

**RIPON AND LEEDS MOTION ON THE MARRIAGE MEASURE**

## Background note from the Secretary General

1. The Church of England Marriage Measure 2008 (“the Marriage Measure”) gave couples a greater range of choice as to where they could marry. It did so by conferring a right to marry in the parish church (or other building licensed for public worship) of a parish with which one of the parties to the proposed marriage had a ‘qualifying connection’.
2. The Measure provided that a person had a qualifying connection with a parish if—
  - he or she was baptised in the parish or had his or her confirmation entered in the register book of confirmation for any church or chapel in the parish;
  - he or she had at any time had his or her usual place of residence in the parish for at least six months;
  - he or she had at any time habitually attended public worship in the parish for at least six months;
  - a parent of the person in question had, during that person’s lifetime, had his or her usual place of residence in the parish for at least six months or had habitually attended public worship in the parish for at least six months; or
  - a parent or grandparent of the person had been married in the parish.
3. The Measure therefore proceeded on the basis of a person’s connection with a particular parish. If he or she had a qualifying connection with a parish he or she had a right to marry in that parish.
4. The rights conferred by the Marriage Measure were over and above the rights that people already enjoyed by virtue of residence in a parish or by virtue of having their names entered on the electoral roll of a parish. The rights enjoyed by virtue of residence arise under the common law; they were extended by statute to cover electoral role membership. The relevant statutory provisions are now contained in the Marriage Act 1949 (“the 1949 Act”).
5. The 1949 Act contains a considerable amount of supplementary provision relating to marriages. In particular, in the case of benefices held in plurality (i.e. where two different benefices have the same incumbent) it empowers the diocesan bishop to make a written direction permitting persons entitled to marry in a church in one of the benefices to marry in a church within another benefice that is held in plurality with it. (See section 23 of the 1949 Act.)
6. The Pastoral Measure 1983 makes further provision that extends the bishop’s power to make directions. In the case of a multi-parish benefice (i.e. a single benefice that comprises two or more parishes), the bishop may make a written direction permitting persons entitled to marry in the church of one of those parishes to marry in any church of another parish comprised in the same benefice (see Schedule 3, paragraph 14(4) of the Pastoral Measure 1983). This is the provision identified in the

first paragraph of the note provided by the diocese of Ripon & Leeds in support of their motion.

7. Shortly after the Marriage Measure came into force the Legal Office was asked whether the bishop's power to make directions extended to the case of persons who had a qualifying connection with a parish under the Marriage Measure. The question was whether directions made by the bishop in relation to a multi-parish benefice enabled a person who had a qualifying connection with a particular parish in that benefice to marry in the church of a different parish within the benefice.

8. Having considered the question, including seeking the opinion of Standing Counsel, the Legal Office has concluded that the bishop's power to make directions does **not** extend to the case of persons with a qualifying connection under the Marriage Measure. The reasons for reaching that conclusion are, in summary, as follows—

- the Marriage Measure confers rights to marry independently of the rights enjoyed under the 1949 Act;
- the reference in section 1(1) of the Marriage Measure to “a parish church of a parish with which he or she has a qualifying connection” cannot be read as including a church of a different parish comprised in the same benefice in relation to which the bishop has made a direction; and
- consistently with that, the power to grant common licences under section 2(1) of the Marriage Measure applies only to “marriage in any church or chapel in which [a] person may be married under section 1” (which provides a right to marry in the church of a parish with which a person has a qualifying connection). The Marriage Measure therefore clearly does not provide for the grant of a common licence to permit marriage in a church in a different parish even if it is in the same benefice and the bishop has made a written direction.

9. Unfortunately legal advice to the contrary effect had been given to the Revision Committee for the Marriage Measure. Having considered the matter carefully and with more time available to do so than was the case when it came to advising the Revision Committee, the Legal office has concluded that the advice given to the Revision Committee cannot now be supported.

10. The Legal Office very much regrets the confusion that has arisen over this matter. It is only fair to record that this was one of a large number of detailed points that were being addressed during the Revision Committee in a context where much of the Committee's attention was directed at other issues concerning the nature of the qualifying connection and where there was a good deal of debate within the Synod over the merits of the legislation more generally.

11. The legal advice to the Synod is therefore that the additional rights conferred by the Marriage Measure are limited to the particular parish with which a person has a qualifying connection and do not extend to any other parish that might be comprised in the same benefice in respect of which the bishop has made a direction.

12. Different lawyers may, in good faith, take different views<sup>1</sup> but given the importance of operating within the law in this area, the Church of England ought now to proceed on the basis of the more cautious view of the Legal Office. This is not simply because they have the responsibility for advising the Synod and the Archbishops' Council, but also because it would be unwise for clergy to solemnize matrimony on the basis of rights that are, at the least, doubtful.

13. The motion from the diocese of Ripon and Leeds calls for legislation to be brought forward to change the position so that a person who has a qualifying connection with a parish would also be entitled to marry in another parish comprised in the same benefice where the bishop had issued a written direction to that effect. That would achieve the result that the Revision Committee had understood that it had achieved in relation to this particular issue.

14. The motion gives the Synod the opportunity to express its view on whether the Marriage Measure should be amended to provide unequivocally for a more permissive regime in relation to multi-parish benefices in accordance with what the Revision Committee understood that the Measure would achieve. If it decides that it should, a small piece of amending legislation could be introduced – probably early in the life of the next Synod. Were the Measure to be amended as proposed, it would remain a matter for the bishop to decide whether to issue directions in relation to a benefice and, if so, which churches in the benefice they should cover.

15. If the Measure is to be amended as proposed there would in logic be a case for providing in addition that those rights should be extended to the case of marriage in a church of another benefice held in plurality with the benefice containing the parish with which a person has a qualifying connection. That is because the right of the bishop to make directions (under the Pastoral Measure 1983) permitting people who are entitled to marry in one parish comprised in a multi-parish benefice to marry in other parishes in that benefice is an extension of the bishop's power to make directions in the case of benefices held in plurality.

16. It might also, in those circumstances, be sensible to extend section 18 of the 1949 Act (which allows marriages to be solemnized in an adjoining parish where the church in which persons would otherwise have the right to marry is being rebuilt or repaired and therefore not being used for divine service) to the case of persons who intend to marry on the basis of a qualifying connection under the Marriage Measure. These would be issues for the Synod to determine during the course of the legislation.

William Fittall  
Secretary General

22 June 2010

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<sup>1</sup> The Legal Office is aware that the Archbishop of Canterbury's Faculty Office (which is responsible for the grant of Archbishop's Special Licences) takes the view, in the light of advice from the present and the previous Master of the Faculties, that the advice originally given to the Revision Committee was in fact correct. The Legal Office has therefore corresponded with the Faculty Office on the subject but, having considered the arguments advanced, remains of the view that it is not possible for a person who relies on a qualifying connection under the Marriage Measure to benefit from a bishop's direction in relation to marriage in the church of a different parish comprised in the same benefice.

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