

Marriage in the Church of England

General Introduction

In July 2002, the General Synod affirmed the Church's teaching on marriage, that:

“...according to our Lord's teaching, marriage is in its nature a union permanent and lifelong, for better or worse, till death do us part, of one man with one woman, to the exclusion of all others on either side, for the procreation and nurture of children, for the hallowing and right direction of the natural instincts and affections, and for the natural society, help and comfort which one ought to have of the other, both in prosperity and adversity” (Canon B30.1)

Wider Background

1. Clergy are recommended to obtain a copy of the booklets *Suggestions for the Guidance of the Clergy with regard to the Marriage and Registration Acts* (issued by the Registrar-General, Smedley Hydro, Trafalgar Road, Southport PR8 2HH Tel: 0870 243 7788) and *Anglican Marriage in England and Wales* (from the Faculty Office, 1 The Sanctuary, Westminster, London SW1P 3JJ. Tel: (020) 7222 5381). These provide detailed answers to numerous questions that are frequently raised. You will also find helpful guidance in the Registry's frequently asked questions website www.churchlaw.co.uk.

Restrictions on marriage

2.1 The legal age of marriage is 16, and if a marriage is solemnised between persons either of whom is under that age the marriage is void. If either of the parties is under 18 the consent of parents or guardians should be obtained. If such consent is withheld, or there is no parent living, and no guardian, a minor can apply to the court for leave to marry, the court may dispense with the necessity of obtaining any consent.

2.2 Marriages between persons within the prohibited degrees of kindred and affinity as set out in Canon B.31 must not be solemnised.

2.3. A marriage may be lawfully solemnised only between the hours of 8am and 6pm.

Foreign Nationals

3.1 Where either of the parties is a foreign national it is strongly recommended that Anglican marriage should be by common licence, especially if either party is a national of a country outside the European Union. This is both for the protection of the couples concerned, and for the protection of officiating clergy. In such cases it is desirable that the party making application for a licence should produce a document from the appropriate embassy or consulate certifying that there has been compliance with all the preliminary formalities necessary to enable that party to marry in England,

and that the marriage will be accepted as a valid marriage in the country of origin of the foreign national.

3.2 Home Office Regulations issued in 2005 have restricted access to marriage for those who are not British citizens. The Regulations prevent non-citizens from marrying in a Registry Office or non-Anglican church or religious building unless they have obtained a supplementary marriage visa or licence. The licence may take 13 weeks to obtain, if it is granted at all.

3.3 This restriction has resulted in a dramatic fall in the number of marriages taking place in Registry Offices between non-British citizens, ‘over-stayers’, asylum seekers, and others whose immigration status in this country is unclear.

3.4 However, the restriction does not apply to Church of England marriages. Consequently there has been a dramatic *increase* in the number of couples who are now approaching clergy to be married in Church of England churches, and who might have found it difficult to be married in a Registry Office because of the Home Office Regulations.

3.5 For many years, the policy has been that non-British citizens, and those who come from outside the EU should be married by ‘Common Licence’ rather than by banns. Before a Common Licence would be granted, applicants would be asked to produce a letter from their embassy confirming that they were not already married and consequently were free to marry in this country, and that a marriage according to the rites and ceremonies of the Church of England would be recognised as valid in their country of origin.

3.6 Although the Home Office Regulations do not directly affect the Church of England practice, I continue to advise clergy that in cases where immigration status is uncertain, a Common Licence should be obtained, rather than authorising the marriage by reading banns. This is because a Common Licence can be obtained only after sworn statements have been made by the applicants, and such statements carry the sanction of proceedings for perjury.

3.7 In certain cases, clergy may wish, notwithstanding this guidance, to marry after reading banns in the usual way. If so, my strong advice to clergy (for their own protection in the event of subsequent investigation by the police or immigration authorities) is that they should insist on seeing valid identification material (passports, visas, or other identifying documents issued by the Home Office or the UK Border Agency) and a letter from the relevant embassy, confirming (1) that the individual is not already married and (2) that a marriage solemnised in the Church of England would be regarded as valid in their country of origin. Only if the non-citizen can produce a valid ‘marriage visa’ should clergy waive this requirement.

3.8 Serious consequences may ensue both as a matter of civil law and of clergy discipline if clergy participate in marriages which turn out to be invalid through bigamy, lack of proper consent, or other reasons.

