborough 381
Priddis, the Right Reverend Anthony (The Bishop of Hereford)	Bishops 22
Randall, the Reverend Prebendary Colin	Bath & Wells 67
*Russell, the Venerable Norman (The Archdeacon of Berkshire)	Oxford 182
Saxbee, the Right Reverend Dr John (The Bishop of Lincoln)	Bishops 25
Scott-Joynt, the Right Reverend Michael (The Bishop of Winchester)	Bishops 5
*Scowen, Mr Clive	London 358
Strain, the Reverend Chris	Salisbury 210
Trott, the Reverend Stephen	Peterborough 186

* Attended one or both meetings of the Committee and spoke to their proposals for amendment in accordance with Standing Order 53(b). (Also in attendance at the invitation of the Committee for part of its first meeting, the

Reverend Dr Andrew Bunch, Chair of the House of Clergy of the Oxford Diocesan Synod.)

Appendix II Submissions received from other persons or bodies

Coulton, The Very Reverend Nicholas	Sub-Dean of Christ Church Oxford
Deployment, Remuneration and Conditions of Service Committee of the Ministry Division (DRACSC)	Sarah Smith (Ministry Division of Archbishops' Council)
English Cathedrals, Association of	Sarah King, Co-ordinator
Family Life and Marriage Education Network (FLAME)	From the Reverend Andrew Body (Chairman)
Fletcher, the Right Reverend Colin	Bishop of Dorchester
Silverman, the Reverend Professor Bernard	Master of St Peter's College, Oxford
Westminster Abbey	From the Reverend Canon Robert Wright (Sub-Dean and Rector)

Appendix III A summary of the proposals and submissions received which raised points of substance and of the Committee's consideration of them

* An amendment (or amendments) based wholly or in part on the original submission was/ were proposed by Steering Committee.

\# Proposal made in Committee by a member of the Committee.

Clause of draft Measure	Summary of proposals/ submission	Name	Committee's decision
General issues on the Measure	Present law adequate	Oxford clergy	Not accepted
	Present law adequate with very limited changes	The Reverend Canon Michael Ainsworth The Venerable Norman Russell and Oxford clergy	Not accepted
	Develop existing licence procedures rather than procedures under the draft Measure	The Venerable Norman Russell	Not accepted
	Allow couple to marry in church of their choice	The Reverend Canon Chris Lilley and an Oxford cleric	Not accepted
	Couples should be able to marry in any church with which they have connections	An Oxford cleric	Not accepted
	Substitute universal civil preliminaries/ universal civil marriage	The Reverend Canon David Bird The Reverend Stephen Trott and Oxford clergy	Not within Committee's powers under SO 53(e)

	Undesirable to proceed further with concept of qualifying connection	The Reverend Stephen Trott	Not accepted
– General issues on potential impact of Measure	"Pretty churches" – churches near good reception venue – "consumer" attitude of couples – effect on "not so pretty" churches"	The Reverend Canon Michael Ainsworth Mr Nigel Chetwood The Venerable Norman Russell The Reverend Stephen Trott and Oxford clergy	On all these points: none of these issues or concerns, of themselves, warranted amendment of the draft Measure, but Committee took them into account in considering detailed provisions of Measure, particularly clause 1(3) and (4)
	Pressure on clergy	Mr Nigel Chetwood The Venerable Norman Russell The Reverend Chris Strain and Oxford clergy	
	Pressure on organists, bell ringers, other volunteers	The Venerable Norman Russell The Reverend Chris Strain and Oxford clergy	
	Effect on pastoral care of parishioners/ clergy's other duties in parish	Oxford clergy	
	Effect on proper marriage preparation	Mr Adrian Greenwood The Reverend Canon Michael Ainsworth Mrs Gill Morrison The Bishop of Hereford The Venerable Norman Russell	

