Law Commission
Reforming the law

Celebrating Marriage: A New Weddings Law

HC 557

Law Com No 408

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The Law Commission

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

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The text of this report is available on the Law Commission's website at http://www.lawcom.gov.uk.

Contents

GLOSSARY

In this Glossary, references to other words and terms contained in the Glossary are in bold.

"Anglican": the Church of England and the Church in Wales.

"Anglican clergy", "clergy" or "Clerk in Holy Orders": a bishop, priest or deacon of the Church of England or the Church in Wales. Only Anglican clergy can solemnize **Anglican** weddings.

"Anglican preliminaries": the **preliminaries** conducted by the Church of England and the Church in Wales, to authorise **Anglican** weddings. They are the publication of **banns** and the issuing of **common licences** and **special licences**.

"Annulment" or "decree of nullity": a court declaration that a marriage was never legally valid or has, following the declaration, become legally invalid.

"Appropriate immigration status": a person has the appropriate immigration status under section 49(2) of the Immigration Act 2014 if they are **exempt from immigration control** or are settled in the United Kingdom.

"Approved premises": under the current law, premises at which civil weddings can take place, following approval by a local authority under the Marriages and Civil Partnerships (Approved Premises) Regulations 2005.[1]

"Authorised person": under the current law, a person appointed by the trustees or governing body of a **registered building** to be present at and register the marriages that take place at that registered building, meaning that a **registrar** does not need to be present.

"Banns": a form of **Anglican preliminaries** for weddings in **Anglican** churches or chapels, involving an announcement in church of an intended marriage.

"Belief ceremony" or "belief wedding": under our recommended scheme, a ceremony officiated at by a **belief officiant** (a member of the **Anglican clergy** or **nominated officiant**). A belief ceremony could either be a **religious ceremony** or (if enabled by Government) a non-religious belief ceremony.

"Belief officiants": under our recommended scheme, **Anglican clergy** and **nominated officiants**.

"Caveat": a formal objection to a **schedule** being issued in respect of a wedding, based on an **impediment to the marriage**.

"Certified place of worship": a place of worship certified under the Places of Worship Registration Act 1855. Once certified as a place of worship, a building can also be registered to **solemnize** marriages (see "**registered building**") under the current law.

"Civil ceremony" or "civil wedding": under the current law, those weddings conducted in a register office or on approved premises. Under our recommended scheme, weddings

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1 SI 2005 No 3168.

officiated at by a **registration officer**, a **maritime officiant**, or (if enabled by Government) an **independent officiant**.

“Civil officiants”: under our recommended scheme, **registration officers**, **maritime officiants** and (if enabled by Government) **independent officiants**.

“Civil partnership”: a legal status acquired by couples who register as civil partners which provides substantially the same legal rights and responsibilities as marriage.

“Civil preliminaries”: **preliminaries** conducted by the **registration service**, in distinction to **Anglican preliminaries**.

“Common licence”: a document issued by the Church of England or Church in Wales, as part of one of the three types of **Anglican preliminaries**. A common licence authorises a wedding in an **Anglican** church or chapel with no **waiting period**.

“Conversion”: a process by which a same-sex couple can convert an existing **civil partnership** into a marriage.

“Diocese”: an administrative district of the Church of England and Church in Wales which is under the supervision of a bishop. Dioceses are divided into **parishes**.

“Dissolution”: the legal termination of a valid **civil partnership**.

“Divorce”: the legal termination of a valid marriage.

“Established church”: the church recognised by the law as the official church of a state. The Church of England is the established church of England; the Church in Wales is not an established church but retains vestiges of having been an established church within Wales, with implications for weddings law.

“Exempt from immigration control”: a person is exempt from immigration control if they are a Commonwealth citizen who had a right of abode by virtue of the Immigration Act 1971; a member of a diplomatic mission, or a family member of such a person; a member of a class of visiting service persons; a consular employee or officer, or a family member of such a person; a visiting member of a foreign government, or a family member of such a person; a specified representative or member of certain international organisations, or a family member of such a person; a specified dependant of a visiting member of the United States Armed Forces; or a head of state, or a family member of a head of state. See regulation 3 of the Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015.[2]

“Exempt person”: a **relevant national**, or someone who has the **appropriate immigration status** or holds a **relevant visa** in respect of the proposed marriage or civil partnership. See section 49(1) of the Immigration Act 2014.

“Faculty Office”: the Faculty Office of the Archbishop of Canterbury, which administers the issuing of **special licences**.

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[2] SI 2015 No 122.

"Forced marriage": a marriage which one or both of the parties entered into without free and full consent due to violence, threats or any other form of coercion, or without the mental capacity necessary to consent to the marriage,[3] as under section 121 of the Anti-social Behaviour, Crime and Policing Act 2014.

"General Register Office": the offices and staff of the **Registrar General** which oversees the civil registration in England and Wales of births, deaths and marriages.

"Handbook": the Handbook issued to **registration officers** by the **Registrar General**, containing guidance in relation to weddings.

"Humanism": Humanists UK's website says that there are many definitions of Humanism. It says that a Humanist is someone who:

> trusts to the scientific method when it comes to understanding how the universe works and rejects the idea of the supernatural (and is therefore an atheist or agnostic)
>
> makes their ethical decisions based on reason, empathy, and a concern for human beings and other sentient animals
>
> believes that, in the absence of an afterlife and any discernible purpose to the universe, human beings can act to give their own lives meaning by seeking happiness in this life and helping others to do the same.[4]

"Impediment to marriage": a reason why two people are not legally able to marry each other. Impediments include being too closely related, being under 16 years old,[5] or lacking mental capacity.

"Independent celebrant": a person who leads wedding ceremonies, but is not a **registration officer** and has not been nominated by or act on behalf of a religious or **non-religious belief organisation**. The current law does not allow independent celebrants to conduct legally binding weddings. Under our Terms of Reference, we make recommendations about how provision could be made for independent celebrants if Government chooses to enable them to do so.

"Independent officiant": an **independent celebrant** who, under our recommended scheme, has been authorised to officiate at legally binding weddings.

"Interfaith": an interfaith wedding is one that combines elements from different religious (and sometimes non-religious) traditions. An interfaith wedding could be a wedding that is conducted by an interfaith minister as a part of their interfaith ministry, or a wedding conducted by multiple officials from different faiths. By "interfaith couple" we mean a couple where the parties are of different faiths or hold different beliefs.

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3 Or, once the Marriage and Civil Partnership (Minimum Age) Act 2022 is in force, before their 18th birthday.

4 Humanists UK, *Humanism*, https://humanism.org.uk/humanism/ (last visited 1 July 2022).

5 The minimum age to marry is 16 years (with the consent of specified persons), or 18 years (without such consent): Marriage Act 1949, ss 2 to 3. Once the Marriage and Civil Partnership (Minimum Age) Act 2022 is in force, the current provisions permitting 16- and 17-year olds to marry with the consent of specified persons will be abolished and so the minimum age to marry will be 18 years.

“Maritime officiant”: under our recommended scheme, a type of officiant exclusively authorised to officiate at weddings on board cruise ships in international waters.

“Marriage certificate”: a certified copy of the details of a marriage contained in the **marriage register**.

“Marriage document”: the document issued after **Anglican preliminaries** and returned for registration after the ceremony, introduced under the **schedule** system under the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019.

“Marriage register”: an official record of marriages legally recognised by the state.

“Nominated officiant”: under our recommended scheme, an officiant nominated by a religious or (if enabled by Government to conduct weddings) **non-religious belief organisation**, and authorised by the **General Register Office**.

“Non-conformist”: historically, a Protestant who did not conform to the **usages** and governance of the **established church**.

“Non-qualifying ceremony”: a ceremony that results in a marriage that it is neither a valid nor a **void marriage** because the wedding ceremony did not comply with the required formalities under the law.

“Non-religious belief organisation”: an organisation whose sole or principal purpose is the advancement of a system of non-religious beliefs which have a level of cogency, seriousness, cohesion and importance that brings them within the meaning of article 9 of the European Convention on Human Rights.

“Notice”: the process by which the parties give notice of their intention to marry each other to the **registration service** or, in the case of **Anglican preliminaries**, to the **Anglican** authorities. The parties may be required to provide certain information, for example, name, date of birth, and nationality.

“Officiant”: under our recommended scheme, all weddings will be attended by an officiant, who will have certain legal responsibilities. The officiant could, but would not be required to, lead the ceremony. Officiants would include **registration officers**, **Anglican clergy**, **nominated officiants**, and **maritime officiants**. If Government decided to enable them to conduct weddings, there could also be **independent officiants**.

“Open doors”: under the current law, a statutory requirement applicable to weddings in **registered buildings** or **register offices**, generally interpreted to mean that the public must have unfettered access to witness the wedding and to make objections prior to or during the ceremony. A similar requirement applies to weddings on **approved premises**, which must be accessible to the public without charge.

“Parish”: within the Church of England and Church in Wales, an area overseen by a parish priest or cleric and which will have one or more parish churches. A number of parishes make up a **diocese**, which is overseen by a bishop.

“Predatory marriage”: a term used to describe weddings in circumstances where one person marries another, often a person who is elderly or lacks capacity, as a form of financial abuse.

If the person lacks the mental capacity to marry, a predatory marriage may also be a **forced marriage**.

"Preliminaries": the steps that must be taken before a couple is authorised to have a legally binding wedding. Preliminaries ensure that there are no **impediments** to a couple marrying each other, and help to detect **sham marriage** and guard against **forced marriage**. **Civil preliminaries** are conducted by **superintendent registrars** and the **Registrar General**; **Anglican preliminaries** are conducted by the Church of England and Church in Wales.

"Prescribed words": the declarations and words of contract that must be said under the current law by the parties during the wedding ceremony, except **Anglican**, Jewish and Quaker weddings. Since 1996 there has been a choice between three alternative authorised versions of the prescribed words.

"Quaker officer": a person appointed by the **Religious Society of Friends** responsible for registering marriages solemnized according to its **usages**.

"Register office": the office of a **superintendent registrar**, being one of the two categories of locations at which a couple may have a civil marriage (the other being on **approved premises**) under the current law. There must be a register office in each registration district.

"Registered building": a **certified place of worship** which is also registered for weddings to take place there. Under the current law, weddings conducted by religious organisations other than those of the **Anglican**, Jewish and Quaker faiths must take place in registered buildings.

"Registrar" or "registrar of marriages": an officer appointed by a local authority, who registers civil weddings and religious weddings in **registered buildings** (except where an **authorised person** is present). Under our recommended reforms, they will officiate at civil weddings.

"Registrar General": the head of the **General Register Office**.

"Registrar General's licence": under the current law, a document issued as **civil preliminaries**, used to authorise a wedding involving a person with a **terminal illness**, with no **waiting period**.

"Registration district": each **superintendent registrar** has authority over a registration district. The registration district might cover a county or a smaller area such as a London borough or a metropolitan district. Registration districts are divided into sub-districts.

"Registration officer": either a **registrar of marriages** or a **superintendent registrar**. Although the current roles of registrar and superintendent registrar are distinct under the Marriage Act 1949, in practice many local authorities appoint the same individuals to both roles. Under our recommended scheme, there will be no distinction between the two roles.

"Registration service": collectively, the civil authorities responsible for the process of getting married: the **Registrar General**, the **General Register Office**, local authorities and **registration officers**. Some local authorities refer to their own departments responsible for the registration of births, deaths and marriages as "registration services", but in this Report we do not adopt that usage.

"Relevant national": a British citizen, an Irish citizen, a person with settled or pre-settled status under the EU Settlement Scheme, or a person who has a decision pending on an EU settlement scheme application that was submitted on or before 30 June 2021. See section 62(1) of the Immigration Act 2014.

"Relevant visa": entry clearance or leave to enter as a visitor for the purpose of marriage or **civil partnership**, or entry clearance, leave to enter or leave to remain as a fiancé(e) or proposed civil partner, in respect of the proposed marriage or civil partnership. See regulation 4 of The Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015.[6]

"Religious leader": a member of the **clergy**, granthi, imam, minister, priest, rabbi or other person who takes a leading role in conducting religious wedding ceremonies.

"Religious-only marriage": a marriage that is recognised by a religious community or organisation but not by the state, because the wedding did not follow the legal requirements. From the perspective of the state, a religious-only marriage is a form of **non-qualifying ceremony**.

"Religious ceremony": a wedding officiated at by a member of the **clergy** or a **nominated officiant** nominated by a religious group.

"Required words of contract" or "Required words": under our recommendations, the words of consent required in a civil ceremony, for example, "I accept you [name] as my [husband, wife or spouse]" or "Yr ydwyf i [enw] yn dy dderbyn di yn [ŵr, wraig neu briod] i mi", or words to the same effect.

"Rites": in this context, the ceremonies, practices or customs associated with a particular wedding ceremony. We use the word "usages", which appears in the current marriage legislation with reference to Jewish and Quaker weddings, to mean the same thing.

"Schedule": a document issued by the **registration service** as part of **civil preliminaries**, which authorises the couple's wedding after the parties have given **notice** and a **waiting period** has elapsed, and is used to register their marriage. Under the current law, a schedule is the only type of document (apart from the **Registrar General's licence**) that provides legal authority for civil weddings, Jewish and Quaker weddings, and other religious weddings in **registered buildings**. It can also be used instead of **Anglican preliminaries** to authorise an **Anglican** wedding in a church or chapel. A schedule system was introduced under the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, with schedules replacing **superintendent registrar's certificates**. Also called a "marriage licence" in other jurisdictions.

"Sham marriage": a marriage between parties of whom at least one is not a **relevant national**, and where there is no genuine relationship between them and either one or both entered into the marriage for the purpose of gaining an immigration advantage.

"Society of Friends" or "Religious Society of Friends": Quakers.

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6 SI 2015 No 122.

“Solemnize”: the term used to refer to performing a legally binding wedding ceremony under the current legal framework.

“Special licence”: a document issued by the Archbishop of Canterbury under the Ecclesiastical Licences Act 1533, as part of one of the three types of **Anglican preliminaries**. A special licence can authorise an **Anglican** wedding to take place at any location named in the licence, with no **waiting period**.

“Superintendent registrar”: an officer appointed by a local authority, who conducts **civil preliminaries** and attends civil weddings.

“Superintendent registrar’s certificates”: prior to the introduction of the **schedule** system, a document that was issued as part of **civil preliminaries**, which authorised the couple’s wedding after the parties have given **notice** and a **waiting period** has elapsed.

“Terminally ill”: under the current law, a person who is seriously ill and not expected to recover; under our recommended scheme, a person who has a serious medical condition and it would be unreasonable to expect them to comply with the 28-day **waiting period** before being given authority to marry. In other areas of law, “terminally ill” has a different, specific meaning.

“Universal civil preliminaries”: a system in which all couples would be required to undergo **civil preliminaries** before getting married.

“Usages”: see “**rites**”.

“Void marriage” or “invalid marriage”: a void marriage is invalid or a nullity, meaning the marriage is treated as never having come into existence. The parties to a void marriage are entitled to apply for financial relief, as if they were divorcing; this is not the case for parties to a **non-qualifying ceremony**.

“Voidable”: a marriage is voidable if certain criteria, for example, non-consummation of the marriage, can be established. Unlike a **void marriage**, a voidable marriage is a valid marriage until it has been **annulled** by a **decree of nullity**.

“Waiting period”: a minimum length of time between when the parties give **notice** of their intention to marry and when they can get married. For weddings authorised by **schedule** under the current law, the standard waiting period is 28 days.

Chapter 1: Introduction

INTRODUCTION

1.1 Weddings are important to people. They are important to the couples getting married, and to their families, friends, and communities. This importance is reflected in how couples celebrate their weddings: to make the day personally meaningful, a couple might celebrate with religious rites or according to other beliefs, with rituals that honour their cultures or heritages, and in personal ways that reflect their lives and relationship together.

1.2 Weddings are also important legally. A wedding creates a new legal relationship between the couple, a relationship with significant legal duties and responsibilities. This in turn requires certainty about who is legally married, for the benefit of the couple and the state. It is this aspect of weddings – the formalities required for a couple to be legally married – that our project is concerned with.

1.3 Our project demonstrates that there is a disconnect between what is meaningful to many couples and what the legal formalities require of them. The law is failing to facilitate weddings, and, for many couples, is preventing them from celebrating in a way they would wish, or, in some cases, discouraging them from being legally married at all.

1.4 The problems with the law can be attributed to its antiquity. The fundamental structure of the law and its rules date from the 18th and 19th centuries, when virtually everyone lived, married and died within a single community, and most people shared the same faith and beliefs. In short, many of the rules were devised to reflect a way of life that bears little resemblance to life today.