3.9 If in any doubt about the immigration status of the applicant, or if you consider that there is some other subterfuge being attempted (for example, an attempt to disguise mental incapacity), consult the Diocesan Registry immediately for further guidance.

Remarriage of Divorcees

4.1 Under the Matrimonial Causes Act 1965 no member of the clergy of the Church of England can be compelled to solemnise the marriage of any person whose former marriage has been

dissolved and whose former spouse is still living, or to permit the marriage to be solemnised in the church of which s/he is the minister.

4.2. The Church's current discipline on the re-marriage of divorced persons is set out in the House of Bishops Guidelines issued in 2003 (see www.cofe.anglican.org/info/papers/mcad). This guidance sets out a number of issues and questions clergy may wish to address with couples intending to be married in these circumstances. There is an application form which is recommended for use in all cases.

4.3 Whilst the final decision on remarriage of divorcees must in every case be a matter for the individual clergy concerned, clergy may wish to refer cases to the bishop for advice. If so, they should send the completed application to the bishop with their own assessment of the situation (which, in accordance with the Data Protection Act, the couple would be entitled to see).

4.4 It is essential, as a matter of human rights law, that whatever approach clergy adopt on the issue generally, they apply their own policy consistently. In case of doubt, do not hesitate to consult the Registrar.

Residence

5.1 The Marriage Act 1949 provides that marriage must normally be solemnised in the church or chapel of the parish in which one of the parties resides. It is not possible to define exhaustively what is meant by 'residence', and it is a question of fact to be decided in the circumstances of each case whether or not a person genuinely resides within a parish. It can be said, however, that renting a room and leaving luggage there without occupation is *not* a residential qualification within the meaning of the Marriage Act. The circumstances which have prompted such devices in the past, however, will largely be covered now by the new qualifying provisions under the Marriage Measure 2008 (see para. 6 below).

5.2 An exception to the above rules is that a person who is on the Church Electoral Roll of a parish in which they do not reside may be married in the church of that parish. The Synodical Government Measure 1969 provides that a person who is not resident in a parish should habitually attend public worship there for a period of six months before their name is added to the Church Electoral Roll. It is improper to add a person's name to the Church Electoral Roll of a parish unless he or she has complied with this requirement of the Synodical Government Measure.

Marriage Measure 2008 Qualifying Connections

6.1 The Marriage Measure 2008 came into effect on 1 October 2008. It has made a substantial difference to the existing arrangements. The concept of 'residence' has been supplemented by a new range of qualifying connections (it does not *replace* the residence test, merely expands the range of qualifying connections with the parish church in question).

6.2 So in addition to residence in the parish or inclusion on the electoral roll, any couple may now be married in any parish church provided that

6.2.1 One of the persons concerned:

- was baptised in the parish; or

- has been confirmed and the confirmation has been entered in a church register book belonging to the parish, (this would have been done on the basis that the person concerned was prepared for confirmation in the parish); or
- has at any time had his or her usual place of residence in the parish for at least 6 months; or
- has at any time habitually attended public worship in the parish for at least 6 months;

or

6.2.2 That person's parent has at any time during the person's lifetime:

- had his or her usual place of residence in the parish for at least 6 months; or
- habitually attended public worship in the parish for at least 6 months;

or

6.2.3 That person's parent or grandparent was married in the parish.

(In this list references to being baptised, confirmed or married, or attending public worship, all refer to Church of England services.)

6.3 Common licences may be issued on the same basis.

For further advice and guidance, please refer to the Church of England website, (see <http://www.cofe.anglican.org/info/socialpublic/marriagefamily/marriageanddivorce/marriagemeasure/>)

Marriage after banns

7.1 The minister may require to receive notice in writing seven days before the first publication of banns, giving the full names of the persons to be married, their addresses, and the length of time that they have lived there or such other basis as may entitle them to be married in the church concerned.

7.2 There is a form of words conventionally used for reading banns. The form set out in the rubric to the Form of Solemnisation of Matrimony in the *Book of Common Prayer* has the force of law. Other forms to substantially similar effect may be used (there is a modernised version in the rubric to the *Common Worship Marriage Service*). In the case of couples having a 'qualifying connection' under the Marriage Measure 2008, after identifying the parish where each individual lives you should add 'and having a qualifying connection with this parish' before reading the statutory enquiry about possible challenges or impediments.

7.3 Banns are to be published on three Sundays preceding the solemnisation of the marriage, during morning service or, if there is no morning service on a Sunday on which the banns are to be published, during evening service.