		The Reverend Chris Strain The Reverend Stephen Trott and Oxford clergy	
	Need for pastoral care/ relationships/ continuing pastoral care after marriage - Need for couple to be part of/ connected with Christian community	The Reverend Canon Michael Ainsworth Mrs Sarah Finch Mr Adrian Greenwood Mrs Gill Morrison The Bishop of Hereford The Venerable Norman Russell Mr Clive Scowen The Reverend Chris Strain The Reverend Stephen Trott and Oxford clergy	
	Possible impact on other occasional offices	The Reverend Canon Michael Ainsworth and Oxford clergy	
	Position where divorced person with former spouse still living seeks marriage	The Reverend Canon Michael Ainsworth Dr Graham Campbell The Reverend Prebendary Colin Randall The Bishop of Winchester and an Oxford cleric	No action needed apart from possibility of House of Bishop's revising its Advice in light of the Measure, and taking the issue into account in considering the detailed provisions of the

			Measure
	Problems over date and time of marriage and possible appeal mechanism	Dr Graham Campbell The Bishop of Hereford and an Oxford cleric	No action needed, existing legal position would apply. Appeal mechanism - not accepted
General issues on drafting of Measure	Clauses 1 and 2 incorporated into the Marriage Act 1949 or the relevant provisions of the 1949 Act should be amended to make them subject to clauses 1 and 2	Mr Clive Scowen	Not accepted
Clause 1(1)	Discretion for minister to allow marriage on basis of qualifying connection	The Reverend Paul Benfield Dr Graham Campbell The Bishop of Lincoln and Oxford clergy	Not accepted
	Give "restricted right" with priority for parishioners/ regular worshippers	The Reverend Peter Ackroyd The Venerable Norman Russell	Not accepted
	Need for "opt out" or similar provision for parishes	The Reverend Paul Benfield The Reverend Simon Butler The Reverend Dr John Hartley The Venerable Norman Russell The Bishop of Lincoln and Oxford clergy	Not accepted
Clause 1(2)	Current drafting ambiguous	Mr Clive Scowen	No action Required

	Clarification needed on interaction with section 29(3) of, and paragraph 14 Schedule 3 to, the Pastoral Measure 1983	Mr Clive Scowen	Explanation provided
	Marriages in parish centres of worship or chapels-of-ease	The Reverend Simon Butler	No action required
Clause 1(3) and (4)	Explanation of current practice and procedure for Special Licences	The Reverend Angus MacLeay	Already in public domain
	Importance of present as opposed to historical connections	The Reverend Canon Michael Ainsworth Mrs Sarah Finch Mrs Gill Morrison Mr Clive Scowen	To an extent accepted and reflected in 'narrowing' of qualifying connection
Clause 1(3)(a)	Qualification based on past entry on roll to apply only to entry after section 1 comes into force (i.e. it is <u>not</u> retrospective)	Steering Committee	Accepted
	Entry on roll within past 10 years	Mrs Sarah Finch	Accepted requirement of entry on roll within past 12 years
	Entry on roll within past 15 years	Mr Clive Scowen and Oxford clergy	
Clause 1(3)(b)	Agree with provision	Mrs Sarah Finch and Oxford clergy	Noted
	Disagree or question	Oxford clergy	Noted
	As regards baptism, provide also connection based on Thanksgiving for child	The Reverend Dr John Hartley	Not accepted
	Confirmation – provide	The Reverend Paul	Accepted

	for preparation for confirmation/ entry in parish confirmation register	Benfield The Reverend Canon Chris Lilley The Venerable Clive Mansell The Reverend Prebendary Colin Randall and an Oxford cleric*	Steering Committee amendments so that qualifying connection in case of confirmation (or baptism and confirmation in combined rite)
	Refine to 'through that church' as baptisms and confirmation may happen elsewhere	An Oxford cleric	clearly to be with parish where a person was prepared for confirmation
	Confirmation – position of cathedrals	The Very Reverend Vivienne Faull*	and entered on register
Clause 1(3)(c)	Delete in entirety	The Reverend Canon David Bailey#	Not accepted
	Substitute "usual place of residence"	Steering Committee	Accepted
	Minimum qualification of three years residence	Mr Jim Cheeseman	Not accepted
	Residence qualification of one year	Mr Clive Scowen	Accepted
	A minimum period of residence qualification	The Reverend Prebendary Colin Randall	Accepted
	Within last 15 years (revised to 12 years before the Committee)	Mr Clive Scowen	Not accepted
	Apply a maximum time limit since residency	The Reverend Prebendary Colin Randall	Not accepted