1.5 Weddings law in England and Wales restricts how couples are permitted to celebrate their weddings, for historical reasons rather than current policy reasons. Complexity and inconsistency mean that different couples are bound by different rules. Because of unnecessary restrictions, many couples cannot have a legally recognised wedding in a place that is meaningful to them. Many couples also cannot have a ceremony which contains the vows, rituals and music that best reflect their beliefs and preferences. Unnecessary regulation and bureaucracy contribute to some couples having to spend more on the legal aspects of their wedding than other couples.

1.6 To comply with their religious and cultural traditions, or to marry in a way that is meaningful to them, some couples celebrate in a way that the law does not recognise at all. Some of these couples will have two or more ceremonies: one which complies with the law, and one or more which honours their beliefs or values. However, other couples will only have one ceremony, either not realising that the ceremony they have had is not legally recognised, or intentionally choosing to comply with the requirements of their beliefs, culture or values rather than the law.

1.7 To address the significant problems with the law, we recommend comprehensive reform: an entirely new scheme to govern weddings law. Our recommendations will

change the law from the foundations up, transforming the law from a system based on the building in which a ceremony takes place to an officiant-based scheme.

1.8 We recommend this fundamental change, and other ancillary reforms, based on the principles underpinning our review, which we agreed with Government at the outset of our project (which we detail at paragraph 1.44 below). These principles have directed us to find a balance between giving couples freedom over their weddings, to allow them to celebrate them according to their own beliefs, whilst ensuring that the state's legitimate interest in weddings is protected (including, for example, in identifying and protecting against forced and sham weddings). These principles have also directed us to seek to harmonise and rationalise the law, including eliminating the differences in treatment between groups. However, as we explain in the pages that follow, we think that some exceptional treatment of the Anglican churches is justified in relation to certain specific aspects of the law governing weddings.

1.9 Our recommendations will give couples, as well as religious groups and (if enabled by Government to conduct weddings) non-religious belief groups, the freedom to decide where and how their weddings will take place.

(1) They will be allowed to choose the location where their weddings will take place, without unnecessary restrictions and costs. This approach will allow all types of wedding – both civil and belief ceremonies – to take place outdoors, including in forests and fields, and in a wide variety of buildings, including in private homes and on military sites.

(2) They will be allowed to choose the form their wedding ceremonies will take. This will allow the variety of ceremonies that people use to mark their weddings, including religious ceremonies, to be recognised as the legal ceremony at which the couple is married, eliminating the need for a couple to have, and pay for, more than one ceremony.

Our recommendations also clarify the consequences when a couple has not complied with the required formalities. Importantly, they will ensure that fewer weddings conducted according to religious rites result in a marriage that the law does not recognise at all.

1.10 Although our recommendations for reform might seem radical to some, they are neither novel nor untested. Our near neighbours in Scotland, Northern Ireland, Ireland, Jersey, and Guernsey have all reformed their laws to reflect modern society and to give couples more choice. Other jurisdictions which share common traditions, for example, Australia, Canada, and New Zealand, also operate modern, fit-for-purpose schemes, which give couples significant choice over where and how their weddings can be celebrated. By bringing the law up to date, our recommendations will make the law in England and Wales more similar to the laws in these countries. In particular, in many ways, our recommendations will make the law of England and Wales similar to the law in Scotland, where regulation has long focussed on the person conducting the wedding rather than on the location where it takes place.

1.11 In explaining that the current law was largely designed for a different age, we do not discount the importance of history and tradition in shaping both individuals' ideas of what form a wedding should take or the beliefs and practices of the religious

organisations conducting them. We wish to emphasise at the outset that nothing in our recommendations will prevent a couple from choosing the kind of wedding that is available under the current law and which is celebrated in accordance with long-cherished forms. Nor will our recommendations require any religious group to conduct a wedding in a form or in a location which is contrary to their beliefs or practices. For many, our reforms will not result in any change in how they celebrate their weddings. But we do not think that the decisions made by legislators in the 18th and 19th centuries should limit the choices that are available to couples who wish to marry in a different way. Nor should they constrain the religious groups who believe weddings should be celebrated in other ways. The Terms of Reference, which we agreed with Government, make clear that our project must aim to ensure that couples' wishes and beliefs are respected, fairly and equally, to give them more choice. The England and Wales of the 21st century is home to millions of people of different faiths and of no faith, and their histories, traditions, beliefs and values should also be respected.

THE LAW OF WEDDINGS

What we mean by "weddings law"

1.12 In this project, we are considering weddings law, meaning how and where couples can get legally married, and the steps they must take before and after the ceremony. We are not considering the law of marriage more generally, meaning that we are not considering the legal status of being married and the legal consequences that flow from it. But the fact that being married does have legal consequences provides important context: it is why it is essential for the couple, and for the state, to know whether a couple are legally married.

1.13 The law governing weddings includes all the formalities which a couple must observe to be legally married, including –

(1) the preliminaries to the wedding, often called giving notice of the intended marriage;

(2) the location of the wedding;

(3) the form and content of the wedding ceremony;

(4) who must attend, including their roles; and

(5) the registration of the marriage.[1]

1.14 The legal formalities are often, for many couples, only one part of the arrangements they make. Many couples will invite guests to attend, even though they will not play any legal role; dress up for the day; decorate their venue with flowers, candles or fabrics; and host a reception or other celebration, where they might serve food and drinks to their guests. Contract law, consumer protection law, health and safety law, and, most recently, Covid-19 public health restrictions, may apply and govern these other arrangements. However, weddings law does not: inviting guests, dressing up, providing catering, and so on are not necessary to change the status of a couple to

[1] The full Terms of Reference for our project are included in Appendix 1.

that of being married. We are therefore not considering them in our project, as we are confined to considering the necessary steps a couple must take to be legally married under the law of England and Wales.

The current law

1.15 Weddings law in England and Wales is extremely complex, with different rules applying to different types of weddings. Under the framework of the current law – the Marriage Act 1949 – couples must choose between a civil wedding and a religious wedding. Religious weddings are further divided by the law into different types: Anglican (meaning the Church of England and the Church in Wales), Jewish, Quaker, and any other religious group. Anglican, Jewish and Quaker weddings are governed by rules distinct to each; weddings conducted by any other religious group are governed by a single set of rules that apply to all weddings taking place in registered places of worship.

1.16 All couples except those having an Anglican wedding must complete the civil preliminaries process; couples having an Anglican wedding alone have the option of Anglican preliminaries. Most religious weddings must be conducted in a place of worship, but there are exceptions for couples having Jewish and Quaker weddings, and for some having Anglican weddings.[2] Civil weddings must take place at either a register office or on approved premises, although recent amendments to the law allow those marrying on approved premises to do so outdoors.[3] Civil weddings and religious weddings in registered places of worship must include the prescribed declarations and words of contract; Anglican, Jewish and Quaker weddings do not, instead taking place according to the rites or usages of those groups.[4] Couples cannot have a legally recognised Humanist ceremony, or a ceremony according to other non-religious beliefs, and couples having civil weddings cannot include anything other than incidental religious references.[5] All these rules are underpinned by complex provisions affecting every stage of the process of getting married.

1.17 These various legal requirements are important. If a couple fails to comply with them, whether intentionally or not, their ceremony might not result in a valid marriage. The marriage might be void, or classified as a non-qualifying ceremony.[6] An individual might only learn that they are not validly married when their relationship breaks down

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2 Jewish weddings and Quaker weddings are not subject to any legal restrictions as to place. The rules governing the ceremony instead flow from the requirements as to who may marry in Jewish or Quaker ceremonies and that those ceremonies are conducted "according to the usages" of those groups: Marriage Act 1949, ss 26(1)(c) and (e), 26B(2) and (4), and 47. Anglican weddings generally must take place in "a church or other building in which banns may be published"; however, on the authority of an Archbishop's special licence, an Anglican wedding can take place anywhere. Authority to conduct weddings vests directly in clergy, without consideration of a link to a church: Marriage Act 1949, ss 12, 15, 22 and 26(1)(e), and Ecclesiastical Licences Act 1533.

3 Marriage Act 1949, s 26(1)(b) and (bb). For more about the recent amendments to the law, see para 1.69 and following below.

4 Marriage Act 1949, ss 5(1), 26(1)(c), (d) and (e), 26B(2)(a) and (4)(a), 44(3) and (3A), 45(1), 46B(3), and 47(1).

5 Marriage Act 1949, ss 45(2) and 46B(4); The Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 2 para 11.

6 See the Glossary for the meaning of "void marriage" and "non-qualifying ceremony".

or their partner dies, when they might discover that they have no legal rights against the other party or their estate. Even couples or individuals who were aware that their wedding did not comply with the law may also be surprised with the consequences of that decision, not appreciating the breadth and significance of the legal protections that marriage provides, in part because of the pervasiveness of the myth of common law marriage.[7] In either case, the financial consequences can be devastating, and are most often felt by the financially weaker party, disproportionately women, as well as any children of the relationship.

The history of the law

1.18 The weddings law in force today is the result of incremental legal development over centuries, with its central elements dating from the 18th and 19th centuries.

1.19 The origins of the current law date from the Clandestine Marriages Act 1753, also known as Lord Hardwicke's Act. The Act sought to address a specific problem at the time: of weddings being conducted in haste, without any scope for impediments to be discovered or parental objections to be made. The canon law of the Church of England had long governed weddings, but although it directed weddings to be preceded by certain preliminaries, they were not essential to the validity of a marriage. To address concerns that children from wealthy families were making unsuitable matches, Lord Hardwicke's Act enshrined earlier requirements of the canon law into statute. It required weddings to be conducted by Anglican clergy, within a parish church or public chapel,[8] following the publication of banns or on the authority of a licence. The Act permitted Anglican weddings only. However, the weddings of Jews and Quakers were excepted,[9] and left unregulated by the law, on the basis that these groups were unlikely to comply with the requirement to marry in an Anglican church.[10]

1.20 The Marriage Act 1836 brought significant reform: it created new routes into marriage, allowing weddings to take place other than according to Anglican rites. It introduced the concept of register offices, permitting weddings to take place in a non-religious environment. It also allowed weddings to be conducted in non-Anglican places of

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7 A Barlow, "Modern Marriage Myths: the Dichotomy Between Expectations of Legal Rationality and Lived Law" in RC Akhtar, P Nash and R Probert (eds), *Cohabitation and Religious Marriage: Status, Similarities and Solutions* (2020). Research from the British Social Attitudes Survey (carried out by The National Centre for Social Research) in 2019 demonstrates that almost half of people in England and Wales mistakenly believe that unmarried couples who live together have a common law marriage and enjoy the same legal rights as married couples: J Curtice, E Clery, J Perry, M Phillips and N Rahim (eds), *British Social Attitudes: the 36th report* (2019) p 113.

8 A chapel is a place without a permanent clergy or congregation, and a public chapel is one that provides facilities for worship additional to the parish church.

9 Weddings of members of the royal family were also excepted. As to whether Jewish or Quaker weddings would have created a valid marriage at this time is not entirely clear. Case law and statements suggest that a wedding in accordance with Jewish law would have created a valid marriage, but there is no case law that considered whether a Quaker wedding would be recognised as creating a valid marriage: see R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009).

10 Clandestine Marriages Act 1753. For a more detailed history, see R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (2009); and W Kennett, "The Place of Worship in Solemnization of a Marriage" (2015) 30 *Journal of Law and Religion* 260.

worship (albeit only Christian ones until 1855[11]), if they were certified as a place of worship and registered for marriage. Importantly, it also created the system for civil preliminaries, which were required to authorise all weddings except Anglican ones. Although retaining distinct treatment for Anglican, Jewish and Quaker weddings, the law regulated Jewish and Quaker weddings for the first time, by requiring that they were preceded by civil preliminaries and registered.[12]

1.21 The fundamental structure of weddings law created by the Marriage Act 1836 remains in place today. Anglican, Jewish, and Quaker weddings are each given unique treatment. All other religious weddings must take place in registered places of worship, with one set of rules governing those weddings. Separate rules govern civil weddings.

1.22 The most significant reforms since 1836 have been in relation to civil weddings, including confining civil weddings to being exclusively secular. The Marriage Act 1836 made provision for weddings to take place in a register office, before a superintendent registrar and registrar. But it was not until 1857 that the use of a religious service was prohibited in register office weddings, transforming them from an option for people, primarily religious couples, who viewed marriage as a civil contract, to a purely secular ceremony.[13] In 1995, approved premises were introduced, allowing civil weddings to take place in locations other than register offices.[14] And in 2021, ceremonies on approved premises were permitted to take place in outdoor areas on the grounds of the approved premises.[15]

THE CASE FOR REFORM

Problems with the law

1.23 The law is ancient and, as the result of its incremental development, complex. The current law categorises weddings into five types, and then applies different rules to each, at different stages in the process of getting married. The result is a law that is inconsistent and complicated, inefficient, unfair, and needlessly restrictive.

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11 R Probert, *Tying the Knot: The Formation of Marriage* 1836-2020 (2021) pp 39 and 86, citing Toleration Act 1688, Roman Catholic Relief Act 1791, Places of Worship Act 1812, and Places of Worship Registration Act 1855.

12 R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (2021) pp 44 to 45.

13 R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (2021) pp 96 to 97, citing the Marriage and Registration Act 1856; R Probert, "Secular or sacred? The ambiguity of 'civil' marriage in the Marriage Act 1836" (2022) *Journal of Legal History* (online), https://www.tandfonline.com/doi/full/10.1080/01440365.2022.2092947?scroll=top&needAccess=true (last visited 3 July 2022).

14 Marriage Act 1994.

15 The Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021 (SI 2021 No 775); and Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2022 (SI 2022 No 295). Government intends to introduce similar reforms to allow weddings to take place in the grounds of registered places of worship and Anglican churches and chapels, when legislative time is available: see Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022) p 32.

Inconsistent and complex

1.24 The rules that apply to weddings are inconsistent, with different rules applying to different types of wedding.

1.25 For example, there are no universal requirements for who must attend a wedding other than the couple. The legal requirements vary depending on the type of wedding.

(1) Civil weddings must be attended by two registration officers – a superintendent registrar and a registrar of the registration district in which the wedding is taking place – as well as by two witnesses.

(2) Anglican weddings must be attended by a Clerk in Holy Orders and two witnesses.

(3) Weddings taking place in registered places of worship, that is religious weddings other than Anglican, Jewish and Quaker weddings, must be attended in the first year of the place's registration by a registrar of the registration district; thereafter, they must be attended by either a registrar or an authorised person of the place of worship. Two witnesses must also attend.

(4) The legislation does not require Jewish and Quaker weddings to be attended by anyone other than the couple. There is no statutory requirement for the attendance of witnesses or the person responsible for ensuring the marriage is registered (that is, the Jewish synagogue secretary or Quaker officer).

1.26 Similar inconsistencies appear across other legal requirements, applying to some weddings but not others. The requirement that a wedding takes place with open doors only applies to civil weddings and weddings in registered places of worship; it does not apply to Anglican, Jewish and Quaker weddings. The same is true for the prescribed words. The rules on location are even more variable: Jewish and Quaker weddings can take place in any location; Anglican weddings must generally take place in a church or public chapel, but exceptionally can take place anywhere on the authority of the Archbishop of Canterbury's special licence; all other religious weddings must take place in a registered place of worship; and civil weddings must take place in a register office or on approved premises.[16]

1.27 Although these differences arose from specific historical circumstances, on their face, they are now inexplicable. They are also unjustifiable, with little relevance to the way weddings are conducted in England and Wales today.

1.28 Because different rules apply to different couples, depending on the ceremony they wish to have, the law is confusing. Someone who had attended a Jewish wedding in a garden might assume that they could have an Islamic wedding outdoors. Someone who had attended an Anglican ceremony in an Oxbridge chapel might similarly not appreciate that if they want a civil wedding, it must be in a place regularly open to the

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16 Since 2021, "approved premises" includes both the room within the built premises which has been approved, as well as any "linked outdoor areas": see The Marriage and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021 (SI 2021 No 775); Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2022 (SI 2022 No 295).

public. And once told of the different rules, it would be understandable if they questioned what the justification for those differences is.

Inefficient

1.29 The current law is also inefficient. Reforms in 2021 to introduce a schedule system have addressed some of the inefficiencies in the way that marriages are registered.[17] The use of schedules and marriage documents has removed the need to distribute and retain approximately 84,000 marriage register books, including by all religious groups conducting marriages, and the requirement to write out entries in marriage register books in duplicate.[18] However, many inefficiencies remain. For example, it is inefficient, as well as ineffective, to attempt to publicise an intended marriage by posting a notice in the couple's local register office. The many detailed regulations governing approved premises are also inefficient, and costly to businesses.