7.4 Banns of marriage may be published by a lay person where no member of the clergy officiates at the service at which it is usual to publish banns. Where this happens the lay person signs the banns book as the officiating minister, but the duty of entering the banns and of issuing certificates of publication remains with the incumbent.

7.5 If a marriage is to take place after banns in the church of a parish in which neither, or only one, of the parties resides or has a Church Electoral Roll qualification or a Marriage Measure 2008 qualification, then the banns must be called both in the church in which the marriage is to take place and in the churches of each of the parishes in which the parties actually reside.

7.6 Whether the marriage is to be authorised by banns or a common licence, it is good practice on first interview with the couple to require evidence of their identity. This may take the form of a passport or driving licence.

Marriage after Common Licence

8.1 Application for a Common Licence must be made to a surrogate. A list of surrogates can be found on the diocesan website. The Surrogate cannot issue the Licence, but can take the affidavit sworn by applicants. The Licences are issued by the diocesan registrar after consultation, if necessary, with the Chancellor or Archdeacons.

8.2 A Common Licence can only be granted if one of the parties has resided in the parish in which the marriage is to take place for at least the *fifteen days before the Licence is issued* or is on the Church Electoral Roll of that parish, or can substantiate some other qualifying connection under the Marriage Measure 2008 (see para. 6 above).

8.3 The granting of a Common Licence is discretionary and not a matter of right. In the case of applications where neither of the parties has been baptised, or where one only has been baptised, any unbaptised party is required to sign a declaration that he or she does not reject the Christian faith.

8.4 Common Licences are now permitted to be granted routinely when either of the parties has been divorced and has a former partner still living provided that the House of Bishops' general guidance to clergy is followed (see para 4.2). Surrogates are required to take great care to satisfy themselves that the statements made by applicants for a Common Licence are true before the licence is issued. The applicants must produce to the Surrogate a completed questionnaire, countersigned by the clergy concerned (see para. 4 above), together with a copy of the Decree Absolute for production to the diocesan registrar.

8.5 Details of the current licence fees can be obtained from a surrogate or from the Diocesan Registry (contact the Registry Clerk, Miss Sara Leader on 01865 297211).

8.6 Banns of marriage and Common Licences are valid for three months. A marriage solemnised after that period without further authority is void.

Marriage after Special Licence

9. For a marriage by Special Licence application should be made to the Faculty Office, 1 The Sanctuary, Westminster, London SW1P 3JT. Tel: (020) 7222 5381. A Special Licence is issued only in unusual circumstances, and it enables the parties to be married at any time or place in England without previous residence in the district. Weddings in any of the Oxford College Chapels are always by Special Licence. Fees on application.

Marriage after Superintendent Registrar's Certificate

10. In certain circumstances, it may be desirable for marriage to be solemnised on the authority of a (secular) Superintendent Registrar's Certificate (usually in circumstances where otherwise a

Common Licence would be applicable, but is unavailable). The Diocesan Registrar will indicate when such applications should be made.

Services of Prayer/Blessing after Civil Services (Marriage Act 1994)

11.1 The Marriage Act of 1994 allows for civil weddings to take place on ‘approved premises’, such as hotels and country houses. The Act provides that a marriage on approved premises is to be solemnised in the presence of two witnesses and the Superintendent Registrar and a Registrar of the Registration District in which the premises are situated. It also provides quite specifically that ‘no religious service shall be used at a marriage on approved premises.’

11.2 The bishops advise clergy not to offer prayer or a blessing at the hotel or approved premises if requested to do so. In such a context it would be too easy for the proper seriousness of the spiritual dimension of Christian marriage to be downgraded. However, the bishops do recognise that there may well be pastoral opportunities in such a request which may be used.

11.3 No statutory fee for such a service, if it takes place, is payable. A donation to church funds could be accepted.

11.4 If ministers have further questions or anxieties on this issue then they should consult their area bishop.

Further Advice

12. Do by all means telephone, e-mail, or write to the Registry if you need further guidance or advice. Our contact details are:-

***Diocesan Registry
16 Beaumont Street
Oxford
OX1 2LZ***

Tel. 01865 297211

***Registrar: John Rees
 jrees@wslaw.co.uk***

***Clerk: Sara Leader
 sleader@wslaw.co.uk***

**Canon John Rees
Diocesan Registrar**