	Residence not more than a given period in past	Mrs Sarah Finch and Oxford clergy	Not accepted
Clause 1(3)(d)	Delete in entirety	The Reverend Peter Ackroyd (Mrs Sarah Finch – in oral submission)	Not accepted
	Difficulties over definition/ meaning	The Reverend Canon Michael Ainsworth and Oxford clergy	Any difficulties could and would be addressed by Guidance (reference new clause 1(7) (renumbered as 1(8) and new clause 3)
	Habitual attendance qualification of one year	Mr Clive Scowen	Not accepted
	Within 15 years (revised to 12 years before the Committee)	Mr Clive Scowen and Oxford clergy	Not accepted
Clause 1(3)(e)	Delete in entirety	Steering Committee The Reverend Peter Ackroyd The Reverend Paul Benfield Mrs Sarah Finch Mr Clive Scowen The Reverend Chris Strain	Accepted

	Some form of qualification	The Reverend Canon Michael Ainsworth Mr Jim Cheeseman The Reverend Dr John Hartley and Oxford clergy	Fell
Clause 1(3)(f) (renumbered clause 1(3)(e)) and 1(4)	General proposals/ submissions as regards clause 1(3)(f) and (4) and on the individual components of clause 1(3)(f). Definition of "relative" and individual components	The Reverend Peter Ackroyd The Reverend Canon Michael Ainsworth The Reverend Paul Benfield His Honour Judge John Bullimore Mrs Sarah Finch The Venerable Norman Russell Mr Clive Scowen The Reverend Chris Strain and Oxford clergy His Honour Judge John Bullimore* Mrs Sarah Finch* Mr Clive Scowen* and Oxford clergy* The Reverend Peter Ackroyd The Reverend Canon Michael Ainsworth The Reverend Canon David Bird Mr Jim Cheeseman Mr Adrian Greenwood	Agreed to Steering Committee amendment to meet these specific concerns in whole or part by providing for qualifying connection based on a "parent" (defined as someone who has undertaken the care and upbringing of a person) who during the lifetime of that person has been resident in parish for not less than twelve months or on electoral roll etc. Other proposals fell.

		The Reverend Dr John Hartley The Reverend Canon Stephen Lake The Reverend Stephen Lynas The Reverend Angus MacLeay Mrs Gill Morrison The Reverend Prebendary Colin Randall and Oxford clergy	
	Amend Steering Committee amendment to restrict to 'current' parish of "parent"	Mr Clive Scowen	Not accepted
Clause 1(3) – additional provisions	Qualifying connection based on place of work	An Oxford reader	Not accepted
	Application in team ministries and multi-parish benefices	The Bishop of Dorchester and Oxford clergy	No action needed
	Connection based on residence within certain distance from church	Oxford clergy	Not accepted
	Connection to a deanery	Mr Gavin Oldham	Not accepted
	Connection based on historical connection	Mr Gavin Oldham	Not accepted
Clause 1(5)	No proposals or submissions received		
Clause 1(6)	Reference here to reading of banns	Mr Clive Scowen	Not considered as withdrawn
New clause 1(7)	Apply section 11(2) and (4) of the Marriage Act 1949 to marriages conducted under the Measure	Steering Committee	Accepted