Unfair and restrictive

1.30 Some couples may perceive the law to be restrictive, preventing them from having a wedding that is meaningful to them. There is no option for a couple to marry according to beliefs that are non-religious. Interfaith couples are also not served well by the law's sharp distinction between civil and religious weddings, as in practice many are unable to have a wedding that honours their different or blended religious beliefs.

1.31 The rules that govern where many types of wedding can take place do not accommodate couples whose beliefs do not dictate that they marry indoors, in a particular type of venue. In particular, couples wanting a religious wedding but whose religious group does not have a place of worship, does not worship indoors, or whose only registered place of worship is too small or too far away to host the wedding, may be prevented from having a legally recognised religious wedding at all. We believe these rules on location contribute to the serious problem of non-qualifying ceremonies, where a ceremony that takes place according to religious rites does not comply with any of the formality requirements.[19]

1.32 Couples having civil weddings may also experience the law as unduly restrictive. The rules governing approved premises only permit certain types of premises to be approved, requiring them to be regularly available to the public for weddings and freely open to the public during the ceremony.[20] The often significant costs associated with approval will need to be reflected in the fee that the venue charges the couple, increasing the cost of getting married there. They also impose a hurdle, deterring

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17 See the Glossary for the meaning of "schedule". See also paras 7.5 to 7.14 below.

18 Getting Married: A Consultation Paper on Weddings Law (2020) Law Commission Consultation Paper No 247 (hereafter, "Consultation Paper"), para 8.7. See also Ch 7.

19 For example, Islamic ceremonies held in a private flat (*A-M v A-M (Divorce: Jurisdiction: Validity of Marriage)* [2001] 2 FLR 6), a hotel (*Shagroon v Sharbatly* [2012] EWCA Civ 1507, [2013] Fam 267), and the Moroccan consulate (*Dukali v Lamrani (Attorney-General Intervening)* [2012] EWHC 1748 (Fam), [2012] 2 FLR 1099) were all held to be a non-qualifying ceremony, although in *A-M v A-M* it was presumed that a valid marriage had taken place overseas. A Hindu ceremony in a restaurant (*Gandhi v Patel* [2002] 1 FLR 603) was held to be a non-qualifying ceremony.

20 Marriage Act 1949, s 46B(2); Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 1 para 2 and sch 2 para 12.

venues, particularly small and non-commercial ones, from applying for approval.[21] The result is to restrict couples' choices to venues that host wedding ceremonies as a business rather than enabling couples to marry in a location that is meaningful to them.

1.33 Government's recent reforms to permit weddings to take place outdoors on the grounds of approved premises, together with its stated intention to extend this ability to places of worship and Anglican churches and chapels,[22] addressed some of the restrictions in the law. However, the recent reforms do not help couples who wish to marry in an outdoor location that is not connected with the type of place which could be approved as premises for civil weddings or with a place of worship. Nor do the recent reforms help to address the barriers – including of cost – facing individuals, community groups or businesses who want to have or host civil weddings.

1.34 And because the law continues to impose significantly different rules on couples, depending on the type of wedding they are having, even with Government's reforms, some couples might perceive the restrictions to which they are subject to be unfair.

Out of step with modern society

1.35 Current weddings law was devised in the 19th century around Christian patterns of worship, largely reflecting Anglican weddings and the accommodation provided to Non-conformist protestant groups who protested at being required to marry in an Anglican wedding ceremony. Although modifications to extend the law to apply to all types of religion have been added since then,[23] the law remains fundamentally structured around Christian wedding ceremonies. It therefore assumes that most[24] weddings will generally follow a particular form, being a ceremony that includes specific statements about the couple's freedom to marry and giving of consent, and taking place indoors in places open to the public, and usually in or near to the community where the couple resides.

1.36 It goes without saying that profound social and cultural changes have taken place in England and Wales since the 18th and 19th centuries. The population is more religiously and culturally diverse, and far more secular.[25] A weddings law based on assumptions about how people would or should marry in the Georgian and Victorian eras does not reflect the ways in which many couples want to celebrate their weddings today.

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21 See Consultation Paper, paras 7.61 to 7.64.

22 See paras 1.69 and following and 6.7 below.

23 For example, the extension to certify a place of worship to non-Christian groups in the Places of Worship Registration Act 1855, and the ability of registered places of worship to appoint an authorised person to attend their weddings, instead of the registrar, in the Marriage Act 1898: see Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (2021) pp 39, 86, and 140.

24 Bearing in mind the significant exceptions for Jewish and Quaker weddings.

25 See Consultation Paper, paras 1.42 to 1.45.

Non-qualifying ceremonies

1.37 Some couples marry in a way that is not legally recognised. These ceremonies, called non-qualifying ceremonies,[26] are a particular concern where the couple having them do so without realising their lack of legal status, or where the law has placed a barrier to the couple having a legal wedding that is meaningful to them, with the couple prioritising a ceremony that is significant to them rather than one that complies with the law. Although many couples have ceremonies conducted by Humanist celebrants and independent celebrants, which are not legally recognised, the evidence suggests that those couples do so knowingly, and will usually have a separate legal wedding in addition. Other couples do not, and only have their meaningful, often religious, ceremony. Although not exclusively arising in the Islamic community, research suggests Islamic couples who have a nikah ceremony might be especially likely to be among those who do not have an additional, legal wedding ceremony.[27] While the reasons why such couples have only a religious-only marriage are complex, and include situations where one of the couple is pressured by the other to have a non-legally recognised wedding, the result is that they lack the protection of legal marriage. As a result, individuals, disproportionately women and the children of these relationships, may suffer serious financial difficulties when the relationship ends or when their partner dies.[28]

Reform elsewhere

1.38 Many other jurisdictions offer couples more choice in where they can celebrate their weddings and how personalised their ceremonies can be. In many countries that focus regulation on the person celebrating the wedding, there are no restrictions on where the wedding can take place. In each of the laws of Australia, New Zealand, and Canada, there are relatively straightforward rules about who is authorised to officiate at a wedding and any requirements of the ceremony, with little or nothing said about where weddings can take place.[29]

1.39 Closer to home, Scotland, Northern Ireland, Ireland, Jersey, and Guernsey have reformed their weddings law to give couples more choice, and to simplify and clarify the law. A notable trend in these reforms has been a move away from buildings-based models, towards organisation- or celebrant-based ones.

(1) Scotland most recently reformed its law in the Marriage and Civil Partnership (Scotland) Act 2014. Scots law provides for universal civil preliminaries, using a schedule system. There are no restrictions on where religious or non-religious belief weddings can take place; civil weddings can take place in the registration office or in a place[30] which is agreed to by the couple and the local registration

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26 See the Glossary for the meaning of “non-qualifying ceremony”.

27 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final Report* (2022) p 6. See also The Independent Review into the Application of Sharia Law in England and Wales (2018) Cm 9560, p 14; C Fairbairn, *Islamic marriage and divorce in England and Wales* (House of Commons Library Briefing Paper 08747, February 2020).

28 See Ch 9.

29 Marriage Act 1955 (New Zealand); Marriage Act 1961 (Australia); and eg Marriage Act 1996 (British Columbia) and Marriage Act 1990 (Ontario).

30 Which are not religious premises.

authority, called an "appropriate place".[31] It operates an organisational model, in which approved celebrants belonging to both religious bodies and non-religious bodies conduct legal weddings, and district or assistant registrars conduct civil weddings.[32]

(2) The law in Northern Ireland was reformed by the Marriage (Northern Ireland) Order 2003. The Order provides for universal civil preliminaries, using a schedule system. Religious and belief weddings are conducted by officiants, appointed on application by their religious or belief body;[33] civil weddings are conducted by registrars or deputy registrars. Religious and belief weddings are permitted to take place anywhere, so long as the location is specified in the schedule. Conversely, a civil wedding can only take place in a registration office or in an approved place; the local registration authority approves places, including outdoor locations, in accordance with regulations.

(3) The law in Ireland was amended in 2004 and again in 2012. In Ireland, there are universal civil preliminaries, with a marriage registration form being the document which gives a couple authorisation to marry and which is registered after the wedding, playing the same role as a schedule in England and Wales. Registrars conduct civil ceremonies, and appointed members of religious and secular bodies solemnize religious and belief weddings. Ceremonies can take place in a building (or in their gardens or grounds) that are open to the public and has been agreed with the solemniser, with the venues for civil weddings having to be approved in advance by the Health Services Executive.[34]

(4) Jersey recently reformed its law, in the Marriage and Civil Status (Jersey) Order 2018. Jersey retained Anglican preliminaries, but has a schedule system for non-Anglican weddings. Both civil and religious weddings are subject to the same rules about location, with venues requiring pre-approval by a public official; however, weddings can take place in a wide range of venues, including outdoors. Religious weddings are conducted by religious officials, authorised on application from their religious organisation. Civil weddings are conducted by superintendent registrars or authorised independent celebrants, the latter category including Humanist celebrants.[35]

(5) Most recently, Guernsey reformed its law, in the Marriage (Bailiwick of Guernsey) Law, 2020. Anglican preliminaries have been retained, with a Dean's

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31 Marriage (Scotland) Act 1977.

32 There are four categories of religious and belief celebrants who can solemnize weddings: see Marriage (Scotland) Act 1977, s 8(1); and Consultation Paper, para 5.73.

33 The Marriage (Northern Ireland) Order 2003 refers only to religious bodies conducting weddings; however, as a result of a successful challenge under the Human Rights Act 1998, the Northern Ireland Court of Appeal determined that the statutory prohibition against having a Humanist celebrant conduct a legal marriage would have constituted unlawful discrimination: *Re Smyth's Application for Judicial Review* [2018] NICA 25, [2020] NI 308. Officiants of non-religious belief bodies can be authorised as temporary officiants: see NI Direct, *Officiant registration*, https://www.nidirect.gov.uk/articles/officiant-registration#toc-4 (last visited 1 July 2022).

34 Civil Registration Act 2004.

35 Marriage and Civil Status (Jersey) Law 2001.

licence authorising the marriage; the civil preliminaries process has been simplified, with a licence issued to authorise weddings. Weddings can take place in any type of location, with venues not subject to any pre-approval process. Anglican clergy and authorised religious officiants, the latter nominated by their religious organisation, conduct religious weddings; the Registrar General and their deputies, and civil celebrants conduct civil weddings.

OUR PROJECT

Background to the project

1.40 In 2015, at the request of Government, the Law Commission conducted a scoping review of weddings law. This scoping phase was a preliminary study of the law, identifying the issues that would need to be addressed in order to develop proposals for reform. At the conclusion of that work, in December 2015, we published the Scoping Paper.[36] In it, we outlined our view that there are clear problems with the law: it is unduly complex, uncertain, and inefficient; and it is also perceived to be unfair and overly restrictive. We concluded that there was a need for a wholescale review of the law governing weddings.

1.41 Government announced in the October 2018 Budget that it would be asking the Law Commission to conduct a full review of the law governing weddings, saying:

> England and Wales have outdated laws about how and where couples can marry. The government has asked the Law Commission to propose options for a simpler and fairer system to give modern couples meaningful choice. This will include looking at reducing unnecessary red tape and lowering the cost of wedding venues for couples.[37]

1.42 After agreeing the Terms of Reference, the current project began in July 2019.

The scope of the project

Terms of Reference

1.43 The Terms of Reference (available in full in Appendix 1) state the objective of our review: to provide recommendations for a reformed law of weddings that allows for greater choice within a simple, fair, and consistent legal structure.[38]

1.44 Our recommendations for reform are underpinned by five principles:

(1) certainty and simplicity;

(2) fairness and equality;

(3) protecting the state's interest;

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36 Law Commission, *Getting Married: A Scoping Paper* (17 December 2015) (hereafter, "Scoping Paper").

37 HM Treasury, *Budget* (29 October 2018) para 5.52.

38 We identified this as an aim for reform in our Scoping Paper, para 3.32.

(4) respecting individual's wishes and beliefs; and

(5) removing unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples.[39]

1.45 Our Terms of Reference require us to consider, and make recommendations on, all aspects of weddings law.

1.46 Our Terms of Reference also outline some policy presumptions that our review has proceeded upon. These presumptions mean that we are not making recommendations on the following issues:

(1) the introduction of universal civil marriage;

(2) the principle that (provided other requirements are met) religious groups should be able to solemnize legal marriages; and

(3) the definition of religion for the purpose of marriage, a point of law decided by the Supreme Court in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*.[40]

1.47 Our review will also not be considering civil partnerships; it will be for Government to consider making any corresponding provision for civil partnership ceremonies where appropriate. Conversely, we do explain how corresponding provision should be made for conversion ceremonies, based on a policy assumption that our recommendations will apply, in so far as relevant, to them. We explain how our recommendations will apply to conversion ceremonies in Chapter 13.

1.48 There are also matters that are explicitly outside our Terms of Reference, most of which are matters which simply fall outside a consideration of the law governing weddings. These include the rights and responsibilities that marriage creates, including the consequences of divorce. We have not considered the law of divorce generally, or the grounds on which a marriage can be void and voidable for reasons other than a failure to comply with the formalities of weddings law. We are also not considering ancillary wedding services unrelated to the law governing how and where couples may marry, as we explain at paragraph 1.14 above.

1.49 There are other matters that we have not considered, as outlined in our Terms of Reference.

(1) The question of whether non-religious belief organisations, including Humanists, and/or independent celebrants should be able to conduct legally binding weddings is not a matter for us to consider, as our Terms of Reference state. However, we have considered, and make recommendations on, how either or both non-religious belief organisations and/or independent celebrants could be enabled to officiate at weddings in a reformed law. We have sought to

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[39] We identified and suggested that the first four principles should underpin a revised law in the Scoping Paper, para 3.2 and following. The fifth principle reflects a priority of Government, reflected in HM Treasury, *Budget* (29 October 2019) para 5.52

[40] [2013] UKSC 77, [2014] AC 610.

ensure that any recommendations we make would work well if they applied to Humanist weddings and weddings conducted by independent celebrants, bearing in mind how both Humanist celebrants and independent celebrants currently conduct non-legally binding ceremonies.

(2) The question of who is eligible to marry is also outside the scope of our review. However, as we explain at paragraph 1.78 below, although we do not consider what the mental capacity required to marry should be, we do address how weddings law seeks to ensure that only those with the required capacity to marry can do so.

(3) We are not considering the question whether religious groups should be obliged to solemnize marriages of same-sex couples, as that question was decided by Parliament following wide public debate. In Chapter 8 we explain how the current special provisions for religious groups will be maintained under our recommended scheme. These provisions will not apply to any non-religious belief organisations or independent celebrants given the authority to conduct wedding ceremonies, as it is a policy assumption underlying our review that they could not discriminate between opposite- and same-sex couples.

(4) How the law deals with weddings which take place in jurisdictions other than England and Wales is also outside the scope of our review.

Devolution and applicability to Wales

1.50 Our project considers the law of England and Wales.

1.51 Under the Government of Wales Act 2006 (as amended by the Wales Act 2017), "marriage, civil partnership and cohabitation" are not devolved to the Senedd Cymru but are instead matters reserved to the United Kingdom Parliament. Any legislation which enacts our recommendations would apply to both England and Wales.

1.52 However, we do make one recommendation which will apply exclusively in relation to weddings which take place in Wales: that couples are able to have their schedules and marriage documents issued and completed in Welsh alone.

1.53 We also think that our recommendations will be beneficial to the Church in Wales. As a result of its disestablishment (by the Welsh Church Act 1914), any Measures passed by the General Synod of the Church of England[41] have no application to it. Over the years the legal rules applicable to weddings in the Church of England and those in the Church in Wales have diverged as a result of Measures being passed, an issue referred to as "limping", despite references in the Marriage Act 1949 to the "Church of England" including the Church in Wales. Realigning the rules has required the more complex and time-consuming route of primary legislation to deal with weddings conducted by the Church in Wales. Under our scheme, many of the issues that have been dealt with by way of Measures – such as when an individual will qualify to be married in a particular parish, or when banns should be called in addition to the situations where they are required by law – will be governed by the Church's own

[41] The General Synod of the Church of England can change the law by making Measures, which have to be approved by Parliament, relating to any matter concerning the Church of England.

internal rules rather than by the law. As a result, the issue of "limping" should no longer arise.

1.54 The law governing weddings is devolved to the Scottish Parliament and the Northern Ireland Assembly, and those jurisdictions have their own legislation. As we note at paragraph 1.39 above, both of these jurisdictions have reformed their weddings law recently, reforms which we have considered as part of our project in order to benefit from lessons that could be learned for England and Wales.

Government's separate work and developments during the project

1.55 During the course of this project, there have been developments relevant to our review, including in areas on which Government has conducted separate work.

