

GENERAL SYNOD

Prayers of Love and Faith: a note from the Legal Office

1. This note summarises the legal background to the decision of the House of Bishops that it should, following discussion in the General Synod, commend *Prayers of Love and Faith*, a draft of which is contained in Annex B to GS 2289. It sets out legal advice for the General Synod which is to the same effect as the advice which was given to the College and House of Bishops.
2. In 2017 the Legal Office set out the relevant legal considerations against which any proposals arising from Living in Love and Faith would need to be assessed.¹ Before the House of Bishops can commend public prayers for use by ministers, it must be satisfied that the use of those prayers by the minister would meet the requirements of Canon B 5 (Of the discretion of ministers in the conduct of public prayer). Paragraph 3 of Canon B 5 provides, "... all forms of service used under this Canon shall be reverent and seemly and shall be neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter."
3. The Church's doctrine of Holy Matrimony as being between one man and one woman is set out in Canon B 30. The effect of Canon B 5.3, in the light of the doctrine described in Canon B 30, is that it would not be lawful for a minister to use a form of service which either explicitly or implicitly treated or recognised the civil marriage of two persons of the same sex as corresponding to Holy Matrimony. But it would in principle be lawful for a minister to use a form of service for two persons of the same sex who wished to mark a stage in their relationship provided that it did not explicitly or implicitly treat or recognise the civil marriage of two persons of the same sex as corresponding to Holy Matrimony.²
4. The Legal Office has carefully examined the draft Prayers. It considers that none of the text contained in the draft Prayers of Love and Faith treats the civil marriage of two persons of the same sex, either expressly or impliedly, as amounting to Holy Matrimony. The Prayers are careful to avoid any such implication. Moreover, the Prayers are framed so that they do not bless civil marriages (or civil partnerships); any blessing is of the couple and the good in their relationship, not of the civil status they may have acquired (bearing in mind that not all will have a civil status – those in covenanted friendships in particular). Note 5 in Notes to the Service specifically states, "Any adaptation or new texts added by the minister here or elsewhere in the service must not involve the incorporation of the blessings contained in the Marriage Service

¹ These were set out in Annex 1 to GS 2055.

² Ibid. paragraphs 7 and 8.

from the Book of Common Prayer or Common Worship.” Accordingly, nothing contained in the draft prayers would amount to, or be indicative of, a departure from the doctrine contained in Canon B30. The Legal Note at the end of the Notes to the Service makes it clear that any variations to the sample services or to the prayers must be in conformity with paragraph 3 of the Canon B 5.

5. In *Living in Love and Faith: A response from the Bishops of the Church of England about identity, sexuality, relationships and marriage*³, the box on page 7 headed “Marriage, the State and the Church of England” refers to a distinction that has, since the coming into force of the Marriage (Same Sex Couples) Act 2013, arisen between civil marriage and Holy Matrimony. Civil marriage and Holy Matrimony both continue to be recognised by the state as conferring the same civil status and there remains a substantial overlap in the legal rules as to preliminaries, annulment and dissolution and they are treated in the same way by other areas of the law, such as immigration law, taxation and so on. However, because what is capable of constituting a marriage for the purposes of ecclesiastical law (the union of one man and one woman) now differs fundamentally from what is capable of constituting a marriage for the purposes of the general law (the union of two persons without regard to their sex), there is a good case for saying that the institution of Holy Matrimony and the institution of civil marriage are now distinct, even though the legal incidents are generally the same for both.
6. This follows from the terms of the Marriage (Same Sex Couples) Act 2013, which explicitly provides for a definition of marriage in ecclesiastical law (one man and one woman) which is different from the definition in the general law. The two definitions are mutually exclusive and this can be seen as having resulted in there now being two different institutions by the name of “marriage”. Since the coming into force of the 2013 Act, civil marriage in England has taken no notice of the respective sexes of the parties to a marriage; it has become in effect a ‘gender-neutral’ institution. But Holy Matrimony continues to be defined by ecclesiastical law – not by the changed position in the general law brought about by the 2013 Act – and remains “in its nature a union ... of one man with one woman”. The 2013 Act explicitly preserves the position in the Canons of the Church of England. Because the sexes of the parties are irrelevant so far as the general law concept of marriage is concerned, the concept of civil marriage is now of a different nature from the concept of marriage set out in Canon B 30 (Holy Matrimony).
7. The civil marriage of a same sex couple confers a civil status on the couple: they are married so far as the general law is concerned but that status is not – and *by definition* does not purport to be – Holy Matrimony. On that basis, they do not need be treated as doing more than obtaining a civil status, and in particular they do not need to be considered simply by obtaining that civil

³ GS 2289, Annex A.

status as rejecting or challenging the definition of Holy Matrimony in Canon B 30.

8. The proposed prayers and other forms of service which may be used for a same sex couple who have entered a civil marriage, do not indicate or imply that the couple are considered to be in a state of Holy Matrimony; they recognise that the couple's relationship has been marked by their entering into a particular civil status (albeit regarded by the State as "marriage"). Provided that the prayers meet the requirements described in the preceding paragraphs, the fact that they are for use – among other occasions – for a couple who have entered into a civil marriage is not indicative of a departure from the doctrine of Holy Matrimony as set out in Canon B 30, just as that would not be the case for prayers for use with a couple who have entered into a civil partnership or a covenanted friendship.
9. Some people have raised concerns that the draft *Prayers of Love and Faith* are contrary to, or indicative of a departure from, the doctrine of the Church of England in an essential matter, on the basis that they are for use in connection with relationships that involve sexual relations between persons of the same sex. But a sexual relationship is not inherent in a same sex marriage, any more than it is in a civil partnership. The draft Prayers contain no implication that what is being celebrated or blessed is a sexual relationship. The argument that the Prayers are therefore indicative of a departure from doctrine so far as sexual relationships are concerned cannot be sustained; they are simply silent on that point.
10. The bishops have indicated that "Issues in Human Sexuality" is to be replaced. But nothing in the draft Prayers pre-empts what the replacement might say on the subject of sexual relationships. In reaching a final view on the legal position the Legal Office will need to see both the final draft of the Prayers and the replacement pastoral guidance.

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