Clause 1(7) (renumbered clause 1(8))	General issues as to evidence/ verification/ burden of proof	The Reverend Canon Michael Ainsworth The Reverend Paul Benfield Dr Graham Campbell Mr Jim Cheeseman Mr Nigel Chetwood Mr Adrian Greenwood The Reverend Dr John Hartley The Reverend Chris Lilley Mrs Gill Morrison Mr Andrew Presland The Venerable Norman Russell The Reverend Stephen Trott and Oxford clergy*	Agreed to Steering Committee amendment so that minister is to be under a duty to have regard to guidance issued by House of Bishops
	Need for sworn statement	The Reverend Canon Chris Lilley and Oxford clergy	Not accepted
	Provide an Appeal mechanism if qualifying connection disallowed	Dr Graham Campbell and an Oxford cleric	Not accepted
Clause 1(8) (renumbered clause 1(9))	No proposals or submissions received		

Clause 1(9) (renumbered clause 1(10))	Delete in entirety (or an 'opt-out' for cathedrals and 'busy churches')	The Reverend Paul Benfield	Neither accepted
	Include all cathedrals	The Reverend Canon David Bird	Not accepted
	Include all parish church cathedrals	The Reverend Canon David Bailey# Mr Andrew Presland	Not accepted
	'Opt-in' provision for all cathedrals	The Reverend Simon Butler The Reverend Dr John Hartley The Very Reverend Vivienne Faull	Not accepted
	Individual Cathedrals to be allowed to operate own policies in light of qualifying connection provisions in Measure	The Reverend Canon Stephen Lake	Not accepted
	Better for all cathedrals to be remain excluded	The Association of English Cathedrals	Agreed
	Royal peculiars remain outside provisions of Measure	The Reverend Canon Robert Wright (Westminster Abbey)	No action needed.
Clause 1(10) (renumbered clause 1(11))	Re-order the definition of 'minister'	The Reverend Paul Benfield*	Steering Committee amendment accepted

New clauses 1(12) and (13)	With regard to qualifying connections based on sub-clause 1(3)(b), (c), (d) and (f), where pastoral re-organisation has taken place then a qualifying connection to a place or parish church relocated by this reorganisation would continue Make provision for cases where new parish created	Steering Committee The Reverend Paul Benfield	Accepted Dealt with as far as practicable by Steering Committee amendment
Clause 2	Delete in entirety	The Reverend Dr John Hartley	No decision necessary as withdrawn
New Clause 3	House of Bishops to issue guidance on minister being satisfied that a person has a qualifying connection under the draft Measure Include in this clause a power for House of Bishops to issue guidance on the implementation of this Measure generally	Steering Committee Steering Committee	Accepted Not accepted

	Need for guidance	Dr Graham Campbell The Reverend Dr John Hartley The Reverend Canon Chris Lilley The Reverend Angus MacLeay The Venerable Clive Mansell Mr Andrew Presland The Bishop of Hereford and an Oxford cleric	Will be addressed in part by specific guidance produced by House of Bishops under clause 3 of the draft Measure. House or other bodies may issue other guidance if required – see list of potential subjects for guidance in Appendix V
Clause 3 (renumbered clause 4 and renamed)	Insert a new sub-clause (2) to parallel a provision in the 1949 Act concerning validity of marriage Insert a new sub-clause (3) to provide for Church Representation Rules to be amended as provided in new Schedule to draft Measure	Steering Committee Steering Committee	Accepted Accepted
Clause 4 (renumbered clause 5)	Include provision to allow for different provisions to come into force on different days.	Steering Committee	Accepted