Introduction of the schedule system

1.56 The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 paved the way for Government to introduce a schedule system in England and Wales. In May 2021, after we published the Consultation Paper, the schedule system was introduced under the Registration of Marriages Regulations 2021.[42] As we explained in the Consultation Paper, we welcomed these reforms, and we ensured that our provisional proposals were compatible with them.[43] The reforms that Government introduced were largely in line with the draft regulations that were available at the time of our Consultation Paper.[44] We explain the new schedule system in more detail in Chapters 3 and 7.

The Independent Sharia Review

1.57 Our review has included an analysis of the offences under the Marriage Act 1949 in order to make recommendations as to the offences that are necessary to underpin a reformed law of weddings. We explain our recommendations in relation to offences in detail in Chapter 9.

1.58 In 2018, the Independent Review into the Application of Sharia Law in England and Wales (the "Independent Sharia Review") recommended amendments to the Marriage Act 1949 so that celebrants of marriages would face penalties should they fail to ensure that the marriage is also civilly registered.[45] Following this review, Government committed, as part of its integrated communities strategy, to explore the legal and practical challenges of limited reform relating to the law on marriage and religious weddings.[46]

1.59 We have therefore not considered the creation of a new offence along the lines suggested in the Independent Sharia Review as part of our work. However, we have

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42 SI 2021 No 411.

43 Consultation Paper, para 1.77.

44 Registration of Marriages Regulations (draft statutory instrument), deposited in the House of Lords Library on 17 April 2018 by Baroness Williams of Trafford.

45 The Independent Review into the Application of Sharia Law in England and Wales (2018) Cm 9560, p 5.

46 HM Government, Integrated Communities Strategy Green Paper (March 2018) p 58.

considered ways of ensuring that fewer weddings conducted according to religious rites result in a marriage that the law does not recognise at all.

1.60 As we explain at paragraph 1.104 below, in March 2022 a research project funded by the Nuffield Foundation published its report on non-legally binding marriage ceremonies.

1.61 We understand that Government will ensure that it considers the work and recommendations of the report of the Independent Sharia Review, the Nuffield project report, and this Report when considering the case for comprehensive and enduring reform.

Humanist weddings

1.62 Prior to and throughout our project, there has been an ongoing campaign to permit non-religious belief organisations, such as Humanists, to conduct legal wedding ceremonies.

1.63 Although raised on earlier occasions,[47] this issue gained prominence during the debates leading to the introduction of marriage for same-sex couples. As a result, the Marriage (Same Sex Couples) Act 2013 gave Government the power to make provision for marriage by organisations "whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics";[48] the Act also required Government to consult on the issue.[49]

1.64 Responses to Government's consultation were very positive. But there remained difficult questions about how a new option for legal weddings could be achieved in a way that was fair to all and did not create new anomalies in the already complex law, pointing toward the need for fundamental reform. Government decided not to proceed with making an order to permit marriage by non-religious belief organisations, and instead asked the Law Commission to conduct a scoping project, as we note above.

1.65 In May 2018, the All-Party Parliamentary Humanist Group published a report about its inquiry into the legal recognition of Humanist weddings. It recommended the legal recognition of Humanist weddings, to be achieved by Government using its power under the Marriage (Same Sex Couples) Act 2013, arguing that "the case for such reform is overwhelming …".[50]

1.66 More recently, six couples challenged the current law's lack of recognition of Humanist weddings on human rights grounds. In its 2020 judgment, published shortly before the Consultation Paper was published, the High Court determined that weddings law treats Humanist couples differently to those who hold religious beliefs; however, it

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47 See the Marriage (Approved Organisations) Bills 2012-13 and 2013-14, both introduced by Lord Harrison.

48 Marriage (Same Sex Couples) Act 2013, s 14(7).

49 Marriage (Same Sex Couples) Act 2013, s 14(2); Ministry of Justice, *Marriages by Non-Religious Belief Organisations* (26 June 2014).

50 All-Party Parliamentary Humanist Group, *Any Lawful Impediment: A report of the All-Party Parliamentary Humanist Group's inquiry into the legal recognition of humanist marriage in England and Wales* (2018) p 58. The Report criticised the conclusion in the Law Commission's Scoping Paper that the power in the Marriage (Same Sex Couples) Act 2013 should not be exercised.

determined that the difference in treatment was justified because of the wider review of weddings law that was taking place. The court agreed that it had been demonstrated that there was "a legitimate aim in seeking to address differences in treatment as part of a wholesale reform of the law of marriage".[51]

1.67 The High Court decision has not affected our review. As we explain at paragraph 1.49(1) above, as specified in our Terms of Reference, in this project we are not considering the question of whether non-religious belief organisations, including Humanists, should be able to conduct legally binding weddings. However, our Terms of Reference require that we consider how weddings by Humanist and other non-religious belief organisations could be incorporated into a new scheme. Accordingly, we make recommendations which would allow weddings conducted by non-religious belief organisations to be legally recognised, should Government enable them to do so. Our recommendations would allow non-religious belief organisations to nominate officiants in the same way that religious organisations will be able to nominate officiants.

1.68 By transforming the law from the foundations up, our recommendations answer the difficult questions of fairness that would arise in making unique provision for Humanist weddings within the current buildings-based scheme. We recommend a scheme that will place all weddings on a level playing field: whether a civil, religious, or (if enabled) non-religious belief wedding, all will be able to take place in the form agreed between the parties and the officiant, and all will be able to take place in any type of location, subject to the agreement of the officiant considering safety and dignity. Our recommendations remove the unfairness in the current law, which limits some couples more than others in where and how they can marry. Our recommendations also prevent any unfairness from arising if provision is made in the law for Humanist weddings, in contrast to the difference in treatment that would arise with piecemeal reform.

Reform to allow weddings to take place outdoors

1.69 When this project was announced, Government also announced that it would take forward separate work, alongside our project, to explore the extent to which regulations governing approved premises could be reformed to allow outdoor locations for civil weddings and civil partnership ceremonies.[52]

1.70 Like everything else, weddings have been severely affected by the Covid-19 pandemic. Many couples were unable to have the wedding they wished, with their friends and families in attendance, during various periods during the pandemic. Moreover, the emergency measures introduced to prevent the spread of Covid meant that weddings were unable to take place for significant periods of time,[53] preventing most couples from getting legally married.

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51 *R (on the application of Harrison) v Secretary of State for Justice* [2020] EWHC 2096 (Admin), [2021] PTSR 322.

52 See HM Government, *First ever marriage review to free-up dream wedding venues* (28 June 2019), https://www.gov.uk/government/news/first-ever-marriage-review-to-free-up-dream-wedding-venues (last visited 1 July 2022).

53 See Consultation Paper, paras 11.46 and 11.53.

1.71 In light of the significant impact that the Covid-19 pandemic has had on couples and the weddings industry, and in line with Government's earlier intention to consider reform to allow weddings on approved premises to take place outdoors, Government introduced reforms to "offer greater flexibility and choice to couples and to owners of civil wedding and civil partnership venues or prospective venues".[54] Coming into force on 1 July 2021, these reforms have permitted civil weddings to take place outdoors on the grounds of approved premises.[55] Although originally temporary, after public consultation, Government has made this change permanent.[56] Government also intends to amend the law by way of a legislative reform order[57] to make similar provision for weddings to take place on the grounds of registered places of worship and Anglican churches and licensed chapels, when legislative time is available.[58]

1.72 Although allowing weddings to take place outdoors in some circumstances has proved helpful during phases of the pandemic where groups could not meet indoors, we make recommendations for further provision to be made to allow weddings law to facilitate couples getting legally married during any future national emergency.[59]

Predatory marriage

1.73 A number of consultees raised specific concerns with us in respect of predatory marriages. This issue has attracted increasing interest since the publication of our Consultation Paper, including coverage in the media[60] and questions in Parliament.[61] Concerns have centred around circumstances where elderly people, including those with dementia, have married without the knowledge of their family. These weddings have, understandably, given rise to significant concerns of elder abuse, including financial abuse. That is because the marriage will revoke any existing will, leaving the spouse to benefit under intestacy rules in priority to the person's children and other family members. Consultees have raised concerns that weddings have taken place when their relative did not have capacity to marry.

1.74 As we have noted in paragraph 1.49(2) above, the issue of what mental capacity a person is required to have to enter into a marriage is outside the Terms of Reference for this project.[62] This project focuses on the formalities for entering a marriage, rather

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54 Ministry of Justice, *Outdoor Marriages and Civil Partnerships* (20 December 2021) p 7.

55 Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021 (SI 2021 No 775).

56 Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2022 (SI 2022 No 295).

57 Under the Legislative and Regulatory Reform Act 2006.

58 Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022) p 32.

59 See Ch 11.

60 See eg Editorial, "The Guardian view on predatory marriage: new safeguards needed" (3 October 2021) *The Guardian*, https://www.theguardian.com/commentisfree/2021/oct/03/the-guardian-view-on-predatory-marriage-new-safeguards-are-needed (last visited 1 July 2022).

61 See eg Ministry of Justice: Forced Marriage Written Answer (HC) 92940 (22 December 2021) (James Cartlidge); Wills: Written Answer (HC) 115814 (19 November 2020) (Alex Chalk MP); Ministry of Justice: Forced Marriage: Written Answer (HL) HL6614 (14 July 2020) (Lord Keen).

62 The full Terms of Refence for the project are included in Appendix 1.

than capacity to do so. To the extent that consultees' responses reflect concerns that the current test is inappropriate, that is not a matter that we are able to resolve.

1.75 The test of capacity nonetheless forms an important backdrop to our work. The courts have held that the level of capacity required in order to be able to consent to a marriage is relatively low, being conscious that too high a level would "operate as an unfair, unnecessary and indeed discriminatory bar against the mentally disabled".[63] The "irreducible mental requirement" is that a spouse must be able

> to understand, in broad terms, that marriage confers on the couple the status of a recognised union which gives rise to an expectation to share each other's society, comfort and assistance.[64]

1.76 The general approach of the courts has been to hold that capacity to marry only requires an understanding that marriage may have financial consequences, not an understanding of what these consequences are. However, in *Re DMM* the Court of Protection held that an individual must be able to understand that a marriage will revoke an existing will.[65] We note that this decision was reached by applying the Mental Capacity Act 2005, rather than the common law test of capacity that is generally assumed to apply,[66] and has yet to be confirmed by any higher court.

1.77 At the same time, the courts will not assess the wisdom of an intended marriage. If a person does have capacity to marry, then they have the right to make their own decisions about who they marry, whether it is a wise decision or not.

1.78 While the test of capacity to marry is not within the scope of our work, our recommendations will ensure that there are sufficient opportunities for concerned individuals to object to an intended marriage and for the registrar (or person responsible for publishing the banns or granting the common licence, in the case of Anglican preliminaries) to be satisfied that both of the couple have capacity to marry. As we explain in Chapter 3, our recommendations are intended to make the preliminaries process more robust and offer greater protection to prevent marriages from taking place where any person is being forced into marriage, whether on account of threats or because they lack the mental capacity required to marry. Further, as we set out in Chapter 4, officiants will have a specific duty to ensure that the parties freely express consent to marry each other during the ceremony, a duty that necessarily includes ensuring that both parties have capacity to marry and are freely agreeing to be married.

1.79 Specific concerns about the impact of predatory marriages on an existing will are outside the scope of our project on weddings law. The revocation of the will is a consequence of marriage rather than a matter relating to the formalities for entering a marriage. But it falls squarely within the scope of the Law Commission's project on

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63 *Sheffield City Council v E (An Alleged Patient)* [2004] EWHC 2808 (Fam), [2005] Fam 326 at [144].

64 *NB v MI (Capacity to Contract Marriage)* [2021] EWHC 224 (Fam), [2021] 2 FLR 786 at [27].

65 *EJ (as attorney for DMM) v SD* [2017] EWCOP 32, [2018] COPLR 137.

66 *Sheffield City Council v E & Anr* [2004] EWHC 2808 (Fam), [2005] Fam 326; *A, B, C v X, Z* [2012] EWHC 2400 (COP), [2013] WTLR 187; *Southwark LBC v KA* [2016] EWCOP 20, [2016] COPLR 461.

wills. We considered this issue in our Consultation Paper, Making a Will,[67] in particular addressing the situation where a person has capacity to marry but lacks capacity to execute a will. In these circumstances (and absent obtaining a statutory will), the intestacy provisions will generally benefit the new spouse. We asked a number of consultation questions around this issue, including whether a marriage or civil partnership should continue to revoke a will. We also provisionally proposed that, in the event that a marriage continues to revoke a will, it should not do so where a person has capacity to marry but does not have (and is unlikely to recover) testamentary capacity. If that proposal becomes a recommendation in our final report on wills, and is enacted, it will not solve all of the concerns relating to predatory marriage. It will, however, solve one of the most significant financial consequences of a predatory marriage and, by doing so, will also remove a potentially significant financial incentive for a predatory marriage. Our project on wills was paused, at Government's request, to enable us to prioritise this project on weddings. We are committed to completing our project on wills and expect to return to it after completion of our work on weddings.

The Consultation Paper

1.80 In our Consultation Paper, published on 3 September 2020, we provisionally proposed a comprehensive new legislative scheme to update the law governing each aspect of the process of getting married. Our proposed scheme would replace the outdated, overly restrictive current law of weddings.

The impact of the Covid-19 pandemic

1.81 We had planned to publish our Consultation Paper in spring 2020. However, by March of that year, Covid had arrived in the UK. For much of the spring and early summer of 2020, although wedding ceremonies were not specifically banned in England and Wales, the emergency restrictions first introduced on 23 March 2020 meant that it was not possible to hold a wedding in compliance with the Marriage Act 1949.

1.82 Consultation is central to all of the Law Commission's projects and pivotal to our ability to make considered recommendations for reform to Government. We did not think that the circumstances in spring 2020 allowed us to consult meaningfully. Moreover, we were acutely aware of the sensitivity of consulting on weddings law during a time when weddings were not able to go ahead. We therefore chose to delay publication of the Consultation Paper.

1.83 However, we could not delay the project indefinitely. The project is important: almost everyone is interested in or affected by weddings law, and the law remained in dire need of reform. We therefore decided to publish the Consultation Paper on 3 September 2020, a time during which, at least temporarily, the restrictions on most indoor venues which could host weddings were lifted, allowing weddings to take place.

1.84 The Commission's consultations generally involve a variety of types of event: project teams will have meetings with stakeholders, host events for members of the public, chair roundtables, and speak at specialist conferences. Although some meetings might take place over the phone or online, in the past most of these events would take

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[67] Making a Will (2017) Law Commission Consultation Paper No 231.

place in person. Physical meetings were not feasible during the weddings law consultation period. Indeed, with the second wave of the pandemic, restrictions and lockdowns were again imposed during the consultation period.

1.85 We therefore devised a consultation programme that took place entirely online. We met with stakeholders, hosted roundtables, and spoke at stakeholder events, all remotely. We recorded videos in which we explained our provisional proposals and the reasons for them, each geared towards a different audience. We posted these videos online, and then hosted live online question and answer sessions for each.

1.86 We also extended the consultation period. Originally, it was set to close on 3 December 2020. By early November, recent announcements of new national restrictions in England and firebreak restrictions in Wales meant that those involved in weddings, who would be dealing with the consequences of those new restrictions, might need more time to prepare their consultation responses. We therefore decided to extend the consultation period to 4 January 2021.

1.87 The level of engagement we had during the consultation period, and the consultation responses received, enable us to be confident that our online consultation reached as many, and as diverse a range of consultees, as we would have been able to do in person.

Consultation period

1.88 During the consultation period, we did our best to inform a wide range of groups about our provisional proposals and to encourage them to respond to our Consultation Paper.

1.89 We launched our consultation period with a presentation at the Society of Legal Scholars Annual Conference 2020. Following this, we hosted nine online question and answer sessions, open to anyone who registered. Two of the sessions were directed towards members of the public, during which we invited general questions on our scheme. The other sessions focussed on aspects of our proposals that would or could be most relevant to particular groups: the Church of England and the Church in Wales; other religious groups; members of the registration service; non-religious belief groups and celebrants; independent celebrants; and wedding venues.

1.90 We also hosted three virtual roundtable events, respectively focussed on religious weddings, non-legally binding religious weddings, and wedding venues. We benefitted from a discussion group facilitated by Southall Black Sisters.[68] We held two group meetings with academics specialising in weddings law, and one group meeting with representatives of cruise companies and another with representatives of the leisure and small commercial marine industry. We joined numerous bilateral meetings with interested stakeholders and Government officials.

1.91 We also participated in external events organised by stakeholders, including two Register Our Marriage meetings, the autumn 2020 meeting of the National Panel for

[68] To which One Law For All contributed.

Registration, and the Local Registration Services Association Annual Conference 2020.