New Schedule	Amend the Church Representation Rules so as to provide for the maintenance and retention of a record of past electoral rolls that come into effect in or after 2007 for a minimum period of twelve years after the roll in question ceased to have effect	Steering Committee	Accepted
Long Title	Add words "in a parish" and words "and for connected purposes"	Steering Committee	Accepted
Additional clauses/ topics	No firm view on fee for investigating a qualifying connection. No additional fee for marriage conducted by cleric from another parish	DRACSC	Noted
	Differential fees/ additional fees for additional work, services etc.	The Reverend Paul Benfield Mr Nigel Chetwood Mr Adrian Greenwood The Reverend Canon Chris Lilley The Bishop of Dorchester DRACSC and Oxford clergy	Not accepted – to be dealt with, if at all, under Ecclesiastical Fees Measure 1986
	Opposed to differential fees	The Reverend Canon Michael Ainsworth The Venerable Clive Mansell	See above
	Designated "wedding churches" and sharing of fees to compensate 'non-wedding churches'	Mr Jim Cheeseman	Not accepted

	Possible extension of qualifying connection to college/ institutional chapels	The Bishop of Dorchester The Reverend Professor Bernard Silverman Diocesan Registrar of Oxford and Oxford clergy	Not accepted, better to stay with Special Licence procedure
	Mandatory provision for marriage preparation for all marriages Guidance to include expectation of marriage preparation	Mr Adrian Greenwood The Reverend Angus MacLeay	Not accepted MPA guidance already available
	Need to be current worshipping member of a church (whether or not Anglican)	An Oxford cleric	Not accepted
	Preliminaries: Couple both to attend when marriage applied for Whether continuation of banns was appropriate Phrasing of banns and other issues on banns	An Oxford cleric The Reverend Stephen Trott and Oxford clergy The Venerable Clive Mansell and Oxford clergy	Not accepted in relation to qualifying connection cases – not within SO 53(e) for marriages in general. 'Out of order' under SO 53(e) No action required
	Issues regarding immigration/ marriage of foreigners	An Oxford cleric	Not within SO 53(e)

	Marriages to be arranged before Measure receives Royal Assent	FLAME	Provisions of Measure could not be applied before it came into force
	Time when marriage can be solemnised	Mr Gavin Oldham	Not within SO 53(e)
	Marriages of other denominations in Church of England churches	Mr Adrian Greenwood	Not within SO 53(e)
	Allow clergy to officiate at secular venues	An Oxford cleric	Not within SO 53(e)

Appendix IV Destination table

GS 1616 (as at First Consideration)	GS 1616A (as amended by the Revision Committee)
1 (1) – (2)	1 (1) – (2)
1 (3) (a) – (d)	1 (3) (a) – (d)
1 (3) (e)	-
1 (3) (f)	1 (3) (e)
1 (4)	-
-	1 (4)
1 (5) – (6)	1 (5) – (6)
-	1 (7)
1 (7)	1 (8) (a)
-	1 (8) (b)
1 (8) – (9)	1 (9) – (10)
1 (10) (a) (i)	1 (11) (a) (ii)
1 (10) (a) (ii)	1 (11) (a) (iii)
1 (10) (a) (iii)	1 (11) (a) (i) and (iv)
1 (10) (a) (iv)	1 (11) (a) (v)
1 (10) (b) – (c)	1 (11) (b) – (c)
-	1 (12) – (13)
2	2
-	3
3	4 (1)
-	4 (2) – (3)
4	5
-	Schedule

Appendix V **Matters (other than those within renumbered clause 1(8) and new clause 3) identified by the Committee as ones on which it may be necessary or desirable to provide guidance material** (paragraph 133 above refers)

1. What the right to be married in a particular parish church etc does not include – right to insist on incumbent/priest in charge conducting service personally, right to be married at date and time of couple's choice, right to services of organist, bellringers, choir etc. (35-37)

2. Marriage preparation (although the Committee recognised that the Mission and Public Affairs Division already provides guidance on this). (151)

3. Pastoral issues, including contact with couple's "home" parish. (132)

4. Wording of banns. (155)

5. Cases where one of the couple is divorced and has a former spouse still living. The House of Bishops' advice to clergy may need to be amended or at least supplemented to deal specifically with "qualifying connection" cases. (31-34)

6. Requests for baptism or other occasional offices. (28-29)

7. Common Licence cases. (124-126)