Consultation responses

1.92 We had a huge response to our consultation, with more than 1,600 consultation responses. Consultees represented a wide range of groups and individuals. Most consultees were individuals, the majority appearing to be interested members of the public. Also among our consultees were religious officials or those involved in the administration of religious weddings; registration officers; Humanist celebrants; independent celebrants; other wedding professionals; legal professionals; academics; Welsh Government officials; and a personal response signed by peers and Members of Parliament. A variety of organisations responded, including local authorities, the National Panel for Registration, and the Local Government Association; the Anglican churches and other religious organisations; non-religious-belief organisations; celebrancy representative bodies; wedding venues and representative organisations; cruise ship companies; campaign and non-profit groups; and legal organisations.

1.93 We have considered every consultation response. It is not possible to deal with every consultation response, or every point raised in them, in this Report. Our focus is on those points that, in our view, are necessary to discuss to explain how we decided our final policy recommendations. Alongside this Report, we are publishing a statistical analysis of consultation responses. We are also publishing the consultation responses that we received in due course.

1.94 Although we are unable in this Report to respond to every point consultees have raised, we emphasise that we are grateful to everyone who took the time to respond to our consultation. Their views have helped inform the recommendations that we make in this Report.

1.95 That does not, however, mean that our recommendations are dictated by the majority view of consultees in response to any particular provisional proposal or our proposed scheme in general. Law Commission consultations inform our recommendations, by gathering views about and experiences with the current law and testing potential reforms, including identifying any gaps in our provisional thinking. They help us to consider the arguments for and against possible reforms, to determine the best way forward. But they are not opinion surveys. Although they can provide evidence of some views on a subject matter, the views of consultees cannot be taken as representative of the views of the public as a whole.[69]

1.96 In this consultation, it appears that many, even possibly the majority of, consultees, were motivated to respond based on briefing texts circulated by two organisations, The Christian Institute and the Coalition For Marriage. These briefing texts attempted to explain some of our provisional proposals, and outlined the concerns and issues on which it encouraged individuals to respond. Their concerns centred on the personalisation of wedding ceremonies and the expansion of places where weddings can take place, as well as concerns about expanding the categories of people who can conduct legal weddings. In some cases, their concerns suggested that the law

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69 Our consultations do not benefit from any of the methodologies necessary to ensure that a group of participants are representative of the public.

should be more restrictive than it currently is. Many consultees responded making very similar or identical points to those raised in the two briefing texts.

1.97 From their responses, it appears that many consultees may not have been aware that we published a Consultation Paper in which we explained the current law and the problems in practice that led us to our provisional proposals. Many seemed to rely on our online question form, together with the briefing texts, for their understanding of our proposals for reform. As our consultation questions were designed to be read alongside the Consultation Paper, rather than as a free-standing set of questions, it is understandable that many consultees appeared not to understand what we were asking.

1.98 Responses to our consultation questions were often general. They often focussed on matters other than those being considered in the specific question at hand or on matters outside our Terms of Reference. For example, many consultees expressed views on the question of whether non-religious belief celebrants and/or independent celebrants should be permitted to conduct legal wedding ceremonies. Misunderstandings about the current law were also common. We explain at paragraph 1.15 and following above the complexity of the current law, owing to its history. Perhaps understandably, there was little understanding of this complexity, including that the current law prescribes different rules for different types of wedding: for example, few reflected awareness that the prescribed words are not required in Anglican, Jewish and Quaker ceremonies.[70] And current policy rationales were sometimes retrofitted to rules that had been introduced for a different reason: one example is the belief, expressed by many consultees, that the open doors rule was introduced as a protection against forced marriage, a belief which is incorrect as a matter of history and without empirical support in terms of its current operation.[71]

1.99 It appears that many of the consultees who opposed the development of the law in the way proposed in the Consultation Paper are unlikely to have had personal experience of the problems caused by the restrictive nature of the current law, as members of a religious group for whom the current law generally works well. These consultees did not generally engage with the problems caused by the current law for other groups, or suggest alternative ways to resolve the real problems the law is causing.

1.100 Many consultees expressed specific beliefs about what marriage is or means, often also arguing that this belief should be promoted by the civil law relating to weddings. But marriage has different meanings for different people. This diversity of meaning has been illustrated to us since the beginning of our work on weddings in 2015, through the variety of ways in which marriage is celebrated. Although not reflected in the current law governing weddings, the law governing the meaning of marriage already accommodates this diversity of meaning.[72] It is this broad, legal meaning of marriage that underpins our project and our recommendations for reform.

1.101 We have commented in some detail on this group of responses as they were an important constituent of our consultation, but we have in many cases not changed our

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70 See para 5.7 below.

71 See para 5.131 below.

72 See eg *NB v MI* [2021] EWHC 224 (Fam), [2021] 2 FLR 786.

policy in the way that they asked us to. As a result, this Report sets out policy recommendations that, in purely numerical terms, often garnered only minority support at the consultation stage. However, in addition to those individuals who responded to us, our proposals were commented on by a wide range of organisations representing thousands of individuals, the importance of whose views should not be diminished because they were presented to us in a single response. It is also worth noting that individuals from religious groups for whom the law does not work well did not respond in high numbers to our consultation. But that does not mean that their concerns, which informed our provisional proposals, have gone away. We have considered the totality of what we have learned about the law and its operation from consultees and stakeholders throughout the course of our project, including during our scoping review, to come to our final recommendations for reform.

THE NUFFIELD FOUNDATION FUNDED PROJECT

1.102 In September 2020, a research project began to investigate why wedding ceremonies take place outside the legal framework.[73] This project, funded by the Nuffield Foundation, was undertaken to provide evidence to inform the Law Commission's review as well as Government's separate consideration of the recommendations of the Independent Sharia Review. As part of its consideration of why couples marry in non-legally binding ceremonies, and the nature of those ceremonies, it canvassed participants' views on our provisionally proposed reforms.

1.103 Led by Dr Rajnaara Akhtar, together with Professor Rebecca Probert,[74] Sharon Blake, Dr Vishal Vora and Dr Tania Barton, the study used focus groups and interviews to engage with 170 participants. These participants comprised individuals who had gone through a non-legally binding ceremony and individuals who conducted such ceremonies.

1.104 The findings of the Nuffield project were published in three reports. The first, a briefing paper to the Law Commission, analyses the provisional proposals that we put forward in our Consultation Paper to consider what their impact might be.[75] This briefing paper

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73 An overview of the project is available online: Nuffield Foundation, *When is a wedding not a marriage? Exploring non-legally binding ceremonies*, https://www.nuffieldfoundation.org/project/wedding-not-marriage-exploring-non-legally-binding-ceremonies (last visited 1 July 2022).

74 Professor Probert is also a specialist consultant on the Law Commission's project. We have benefitted significantly from Professor Probert's general expertise on weddings law as well as the specific Nuffield project work on weddings that take place outside of the legal framework. The Commission has not afforded any special status to the Nuffield research on account of Professor Probert's involvement in the project and the recommendations in this Report are the independent conclusions of the Commissioners. We are grateful to the Nuffield Foundation for supporting research work specifically designed to contribute to the evidence base for this project.

75 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021).

was followed by a full report of the project's findings.[76] Finally, a paper considering the impact of the Covid-19 pandemic was published.[77]

1.105 The Nuffield project has provided invaluable evidence about the practices surrounding non-legally binding ceremonies in England and Wales, and in particular how many of these ceremonies take place because of the barriers to, or impossibility of, a couple having a legal wedding that is meaningful to them. It has also provided an insight into how our provisional proposals could address these issues. We have considered the evidence provided by the Nuffield project alongside consultation responses in developing the policy presented in this Report, and we refer to its findings throughout.

1.106 More generally, the findings of the Nuffield project provide evidence, based on empirical research, that our proposed reforms "would have removed the need for a second ceremony" for many of the participants in the project. The majority of participants supported our proposed scheme for reform,[78] with some expressing their support in strong terms:

> "I think the work that you're undertaking is such a great piece of work to do. And it will touch the lives of so many. And I think a lot of people don't know that they need this until it happens. So, in terms of marriage, in terms of going forward, I think this can only be progressive and I do wish you all the best and I hope that this is put forward and it's approved going forward" (021, Muslim female).
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> "I just hope that it does go through and that there is a lot more options in the future for other people who want to get married" (083A, Muslim female).
>
> "I hope they happen fast" (078, Spiritual female).
>
> "I think it's wonderful. I can't wait. I sure hope it happens" (M-232, Buddhist approved person).
>
> "It's a very very welcome idea that they're looking at. It's radical. From what they are thinking, it's completely needed. This should have been done yesterday in my books" (J-202, Hindu priest).[79]

THE FORMAT OF THIS REPORT

1.107 This Report begins with an overview of our recommended scheme in Chapter 2. We outline our recommendations for an entirely new scheme to govern weddings law, explaining how our officiant-based scheme will address the many problems with the current law, and achieve the aim of our project: a reformed law of weddings that will

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76 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final Report* (2022).

77 R Probert, R Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (2022).

78 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) pp 8 and 162.

79 *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Transcripts* (2022), https://warwick.ac.uk/fac/soc/law/research/projects/wedding-not-marriage/resources/ (last visited 13 July 2022).

allow couples greater choice to have a wedding that is meaningful to them, within a simple, fair and consistent legal structure.

1.108 The Report then explains the detail of our recommendations, considering each stage in the process of getting married.

1.109 Chapter 3 considers preliminaries, the first step a couple must take to be legally married. Within the context of the reforms made by the recently introduced schedule system,[80] we make recommendations that will improve the system of preliminaries as well as recommendations that are necessary to reflect the other changes within our scheme, including the focus on the wedding's officiant rather than its location.

(1) Although we continue to believe that there may be wider benefits to moving to a system of universal civil preliminaries, in the light of consultees' general support for the retention of Anglican preliminaries, we proceed on the basis that the dual system of civil and Anglican preliminaries will remain.

(2) We make recommendations to reform civil preliminaries in several important ways. Under our recommendations, no prior period of residence will be required in order to give notice. Individuals will be able to give notice in person in any registration district or give initial notice online. Notice will then be displayed on a publicly accessible Government website for the waiting period. If initial notice is given online, an in-person interview will be required to take place at least five days before the schedule is issued. Where initial notice is given in person, an interview will take place at the time notice is given.

(3) Where an Anglican wedding is authorised by way of banns, we recommend that they should only be required to be published in the couple's parish(es) of residence. Where this is not possible, we recommend that the wedding should be authorised in another way, by civil preliminaries, a common licence or a special licence; this will enable the intricate and confusing provisions about where banns must be called in the alternative to be abolished. We also make recommendations to require that each of the couple is required to attend an in-person meeting and provide evidence in advance of a wedding being authorised by banns or a common licence, to align these processes more closely with the civil preliminaries.

1.110 Chapter 4 focuses on officiants. Because our recommended scheme is based on the authorisation and regulation of officiants, this chapter contains much of the detail of our scheme.

(1) The chapter begins with consideration of the role of the officiant. We make recommendations about the duties and responsibilities of all officiants. We also recommend that the General Register Office should issue guidance to officiants on how to fulfil their duties and responsibilities.

(2) Next, the chapter considers the different (potential) types of officiant under our scheme: registration officers, Anglican clergy, nominated officiants, independent officiants, and maritime officiants. As our scheme envisages little change to how

[80] See para 1.56 above.

registration officers and Anglican clergy are authorised, our primary focus is on the appointment and regulation of nominated officiants, independent officiants, and maritime officiants. In each case, we recommend that they should apply for authorisation by the General Register Office and should be required to be fit and proper persons to conduct weddings. Religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations will be responsible for nominating officiants to conduct weddings. If enabled, a non-religious belief organisation must be one whose sole or principal purpose is the advancement of a system of non-religious beliefs which have a level of cogency, seriousness, cohesion and importance that brings them within the meaning of article 9 of the European Convention on Human Rights. The chapter also outlines the other criteria that religious and non-religious belief organisations will have to meet to be able to nominate officiants. Maritime officiants and (if enabled by Government to officiate at weddings) independent officiants will apply directly to the General Register Office for authorisation. We recommend that the General Register Office should maintain public lists of all nominated officiants, independent officiants, and maritime officiants.

(3) We recommend that any officiant should only be permitted to be authorised as one category of officiant at any one time,[81] and that a nominated officiant should only be permitted to be nominated by one organisation at any one time.

(4) Finally, because the General Register Office will have a regulatory role in relation to nominated, maritime and (if enabled to conduct legally binding weddings) independent officiants, we recommend that it should have investigative powers and that there should be a procedure for complaints and appeals.

1.111 Chapter 5 considers the rules governing the wedding ceremony itself. Our recommendations focus on the essential requirements of the ceremony. The couple will be required to express their consent to be married in each other's presence, as well as the presence of the officiant and two witnesses. In a belief ceremony, the couple will be able to express consent by their words or actions, in any way that reflects a shared understanding of an expression of consent within that ceremony. In a civil ceremony, the couple will be required to express their consent by saying required words of contract or words to the same effect.

1.112 In Chapter 6 we consider location. We recommend that the existing restrictions on where weddings can take place should be abolished. Under our recommendations, weddings will be able to take place in any type of location, provided that the officiant agrees to the location, considering safety and dignity. As a result, religious and (if enabled to officiate at weddings) non-religious belief organisations will be able to set their own rules as to where weddings conducted according to their beliefs take place.

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81 With the exception that a maritime officiant could also be authorised as an independent officiant, if the latter are enabled by Government to officiate at weddings.

1.113 Chapter 7 explains and makes recommendations about how registration of marriages will operate under our recommended scheme. As part of this, we recommend that weddings conducted in Wales should be able to be registered in Welsh alone.

1.114 In Chapter 8 we explain how the special provisions for religious groups in relation to same-sex weddings and weddings involving transgender people will be maintained under our recommended scheme. This area of policy has been settled, so we simply describe what consequential amendments will be necessary for the existing special provisions to work, in the same way that they currently do, within our recommended scheme. As under the current law, the Church of England and the Church in Wales will continue to be unable to conduct same-sex weddings without an amendment to primary legislation. Other religious groups will be able to conduct same-sex weddings only if they opt into doing so.

1.115 Chapter 9 focusses on how the validity of a marriage will be determined under our scheme, as well as the offences necessary to underpin our recommended scheme. We recommend the factors that should render a marriage void, each of which will be within the knowledge or control of the parties, including a failure to complete the in-person stage of the preliminaries process, and a failure, known to both parties, to have an authorised officiant present at the ceremony. We make recommendations about the limited circumstances in which a wedding will be a non-qualifying ceremony, explaining, in the final section of the chapter, how far our recommendations will go to address the issue of religious-only marriages. Finally, we recommend that there should be two offences, one which exclusively applies to officiants, in relation to misleading either of the couple as to whether their ceremony will result in a legally recognised marriage.

1.116 Chapter 10 considers weddings that take place in specific circumstances or in specific types of location.

(1) First, we consider weddings involving people who are terminally ill, detained, or housebound. Under our recommended scheme, most of the specific provisions that currently apply to these weddings will be unnecessary. However, some specific provisions will need to remain to ensure that people who are terminally ill, detained or housebound can give notice under the civil preliminaries process, so we make recommendations to facilitate each of the couple in these circumstances giving notice to marry.

(2) Next, we briefly explain how our general scheme will apply to weddings on military sites, and weddings in the territorial sea, bays and other coastal waters.

(3) Finally, we make recommendations to permit weddings to take place under the law of England and Wales in international waters on board cruise ships registered in the United Kingdom with a port of choice in England or Wales. Although our generally recommended scheme will apply to weddings at sea, including the rules governing the ceremony itself, we make specific recommendation to facilitate weddings in international waters and to ensure that they are appropriately regulated.

1.117 In Chapter 11 we make recommendations to enable couples to get married in national emergencies, on the basis of the experience with weddings during the Covid-19

pandemic. To ensure that weddings law can be adapted in a future emergency during which couples cannot comply with the legal requirements to get married, we recommend a power that, if exercised, could put measures in place to modify the law. These modifications could include allowing both stages of the preliminaries process and the wedding ceremony itself to take place remotely.

1.118 Chapter 12 considers the legal powers that will be necessary under our recommended scheme to determine and charge fees.

1.119 Finally, Chapter 13 outlines the changes that could be made to the process for converting an existing civil partnership into a marriage, based on our recommendations to amend the law governing weddings that are relevant to the conversion process.[82]

OTHER DOCUMENTS PUBLISHED ALONGSIDE THIS REPORT

1.120 Alongside this Report, we are publishing a number of other documents.

(1) A summary: this provides an overview of the Report, with a focus on the main features of our recommended scheme and how it will work as a whole.

(2) An impact assessment: in the impact assessment we set out the likely economic and other impacts of our recommended reforms. Our recommendations will have a significant impact for couples, organisations conducting weddings, and businesses. It will eliminate unnecessary red tape, which will reduce the costs of businesses who wish to host weddings, allowing smaller businesses, business which do not specialise in weddings, and community and non-profit organisations to do so. It will increase the choices available to couples, including giving them the choice of having a low-cost but still meaningful wedding ceremony in a location that is personal to them.

(3) A statistical analysis of responses: this provides a breakdown of the responses to our consultation, by question. It will show the proportion of consultees in favour, against, and expressing other views in response to our provisional proposals, and the number of consultees responding to our open questions. In it, we have categorised consultees as best we could, based on the information they have provided to us.[83] Where consultees have not provided any relevant information, we have categorised them as members of the public. Because these categorisations are based on our own inferences, they are not definitive

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82 See para 1.47 above.

83 The categories are local authorities and the Local Government Association; individual registration officers; Anglican churches, Anglican clergy and other people involved in Anglican preliminaries; people who conduct or register other religious weddings; religious organisations; non-religious belief organisations; people who conduct non-religious belief weddings (including people who conduct Humanist weddings whether or not accredited by Humanists UK); independent celebrants (including those with corporate personality); celebrancy representative bodies; venues including marine venues other than cruise companies, and representative organisations; other wedding professionals; other organisations; cruise ship companies; legal professionals and organisations; academics and academic organisations; Members of Parliament and lords temporal; members of the public; Government departments or bodies.

and may not reflect how particular consultees would self-identify. We have not therefore relied on these categorisations in our decision-making.

(4) The consultation responses: we will publish the responses we received to our consultation in due course, as we note above.

ACKNOWLEDGEMENTS AND THANKS

1.121 We remain appreciative of all the stakeholders who met with us during our scoping work in 2015, and who responded to our consultation on the 13th programme of law reform in 2016, for sharing their views with us on the current law and potential avenues for reform. We also remain very grateful to the individuals and organisations who met with us from the beginning of this project in the lead up to our Consultation Paper,[84] and the registration service members, lawyers and policy officials from neighbouring jurisdictions who have generously shared their time and knowledge with us.

1.122 We are very grateful to the individuals and groups we met during the consultation period from September 2020 to January 2021. These include: Dr Rajnaara Akhtar; Dr Samia Bano; the Baptist Union of Great Britain; Board of Deputies of British Jews; Bridebook.co.uk and Association of British Weddings Businesses; British Marine; Carnival UK; Churches' Legislation Advisory Service; Church in Wales; Church of England; Church of Jesus Christ of Latter-Day Saints; Dr Rachael Clawson; Coco Wedding Venues; Cruise Lines International Association UK and Ireland; Professor Gillian Douglas; English Heritage; Equal Civil Partnership Campaign; Faculty Office of the Archbishop of Canterbury; For Better For Worse; Guides for Brides Ltd; Heritage Railway Association; Historic Houses; Hobbs of Henley; Humanists UK; Local Government Association; the Methodist Church in Britain; MSC Cruises; Muslim Council of Britain; National Association of Wedding Professionals; National Commission on Forced Marriage; National Panel for Registration; National Secular Society; the National Spiritual Assembly of the Bahá'ís of the United Kingdom; National Trust; Network of Buddhist Organisations UK; One Law For All; OneSpirit Interfaith Foundation; the Pagan Federation; Dr Rehana Parveen; Religious Society of Friends; Register Our Marriage; Royal Caribbean Cruise Line; Professor Russell Sandberg; Sikh Council UK; Soka Gakkai International – United Kingdom; Southall Black Sisters; SW Venues; Thames Steamers Limited; Dr Islam Uddin; Unitarian Church; Dr Vishal Vora; and the Wedding Celebrancy Commission.

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1.124 The Commissioners would like to record their thanks to the following members of staff who worked on this Report: Professor Rebecca Probert (specialist consultant), Elizabeth Welch (team lawyer), Sam Hussaini (research assistant until September 2021), Harriet Breakwell (research assistant from July 2021), Christine Gentry

[84] For a list of those individuals and groups, see Consultation Paper, para 1.105.

(research assistant from January 2022), and Matthew Jolley (head of legal services and team head).

Chapter 2: Overview of our officiant-based scheme

INTRODUCTION

2.1 In this Report, we make recommendations to reform the law of weddings. If enacted, our recommendations would replace the scheme that is currently contained in the Marriage Act 1949.

2.2 Our recommendations cover the three key stages in the legal process of getting married:

(1) the preliminaries, through which legal authorisation for a wedding to take place is obtained;

(2) the ceremony, including where a wedding can be held and the legal requirements as to the content of the ceremony; and

(3) registration of the marriage.

2.3 Our recommendations ensure, as far as possible, that the same legal rules apply to all weddings, whether the wedding consists of a civil ceremony, a religious ceremony or (if enabled by Government) a non-religious belief ceremony. Some specific requirements will apply to civil ceremonies in order to ensure they are clearly identifiable as such.[1] As regards belief ceremonies – a term we use to refer collectively to religious and non-religious belief ceremonies – the same legal rules will apply, as far as possible, to all beliefs. The main remaining difference that will continue to exist is that Anglican weddings will continue to be able to be preceded by Anglican preliminaries, such as the calling of banns. All other weddings, as under the current law, will need to be preceded by civil preliminaries.

2.4 The central feature of our scheme is that it shifts the focus of regulation from the building or venue where the wedding takes place, to the officiant. Every wedding will be attended by an officiant, who will have specific legal obligations in relation to the wedding. The officiant may also conduct the wedding ceremony, but under our scheme the role of officiant is distinct from that of a celebrant. Therefore it will be possible for someone other than the officiant to conduct the wedding.

2.5 We explain in paragraph 2.40 below the different categories of officiant. Under our recommendations, a wedding will either be a civil or a belief ceremony. Its type will be determined based on the identity of the officiant: officiants will be authorised to officiate at either civil or belief ceremonies, but not both. Civil ceremonies will be subject to specific rules about the content of the ceremony.

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[1] A civil ceremony will need to be identified as such, the couple will need to express consent using required words (or words to the same effect) and there will be limits on the use of religious and (if enabled to conduct weddings) non-religious content in civil ceremonies.

2.6 The changes to weddings law that we recommend are undoubtedly significant; they provide for the most comprehensive overhaul of weddings law since at least the 19th century. But they are neither radical nor untested. They reflect the approach to weddings law in a number of other jurisdictions, including those close to home: Scotland, Northern Ireland, Ireland, Jersey and Guernsey. Understandably, given the significance of the changes, consultees expressed a number of concerns as to the possible consequences of our scheme. In assessing these concerns, we have been able to draw on experience in those other countries. That experience has enabled us to have confidence that the recommendations we make will achieve the purposes of our reforms, without giving rise to unintended consequences.

2.7 It was also apparent from consultees' responses that there is a significant degree of misunderstanding about the law that currently governs weddings. Many aspects of our scheme about which consultees expressed concern are already possible under the current law. For example, consultees expressed concern about state functions being outsourced if officiants were nominated by religious groups other than the Anglican churches. Such consultees are perhaps unaware that religious groups whose place of worship is registered for marriages may already appoint their own authorised person, and that Jewish and Quaker groups may similarly certify who is to take responsibility for ensuring that their marriages are registered. This misunderstanding is perhaps unsurprising given the complexity of the current law, the piecemeal manner in which it has developed, and the fact that different rules apply to different types of wedding. The fact that something can already happen under the current law may not make it any less of a concern for those consultees. However, our Terms of Reference agreed with Government are clear that our recommendations should allow for greater choice within a simple, fair, and consistent legal structure. Restricting choice that already exists was not within the scope of our review.

2.8 While the changes we recommend to the legal regime are significant, that does not mean that wedding ceremonies that take place will necessarily be any different from those that take place today. Our reforms will enable couples to have much greater choice as to where their wedding takes place and as to the form and content of the ceremony. But that choice is not unrestrained. For all weddings, our recommendations ensure that the dignity and safety of the ceremony is protected. Beyond that, religious organisations and (if enabled by Government to conduct weddings) non-religious belief organisations will be able to impose their own requirements as to where weddings officiated by their officiants take place, and as to the form and content of the ceremony. The special provisions will continue to apply to religious groups to ensure that they are not required to conduct same-sex weddings.

2.9 Our recommendations will, however, greatly assist couples and religious organisations for whom the current law simply does not work. In particular, our recommendations will make it less likely that couples will have a wedding that is recognised by their religion, but not by the law (a religious-only marriage); a position that can leave women and children, in particular, vulnerable at the end of the relationship.

2.10 The key benefits of our recommendations are that they will enable:

(1) religious ceremonies that take place in venues other than a place of worship to be legally recognised;

(2) religious ceremonies to be legally recognised without the need for prescribed words to be incorporated into the ceremony;

(3) couples to have a wedding ceremony that more closely reflects their beliefs, by incorporating religious elements into their civil ceremony, or having a religious ceremony led by an interfaith minister that contains aspects of each of the couple's beliefs;

(4) couples to get married in a much wider variety of venues, including:

(a) outdoors, in a place unconnected with any building, such as in a forest, on a beach, or in a local park;

(b) in affordable local venues, such as community centres and village halls, as well as in their own homes;

(c) on cruise ships that are registered in the UK, whilst in international waters.

2.11 While none are generally possible under the current law, some groups already enjoy most of these benefits. Jewish and Quaker weddings can take place in any location and do not need to include words prescribed by law. In broad terms, our recommendations will place all religious groups (other than the Anglican churches, which retain a distinct position in some specific respects) in the same position, as far as weddings law is concerned, as that currently enjoyed by Jews and Quakers. Our recommendations enable other religious ceremonies to give rise to legally recognised weddings, subject to compliance with civil preliminaries, without imposing additional requirements as regards where the wedding can take place and as to the content of the ceremony. Our recommendations respect the rich traditions of wedding ceremonies within religions, requiring only that the couple consents to be legally married in the presence of each other, their witnesses and the officiant.

2.12 Further, our recommendations will enable non-religious belief organisations, such as Humanists, to conduct legally binding weddings, on the same basis as religious organisations.[2] As our Terms of Reference make clear, it is a matter for Government to decide whether to enable non-religious belief organisations to take this role. Our recommendations will also enable independent officiants – that is, officiants who are not registrars, and are not affiliated to a religious or non-religious belief organisation – to conduct civil weddings, again, only if Government decides that they should be able to do so.

2.13 At the same time, our recommendations ensure that the legitimate interests of the state in weddings are protected. In particular, our scheme strengthens protection against forced marriages, including predatory marriages involving a person who lacks capacity to marry,[3] and maintains the existing protections against sham marriages.

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[2] The special provisions that ensure religious organisations are not required to conduct same-sex weddings would not, however, apply to non-religious belief organisations.

[3] Throughout this Report, our use of "forced marriage" is based on the definition of forced marriage in s 121 of the Anti-social Behaviour, Crime and Policing Act 2014.

2.14 The recommendations we make are underpinned by the five principles identified in the Terms of Reference for this project.[4]

(1) Certainty and simplicity will be achieved by having a single set of rules that apply, as far as possible, to all weddings. Alongside will be clear rules to determine what is required for a wedding to result in a valid marriage, and when a failure to comply with one or more requirements for a wedding will render the marriage void, or result in a non-qualifying ceremony.

(2) Fairness and equality will be achieved by ensuring that, insofar as possible, the same rules apply to all weddings, including all weddings conducted by religious and (if enabled to conduct legally binding weddings) non-religious belief organisations. These rules include the location in which the law allows a wedding to take place, and the requirements as to the ceremony.

(3) Protecting the state's interest will be achieved, in particular, through a robust system of preliminaries to ensure effective protection against forced and sham marriages.

(4) Respecting individuals' wishes and beliefs will be achieved by giving couples greater choice as to the location of their wedding and as to the form and content of their wedding ceremony. In particular, our recommendations will enable wedding ceremonies conducted according to the rich traditions of different religious groups to be legally recognised.

(5) Removing unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples, will be achieved by removing the need for venues to be pre-approved for weddings, either through being registered places of worship or approved premises for civil weddings, and by relying on the general law to ensure the safety of venues. Further, shifting the focus of weddings law from the building or venue to the officiant enables all types of wedding to take place in a wide range of locations, including those that are cheaper or cost-free.

2.15 In the remainder of this chapter we set out the key features of our scheme as regards each of the three key stages in the legal process of getting married identified in paragraph 2.2 above. We then explain our recommendations in relation to the validity of marriages where the legal formalities for a wedding have not been complied with.

2.16 We confine this chapter to discussing our general scheme for weddings law. At the time our Consultation Paper was published, the ability of people to get married had been significantly impacted by public health measures that were put in place as a result of the Covid-19 pandemic. The impact of Covid-19 led us to consider what emergency provision may be contained in a new weddings law to better accommodate weddings in any future national emergency. We make recommendations in relation to emergency measures in Chapter 11.

[4] The full Terms of Reference for the project are included in Appendix 1.

THE PRELIMINARIES

2.17 The preliminaries – the steps that a couple must take before the legal authority is issued for their wedding to go ahead – play a crucial role in the process of getting married. Their role is to ascertain, so far as possible, that the parties are free to marry each other, and to identify and prevent forced and sham marriages, including predatory marriages where the victim lacks the capacity to consent to a marriage.

2.18 Under our scheme, before getting married, couples will continue to be required to give notice of their intention to marry. Most couples will give notice to the registration service through the system of civil preliminaries. That is the case whether they are having a civil wedding or a belief wedding. However, for couples having an Anglican wedding, it will remain possible to give notice to ecclesiastical authorities through Anglican preliminaries, usually by having banns called.[5]

Civil preliminaries

2.19 Under our scheme, each of the couple[6] will need to give notice to a registration officer. They will be able to give notice in any registration district. People will no longer be confined to giving notice in their district of residence, so could choose to give notice in a district that is more convenient for them; for example, the district in which they work, are visiting, or in which they intend to get married.

2.20 It will also be possible for people to give their initial notice online, rather than in person. The online system will need to be thoughtfully designed and comprehensive to guide individuals through the process and require key information and evidence to be provided. It could also signpost people to further sources of information about the process of getting married. It may prevent unnecessary appointments with registration officers by ensuring that couples are aware of the process and know the decisions they need to take, and the documents that they will need to provide, in order to give notice.

2.21 The ability to give initial notice online will be particularly convenient for some couples. It will enable people living overseas but planning to get married in England and Wales to begin the preliminaries process from home. A couple who lives overseas will then be able to get married in England and Wales in a single, short trip, although they will need to be in England and Wales for a minimum of five days before their wedding. Making it easier for couples who live overseas to marry in England and Wales will assist British couples who live overseas and want to celebrate their weddings with friends and family at home. It will also make it possible for other couples to come to

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5 The use of banns or a common licence to fulfil Anglican preliminaries would only be possible, as under the current law, where both of the couple are relevant nationals. See the Glossary for the meaning of "relevant national".

6 This summary assumes that both of the couple are relevant nationals. If either or both of the couple are not relevant nationals or exempt from immigration control, they will need either to give notice together (as at present) or have their in-person interview together. They will also be required to be interviewed separately, as will all couples under our scheme. And if either or both of the couple are not exempt persons – meaning that they are not relevant nationals, do not have appropriate immigration status, and do not hold a relevant visa – the waiting period could be extended to 70 days, again as at present. See the Glossary for the meaning of these terms.

England and Wales for their wedding, just as they are already able to do in Scotland, to the benefit of the economy.

2.22 As part of the preliminaries process, the couple will be required to be interviewed by a registration officer in person, and separately from each other. This in-person interview plays an important role in helping to identify where one of the couple is being forced or coerced into marriage, including situations where one of the couple lacks capacity to marry.

2.23 Where a couple gives notice in-person, the interviews with the couple will be able to take place at the same time. Where a couple gives notice online, the in-person interviews will need to take place a minimum of five days before the schedule authorising the wedding is issued.

2.24 Once both of the couple have given notice, a 28-day waiting period must be completed before they can be granted authority to marry. During that period, notice of the wedding will be publicised online and will be available to access at registration offices so that impediments to the marriage taking place can be identified and raised. The publication of notices online will make it much easier for those who know of an impediment to discover an intended wedding. It also serves to emphasise that marriage is a public matter and the fact that a couple intend to marry is something that is regulated by law. There will be those, however, for whom publication of their wedding would pose risks; for example, the risk of an attack by a violent ex-partner or a potential perpetrator of so-called “honour”-based abuse. Therefore, a couple will be able to apply for exemption from their wedding being publicised online where online publication would put the couple, or a member of their household or family, at risk of harm.

2.25 Where someone (typically a family member, friend, or someone acting in a professional capacity) has legitimate grounds for concern that another person may be at risk of being coerced into marriage, they will be able to ask for a caveat to be recorded before any notice of marriage has been given.[7] Provision to do so will provide additional protection against the risks of forced marriage, including predatory marriages.

2.26 Once preliminaries have been completed, and the 28-day waiting period has passed, the couple will be issued with their schedule. As the focus of regulation under our scheme is the officiant, the schedule will identify the individual officiant or type of officiant who will be responsible for officiating at the wedding. There will be a process for amending the schedule in the case of changes to the individual officiant or type of officiant, and the possibility of last-minute substitutions that may be necessary where the officiant is unexpectedly unable to attend the wedding. The schedule will be valid for 12 months from the date of issue.

2.27 It will continue to be possible for the 28-day waiting period to be reduced, including to allow a wedding to take place with no waiting period. Provision to do so is necessary, for example, to facilitate weddings in cases where one of the couple is terminally ill.

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7 See the Glossary for the meanings of “caveat”.

Anglican preliminaries

2.28 Under our scheme, banns, common licences and special licences will continue to be legal preliminaries to Anglican weddings, that is to say, weddings that are officiated at by Anglican clergy.

2.29 We make recommendations for reform of banns and common licences, to make these preliminaries more robust in providing protection against forced and predatory marriages. We do not make any recommendations in relation to special licences, the grant of which is, and will remain, at the discretion of the Archbishop of Canterbury.

2.30 Under our recommendations, couples using Anglican preliminaries will have the same obligation to provide documentary evidence as couples using civil preliminaries. The provision of documentary evidence is important as a means of ensuring that each of the couple is eligible to marry.

2.31 It will also be necessary for a couple applying for a common licence each to make a separate declaration that they are free to marry, and for those marrying after banns each to have a separate meeting with the incumbent of their parish(es),[8] as safeguards against forced and predatory marriages. Such safeguards are particularly important where the marriage is by common licence, given that such licences involve no prior publicity and so do not allow any scope for objections to be made. However, we also think that such safeguards should be in place where the marriage is by banns. While banns are intended to publicise the intended wedding and enable objections to be made, their efficacy will largely depend on whether the couple is known to those attending the church or churches in which banns are published. The meeting need not take place before the banns are called, but must take place at least five days before the marriage document is issued.

2.32 Where banns are used, they will be required to be called only in the couple's parish(es) of residence. That means that if the parties live in different parishes the banns will need to be called in both, but if they live in the same parish the banns will only need to be called there. There will be no legal requirement for the banns also to be called in the parish where the wedding is to take place. It will be a matter for the Church of England and Church in Wales to decide whether banns should also be called in the parish where the wedding is to take place for ecclesiastical purposes. Where it is not possible for the banns to be called in the couples' parish or parishes of residence, then the couple will need to obtain a common licence to complete Anglican preliminaries, or use civil preliminaries.

2.33 Once banns have been completed, or a common or special licence obtained, a marriage document is issued. The marriage document performs a similar function to the schedule that is issued on completion of civil preliminaries, in that it is used to record the information needed to register the marriage. However, it is the banns or licence, rather than the marriage document, that is the authority for the wedding to proceed.

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[8] Each of the couple will be seen by the incumbent in their parish of residence. Where the couple live in different parishes, they will therefore be seen by a different member of the clergy. Where they live in the same parish, they will be seen separately by the same member of the clergy.

THE WEDDING CEREMONY

Officiants

2.34 Central to our recommendations is the concept of an officiant. Every wedding will need to be attended in person by an officiant, who will have the same legal duties in relation to the wedding, regardless of whether it is a civil or belief ceremony. The officiant, rather than the building, is the focus of regulation under our scheme.

2.35 Although we recommend that there should be a single concept of an officiant, we also recognise that different types of officiant will be appropriate for different types of wedding. Under our scheme there will be civil officiants and belief officiants. The different categories of officiant are explained in paragraph 2.40 below.

2.36 While a move to an officiant-based scheme from the current buildings-based model will be a fundamental change in the way that the law of England and Wales regulates weddings, it will not be a unique or untested change of approach. Among neighbouring jurisdictions, Scotland, Northern Ireland, Ireland, Jersey and Guernsey all now operate systems that primarily focus on the person conducting the wedding rather than its location.[9] The same is true across the common law world, with Australia, Canada, New Zealand and the United States also regulating the celebrant rather than the location.[10]

Legal duties and responsibilities of officiants

2.37 The officiant attending a wedding will have three legal duties to discharge.

(1) Ensure that the parties freely express consent to marry each other. An officiant will be under a duty to ensure that each of the couple express their consent to be married in person in the presence of the witnesses and the officiant. The requirement for couples to express their consent in the ceremony, before they sign the schedule or marriage document, will apply to all weddings. A civil officiant will additionally need to ensure that the couple express their consent using the required words of contract or words to similar effect (as explained in paragraphs 2.60 and 2.61 below).

(2) Ensure that the other requirements of the ceremony are met. An officiant will be under a duty to ensure that all other requirements of the ceremony are met. This will include ensuring that the wedding is attended by two witnesses, and that a civil ceremony is identifiable as such.

(3) Ensure that the schedule or marriage document is signed. Implicit in this duty is a requirement that the officiant ensures that the couple has a schedule or marriage document, which in turn confirms that they have completed the required preliminaries. The officiant will also need to ensure that the parties

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9 See respectively Marriage (Scotland) Act 1977; Marriage (Northern Ireland) Order 2003 (SI 2003 No 413); Civil Registration Act 2004; Marriage and Civil Status (Jersey) Law 2001; The Marriage (Bailiwick of Guernsey) Law 2020.

10 See respectively Marriage Act 1955 (New Zealand); Marriage Act 1961 (Australia); eg Marriage Act 1996 (British Columbia) and Marriage Act 1990 (Ontario); and eg New York (Domestic Relations Law, Article 3).

getting married are the parties named in the schedule or marriage document, and that it has not expired.

2.38 In addition, all officiants will have a responsibility to uphold the dignity and significance of marriage in their role as officiants and in officiating at weddings. Officiants will need to take account of this responsibility when agreeing to the form of ceremony, and will be under the responsibility for the parts of the ceremony at which they are present.[11] An officiant will be able to pause or stop a ceremony in order to protect the dignity and significance of the occasion. But they are not responsible for aspects of the ceremony at which they are not present, or for celebrations that may precede or proceed the wedding, unless they impinge on the ceremony itself. In discharging their duties, officiants will be provided with guidance by the General Register Office.

2.39 In line with the general approach of the law to uphold marriages where possible, the failure of an officiant to fulfil their legal duties or responsibilities will not impact on the validity of the marriage (unless the parties have not in fact given notice or expressed consent to be married). It may, however, result in the officiant being deauthorised from acting as an officiant and, in some instances, may mean that the officiant has committed a criminal offence.[12]

Categories of officiant

2.40 Under our recommendations there will be up to five categories of officiant. The first two categories will conduct belief weddings, while the other three categories will conduct civil weddings.

(1) Anglican clergy. This category consists of Clerks in Holy Orders authorised to exercise ordained ministry within the Church of England or the Church in Wales. They will be recognised automatically as officiants in order to conduct Anglican weddings.

(2) Nominated officiants. These are officiants who will be nominated by religious organisations (other than the Anglican churches) and, if enabled by Government, non-religious belief organisations. Nominations will be made by the organisation's governing authority, which will be required to ensure that those nominated are "fit and proper" persons to be officiants, by being of good character; not having been convicted of any offence determined by the General Register Office as preventing a person from being "fit and proper" to be an officiant; being at least 18 years old (although in practice they are likely to be much older); having undertaken training on the legal aspects of being an officiant; and understanding the legal requirements for being an officiant and performing the role.

(3) Registration officers who are employed by local authorities. Under our scheme, only one registration officer will be required to be present at a wedding, providing greater efficiency and flexibility. Registration officers will also be

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11 The officiant will be required to be present while the couple express consent and the schedule or marriage document is signed. They will not be required to be present during other parts of the wedding ceremony, but will remain under their legal responsibilities for as long as they are in fact present.

12 For more detail about criminal offences, see Ch 9.

confined to officiating at civil weddings. They will no longer be able to attend a religious wedding in the place of a religious officiant (although they will, with the permission of the relevant religious organisation, be able to officiate at a civil wedding in a place of worship that could be accompanied by a separate religious ceremony).

(4) If enabled by Government to officiate at weddings, independent officiants would comprise a further category of officiant able to conduct civil weddings. Independent officiants would be independent from any religious or non-religious belief organisation. They would apply individually to be registered as officiants by the General Register Office. In order to be registered, they would have to demonstrate that they are "fit and proper" persons by being of good character; not having been convicted of any offence determined by the General Register Office as preventing a person from being fit and proper to be an officiant; being at least 18 years old (although in practice they are likely to be much older); having undertaken training on the legal aspects of being an officiant; and understanding the legal requirements for being an officiant and performing the role.

(5) Maritime officiants, who comprise a special category of officiant, will be able to conduct civil weddings in international waters on board cruise ships registered in the United Kingdom with a port of choice in England and Wales.[13] In order to be authorised as a maritime officiant, an individual will need to be a deck officer, a category that comprises the captain, chief mate, and other officers who take charge of a navigational watch on board a ship.

2.41 With one exception, a person will only be able to be an officiant within any one of the above categories at any one time. Further, in the case of nominated officiants, a person will only be able to be nominated by one organisation at any time. It will not, for example, be possible for a registration officer or a nominated officiant also to be authorised as an independent officiant, for a registration officer also to be a nominated officiant, or for a person to be nominated by two separate religious organisations. This bar on dual authorisation is necessary because responsibility for the training, monitoring and authorisation of the different categories of officiant is different, as we explain in paragraph 2.50 and following below. Different rules relating to limitations on profits and conflicts of interest also apply to different categories of officiant, as we explain in paragraph 2.46 and following below. Further, the category of officiant officiating at the wedding determines the type of wedding that is taking place: whether it is a civil wedding or a belief wedding. As some different rules apply to civil weddings compared to belief weddings, it is necessary to have clarity as to the status of the officiant.

2.42 The one exception to dual authorisation that arises is that it will be possible for a maritime officiant also to be an independent officiant, to enable them to conduct weddings in the territorial sea as well as in international waters. The problems identified with dual registration do not arise as both these officiants will conduct civil

[13] We explain in Ch 10 why maritime officiants should be restricted to officiating at weddings on cruise ships, and not on other types of ship.

weddings and, with limited exceptions, be subject to the same rules as regards training, monitoring and authorisation, and conflicts of interest.

Religious and non-religious belief organisations

2.43 In order to nominate officiants, an organisation will have to show that it is a religious or non-religious belief organisation which has been established for a minimum period of time. During that period, it must have had members from at least 20 households who meet regularly in person for worship or in furtherance of or to practise their beliefs. It will also have to demonstrate that it has a policy in relation to nominating and monitoring officiants and that it would be a manifestation of an individual's religion or beliefs to have a wedding officiated at by an officiant nominated by that organisation.

2.44 To be a religious organisation, an organisation will need to meet the description in the current law, which is given in the judgment of the Supreme Court in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*.[14] In that case Lord Toulson described a religion as:

> A spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system. … Such a belief system may or may not involve belief in a supreme being, but it does involve a belief that there is more to be understood about mankind's nature and relationship to the universe than can be gained from the senses or from science.[15]

2.45 Non-religious belief organisations will be limited to those whose sole or principal purpose is the advancement of a system of non-religious beliefs which have a level of cogency, seriousness, cohesion and importance that brings them within the meaning of article 9 of the European Convention on Human Rights.

Preventing commerciality and conflicts of interest

2.46 There is no objection to nominated officiants profiting from their role. It is perfectly legitimate for nominated officiants to charge for officiating at weddings, and for that charge to reflect any preparation time and the costs involved in being an officiant. It is also, however, important to guard against the commercialisation of the role of officiant. Like Anglican clergy, nominated officiants will be authorised to officiate at weddings according to a belief system. They will not be authorised for the purpose of pursuing commercial interests. Under our recommendations, nominated officiants will therefore be prevented from subordinating the expression of their beliefs to commercial interests. This rule could, for example, prevent nominated officiants from advertising their availability to officiate without explaining their connection to their nominating organisation, or from conducting ceremonies otherwise than within the parameters set by their nominating organisation.

2.47 As independent officiants, if enabled by Government to conduct weddings, would not be acting in pursuance of particular beliefs, a prohibition against putting profit over

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14 [2013] UKSC 77, [2014] AC 610.

15 At [57].

their beliefs could not apply to them. Independent officiants would be offering a service for a fee. They could act purely to make a profit and out of commercial motivations. They would, however, be prevented from acting with a conflict of interest. It would, for example, be a conflict of interest for an independent officiant to make it a condition of them officiating at a wedding that the couple buy goods or services such as floristry and catering from them or their company (but not merely to offer the couple those other goods or services), or to accept a payment to recommend another provider of goods and services.

2.48 It would be possible for a venue that regularly hosts weddings to employ an independent officiant, and for the venue then to offer couples the option of their wedding being officiated at by the independent officiant employed by the venue. There would be no conflict of interest in the officiant officiating at the wedding in those circumstances. It would, however, be a conflict of interest for an independent officiant to require that the wedding take place at that venue as a condition of officiating, or to accept a payment to recommend a venue (whether they are employed by it or not).

2.49 Maritime officiants will also be prohibited from acting in a conflict of interest. They will, however, need to ensure that the wedding takes place on the cruise ship on which they are employed as a deck officer. That will not be a conflict of interest for them, since it is the only circumstance in which they will be authorised to officiate.

Training, monitoring and withdrawal of authorisation

2.50 The ability to officiate at weddings will not be subject to a fixed time limit and there will be no requirement for an officiant or their nominating organisation to renew their authorisation or nomination on a periodic basis. Officiants will remain authorised unless or until they are de-authorised, whether at their request or the request of their nominating organisation. Anglican Clerks in Holy Orders will be officiants as long as they remain authorised to exercise ordained ministry. The ability of registration officers and maritime officiants to officiate is necessarily dependent on their continued employment in their roles.

2.51 In relation to Anglican clergy, the provision of their training, monitoring and, where necessary, their de-authorisation, will be matters for the Church of England and the Church in Wales.

2.52 The training of nominated officiants may, if approved by the General Register Office, be provided by the nominating organisation or provided directly by the General Registrar Office. Primary responsibility for monitoring nominated officiants and requesting withdrawal of their authorisation if they fail to comply with the “fit and proper” person standard or their duties or responsibilities will lie with the organisation that nominated them. However, if the body who nominated them fails to act, the General Register Office will have the power to de-authorise nominated officiants who fail to comply with the “fit and proper” person standard or their duties or responsibilities.

2.53 Local authorities will remain responsible for the training and monitoring of registration officers.

2.54 Independent officiants will be required to undertake training provided by the General Register Office, or a provider approved by the General Register Office. The General Registrar Office will be responsible for monitoring independent officiants and de-authorising those who fail to comply with the "fit and proper" standard or with their duties and responsibilities. Independent officiants will be automatically de-authorised if they fail to comply with a requirement to undertake ongoing training prescribed by the General Registrar Office.

2.55 Maritime officiants will be subject to the same processes for authorisation, training and monitoring that we recommend should apply to independent officiants.

Requirements as to the ceremony

2.56 Under our scheme, in order to be married, a couple will need to have a wedding ceremony. That ceremony will need to consist of something more than the couple signing the schedule or marriage document; specifically, the couple will need to express their consent to be married in addition to signing the document. The process of getting married will therefore remain distinct from entering into a civil partnership, which can be formed simply by signing a document.

2.57 Our recommendations, however, enable couples to have a wedding ceremony that is meaningful to them, without imposing unnecessary regulation over the content of the ceremony. By focussing on the preliminaries stage as protecting the state's interest in identifying and preventing sham and forced marriages, and enabling impediments to a marriage to be brought to light, there is little need for the law to dictate the content of a ceremony.

The expression of consent

2.58 The core requirement of the wedding ceremony under our recommendations is that the couple each expresses consent to be married, in the presence of each other, the officiant and the witnesses, in advance of signing the schedule or marriage document.

2.59 In a belief ceremony – that is, a ceremony officiated by a member of the Anglican clergy or a nominated officiant – there will be no requirement as to how the couple expresses consent, as long as they do so clearly. Consent will be able to be expressed by words or actions. The ability to express consent by actions is significant for religious groups whose wedding ceremonies involve the expression of consent by a series of rituals. For example, in a Sikh wedding, the couple walking together clockwise around the Sri Guru Granth Sahib Ji (the holy scriptures) would amount to their expression of consent. Such ritualistic actions are no less clear and unambiguous than words where their significance is understood by the couple, the officiant and the witnesses.

2.60 In a civil ceremony – a ceremony in which the officiant is a registration officer, an independent officiant (if enabled by Government to conduct weddings) or a maritime officiant – the couple will be required to express consent by using required words of contract, or words to the same effect. This requirement helps to distinguish civil and belief-based ceremonies. We do not make recommendations as to what form the words of contract should take, but they could consist, for example, of words such as "I accept you [name] as my [husband, wife or spouse]".

2.61 Allowing the couple to use words to the same effect as the words of contract provides flexibility, for example, for the couple to say the words in a language other than English or Welsh, such as in Cornish. It would also be possible for the couple to say the words of contract using the past tense. The ability to do so will be helpful for couples who have already had a non-legally binding ceremony, as it will allow the words to reflect that, according to their beliefs, they are already married, even if in legal terms the marriage only comes into existence on the day of the legal ceremony.

2.62 Under our scheme, the expression of consent will play a central role in the validity of a marriage. The ceremony will be required to include an expression of consent other than the signing of the schedule or marriage document, and the officiant will be responsible for ensuring that consent has been expressed before it is signed. However, the signing of the schedule or marriage document on its own will be sufficient to satisfy the requirement for consent in terms of the validity of the marriage. This approach provides certainty; as long as the schedule or marriage document has been duly signed, there can be no challenge to the validity of the marriage based on whether consent was expressed during the ceremony.

Other requirements

2.63 Beyond the expression of consent, there will be no specific requirements as to the form of the ceremony. The form of the ceremony will need to be agreed by the couple and their officiant. The ability of a couple to agree the content of their ceremony with their officiant is not unusual. It already happens where a wedding takes place in a registered place of worship, although such weddings currently must include the prescribed words. When agreeing to the form of the ceremony, all officiants will need to have regard to their responsibility as regards the dignity of the wedding. Nominated officiants will also need to comply with the requirements of their nominating body, which may include using particular words or rituals. In this way, religious groups will continue to be able to ensure that their weddings are conducted only in accordance with their own practices and beliefs.

Religious and non-religious belief content in civil weddings

2.64 Many couples who have a civil ceremony might wish to include specific belief elements as part of their ceremony. For example, someone who was raised in a religious faith but who does not practise that faith as an adult might nevertheless wish to include religious references to pay tribute to their upbringing or to their parents' beliefs in their wedding. Couples may also wish to incorporate religious elements in their wedding for cultural rather than religious reasons.

2.65 Under our scheme it will be possible for a civil ceremony to include religious content, and content reflecting non-religious beliefs, including music, readings, prayers, blessings and rituals. It will not, however, be possible for a civil ceremony to take the form of a religious or non-religious belief service. In addition, a civil wedding will need to be identifiably civil. We impose two requirements on civil weddings to ensure that they are clearly identifiable as such. First, we recommend that every civil wedding ceremony should be identified as such, either by the officiant or, where relevant, another person leading the ceremony. Alternatively, the officiant should be required to identify themselves as a civil officiant. Second, couples getting married in a civil ceremony will be required to express their consent using required words, or words to

the same effect, and they will not be able to use part of the marriage rites of any particular religion when doing so. Further, they will not be able to replicate in their ceremony the words or form of any ritual, vow, statement or expression of consent required of any couple marrying in a religious or non-religious belief marriage ceremony.

Open doors

2.66 Under our scheme, there is no requirement that a wedding takes place with "open doors". The removal of this requirement where it exists under the current law places all weddings in the same position as Anglican, Jewish and Quaker weddings.

2.67 The fact that a couple intend to get married is a public matter. The state has an interest in knowing that the wedding will take place, particularly to provide protection against forced and sham marriages. The public has an interest in knowing about weddings so that members of the public can raise any existing impediments to the marriage. Under our scheme, the focus of these interests is at the preliminaries stage, where the intention to marry becomes known to the civil or Anglican authorities and is then publicised – in the case of civil preliminaries, online. The state is also represented at every wedding by the officiant, complying with their duties and responsibilities.

2.68 There is therefore no need for the public to be able to attend weddings through them being held with "open doors" and nor is there evidence that the ability to do so is effective as a means of identifying sham or forced marriage or raising impediments. Further, there are risks in any requirement for open doors, including risks of violence against members of religious minorities and victims of domestic and "honour"-based abuse. There is also a risk of unnecessary and unwelcome disruption on a very important day in the couple's life.

The location of the wedding

2.69 A consequence of the shift to an officiant-based scheme is that the location of a wedding will no longer play any role in the regulatory regime governing weddings. That shift in focus paves the way for weddings to be able to take place in a much wider range of locations.

2.70 Under our recommendations, weddings will be able to take place in any type of location. That does not, however, mean that couples will have the right to get married wherever they choose. First, the location will need to be agreed by the officiant, who will have responsibility for considering the safety of those attending and the dignity of the location. Second, religious and (if enabled to conduct legally binding weddings) non-religious belief organisations will be able to set their own rules as to where weddings conducted according to their beliefs take place. Religions that wish to ensure that their weddings take place only within their places of worship will therefore be able to do so, including if necessary by means of their ability to de-authorise the officiants they nominated. For those religions, our recommendations in relation to location will in fact make no difference to their current practice.

2.71 However, our recommendations will solve problems caused by the current law, which places unnecessary barriers in the way of couples getting legally married. They will, for example, mean that couples whose religion does not look to their place of worship

as the natural venue for a wedding, or is happy for its officiants to conduct weddings in other locations, will be able to have a legally recognised wedding somewhere other than their place of worship. The ability to do so will reduce the likelihood of couples having religious-only marriages.

2.72 The ability for a wedding to take place in a wide range of types of places will be new in England and Wales. But it is not untested. It is commonly the case in other countries, from Scotland, Northern Ireland, Ireland, Jersey and Guernsey to New Zealand, Australia, and Canada. We are confident from the experience in those other jurisdictions that giving couples wider choice over locations does not result in weddings taking place in inappropriate venues. The officiant's responsibility to consider safety and dignity is a clear safeguard in that respect.

2.73 Further, the shift towards giving couples more options about where they can get married is already under way in England and Wales. Reforms to enable civil weddings to take place in the grounds of approved premises, which were initially introduced in response to the Covid-19 pandemic, have been made permanent.[16] Government also intends to amend the law to make similar provision for weddings to take place on the grounds of registered places of worship and Anglican churches and chapels.[17] These recent reforms – which those responding to Government's consultation were "overwhelmingly" in favour of[18] – show the demand among couples to be able to have, and venues to be able to offer, weddings outdoors.[19] As Justice Minister Tom Pursglove MP said when announcing the reforms:

> A wedding is one of the most important days in a person's life and it is right that couples should have greater choice in how they celebrate their special occasion.[20]

2.74 Under our scheme, officiants will be responsible for deciding whether to approve the location of each wedding, including considering its safety and dignity. They will be assisted in doing so by guidance provided by the General Register Office.

2.75 In terms of safety, the officiant's responsibility is a contextual one: they must consider whether the location is safe for those attending that particular wedding, not whether it is safe for weddings in general. Weddings are not inherently risky events and, in many instances, existing health and safety laws will be able to be relied upon. The officiant's *responsibility* for considering safety does not mean that they are legally *liable* in the unlikely event that something does go wrong. The officiant having a "responsibility"

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16 The Marriage and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021 (SI 2021 No 775); The Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2022 (SI 2022 No 295).

17 Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022) p 32.

18 Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022) pp 30 and 32.

19 Respondents to Government's consultation said that "outdoor ceremonies accounted for between 30-100% of the weddings they hosted": Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022) p 16.

20 Ministry of Justice and Tom Pursglove MP, *Press release: Outdoor civil weddings and civil partnerships made permanent* (15 March 2022), https://www.gov.uk/government/news/outdoor-civil-weddings-and-civil-partnerships-made-permanent (last visited 1 July 2022).

simply means that, in making a decision about whether to approve a location, the officiant will have a statutory responsibility to consider the safety of those attending. Failing to do so could result in the officiant being deauthorised. Officiants will otherwise be subject to the same existing legal regimes as anyone else. In particular, it is possible (although unlikely) that they may be liable, under the tort of occupiers' liability or negligence, for injuries or losses resulting from failing to take reasonable care in approving the venue or for their own actions. But no specific legal liability in respect of safety will arise merely by reason of the fact that a person is an officiant.

2.76 In terms of dignity, there are a number of matters that officiants may need to take into account, including ensuring that the couple is able to focus on expressing their consent to be married and on the significance of that act. Whether a location has personal meaning to a couple may also be relevant to assessing its dignity and may prevent couples from choosing a location for frivolous reasons (for example, to impress on social media) or to try to "push the boundaries". But it will also be important for any conception of dignity to be culturally sensitive, bearing in mind that culture plays a large role in what any given individual considers to be dignified or meaningful.

REGISTRATION

2.77 Once a marriage has taken place, it must be registered. Registration is an important part of the legal process of getting married. It provides a record that the ceremony took place, and the legal marriage certificate that can be obtained once the marriage has been registered provides the couple with evidence that they are married. For the state, registration underlines the fact that marriage is a public status as the record of the marriage is a public record.

2.78 The process of registering a marriage has recently been reformed by Government with the introduction of the schedule system. The foundation for these reforms had been laid at the time we published our Consultation Paper.[21] The changes subsequently came into force in May 2021.[22] Our scheme does not require significant changes to this newly introduced regime. Instead, our recommendations simply build upon these recent changes to ensure that they will operate with other aspects of our scheme. So, for example, we recommend how the officiant should be recorded on the schedule or marriage document. In addition, where the wedding takes place in Wales, we recommend that couple should be able to have their schedules and marriage documents completed in Welsh alone.

2.79 Under our scheme, and taking into account the current law, a schedule or marriage document will record the following.

(1) The nature of the preliminaries (civil or the form of Anglican preliminaries) that have been used; the name and surname, date of birth, marital status and

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21 Provision for the introduction of the schedule system was made in the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019.

22 The Registration of Marriages Regulations 2021 (SI 2021 No 411).

occupation of each of the couple; and the identity of the intended officiant. This information is provided by the couple as a part of the preliminaries.

(2) The date and location of the wedding, along with the identity and authorising or nominating body of the officiant, and the identity of the witnesses. This information will be added at the ceremony, in advance of the schedule or marriage document being signed.

2.80 In addition, at the ceremony and before the schedule or marriage document is signed, the couple may choose to record on it (without there being a requirement to do so) the names and occupations of their parents. Additionally, in relation to a schedule, the couple may choose to record the name of any person conducting or solemnizing the wedding along with (where relevant) the religious or non-religious belief organisation with which that person is affiliated.

2.81 During the ceremony, the officiant is responsible for ensuring that the schedule is signed by the couple, their witnesses and the officiant in each other's presence, after the couple has expressed consent to be married. The officiant is then responsible for ensuring that the schedule is returned to the registration office in the district where the marriage took place within 21 days so that the marriage can be registered.

THE EFFECT OF NON-COMPLIANCE WITH LEGAL FORMALITIES ON THE VALIDITY OF MARRIAGE

2.82 Where a wedding takes place without the legal requirements being complied with, a variety of consequences may follow. In some instances, the marriage will be void, or the result will be a non-qualifying ceremony. In others the marriage will be valid, despite the failure to comply with a particular requirement.

2.83 It may seem strange that the law imposes requirements for a legal wedding, but does not then invalidate the marriage where there is a failure to comply with them. But that approach, which is retained in our scheme, reflects the long-standing policy of the law that a marriage should not be lightly set aside.

2.84 Where consequences do follow from a failure to comply with legal requirements, whether that results in a void marriage or a non-qualifying ceremony is significant. If a marriage is void, a court granting a decree of nullity has the same powers to reallocate assets between the couple as upon divorce, although in other contexts, including on death, a void marriage does not confer the same rights as a valid one.[23] If the ceremony is non-qualifying, the couple are simply treated as cohabitants; in such cases a court has no power to reallocate assets between the couple on separation, and a cohabitant does not have the same rights on the death of their partner as does a person on the death of their spouse.[24]

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[23] A person who entered into a void marriage in good faith can apply for provision under the Inheritance (Provision for Family and Dependants) Act 1975.

[24] The Law Commission made recommendations for reform in respect of the rights of cohabitants on the death of their partner in our report Intestacy and Family Provision: Claims on Death (2011) Law Com No 331. In 2013, Government announced that these recommendations – which would be given effect by the draft

2.85 In recent years, the consequence of a failure to comply with the legal requirements for a marriage has been bought into particular focus in situations where a couple has entered into a religious-only marriage. Under our scheme it will be less likely that couples will have a religious-only wedding. In particular, the ability to hold a religious wedding other than in a place of worship, and the absence of a need for prescribed words as the means through which consent is expressed, will enable religious traditions of many faiths to be reflected in a legal marriage following compliance with civil preliminaries.

2.86 But there will remain couples who have a religious-only marriage. Some will do so as a matter of choice, fully aware of the legal consequences of their decision. Others, however, will not be aware that their marriage is not legally recognised or of the legal consequences of that, or will be pressured or coerced into accepting a religious-only marriage. For those for whom a religious-only marriage is not a free and informed choice, the consequences on the end of the relationship can be devastating, and those consequences are felt disproportionately by women and by the children of the relationship.

2.87 We have therefore examined closely what the consequences should be under our scheme where the legal requirements for getting married have not been complied with. Under our scheme, we have simplified the requirements for a valid wedding. Further, where a marriage is not valid, it is more likely that it will be void than that the ceremony will be non-qualifying.

2.88 Under our scheme, there are only four circumstances in which a failure to comply with legal formalities will render a marriage void:

(1) where either or both of the couple fail to complete the in-person stage of the wedding preliminaries (other than where the wedding is by special licence);

(2) where the wedding takes place after the validity of the schedule or marriage document has lapsed;

(3) where both of the couple know that the wedding is not officiated by an authorised officiant; and

(4) in the case of a religious same-sex wedding, where both of the couple know that the relevant governing authority has not opted into provide same-sex weddings.

Importantly, these four factors are all within the control or knowledge of the parties.

2.89 Under our scheme, there are only two circumstances in which a failure to comply with legal formalities will result in a non-qualifying ceremony:

(1) where either or both of the couple do not complete the in-person stage of the wedding preliminaries and either both parties know that the ceremony is not

Inheritance (Cohabitants) Bill annexed to the Report – would not be implemented during that Parliament. For more information, see https://www.lawcom.gov.uk/project/intestacy-and-family-provision-claims-on-death/.

being officiated by an authorised officiant or, in the case of a religious same-sex wedding, that the relevant governing authority has not opted in; and

(2) where either of the couple do not express consent to the marriage, because they do not do so as part of the ceremony and do not sign the schedule or marriage document.

2.90 Our recommendations in relation to the validity of weddings go as far as we consider weddings law can go to give some legal recognition to a marriage when legal formalities for getting married have not been followed. They will provide a better outcome for many people whose marriage is not legally valid. But they will not help everyone. Take for example a woman who is pressured or coerced into entering a religious-only marriage, whether through cultural or religious expectations, or by the conduct of her partner. She will still have a non-qualifying ceremony, where either of the parties do not give notice and both of them are aware that the ceremony is not officiated by an authorised officiant.

2.91 We do not think that people in that position should be left without a remedy. However, we think that the remedy needs to come from outside weddings law. There are many people who are in a legally vulnerable position because their relationship is not legally recognised. Some of those will have undertaken a religious wedding ceremony which is non-qualifying, others will have had another form of ceremony which is not legally recognised (such as a Humanist ceremony or one conducted by an independent celebrant), while many will be cohabiting without having taken part in any ceremony. As is the case with religious-only weddings, some of those who have had another type of ceremony or are simply cohabiting will be doing so out of choice and will be fully aware of the legal consequences. Others will do so unaware of the legal consequences (in particular because of the enduring myth of common law marriage).[25] And others will be in this position as a result of pressure or coercion from a partner who refuses to marry, or a partner who promises a marriage that never takes place.

2.92 We acknowledge that a couple who has had a religious ceremony would not consider themselves to be cohabiting, and would not be considered to be doing so by their religious community. Notwithstanding, we think there are many commonalities between them and a couple who have had no ceremony at all, or who have had another type of ceremony that is not legally recognised. Where there has been no engagement by a couple with weddings law, it is necessary to look beyond any ceremony that has taken place and to their relationship as the focus of legal redress. Reforming the law to provide financial relief to cohabiting couples at the end of their relationship would help those who have had a non-qualifying religious ceremony, those who have had a non-religious ceremony that is not legally recognised, and those who have had no ceremony at all. The Law Commission has already made recommendations for reform that would provide financial relief to cohabiting couples

[25] The myth of common law marriage is the incorrect, but commonly held, belief that after a particular period of cohabitation a couple are treated by law in the same way as those who are married.

(including those in religious-only marriages) when the relationship ends through breakdown or death.[26]

[26] Cohabitation: the Financial Consequences of Relationship Breakdown (2007) Law Com No 307; Intestacy and Family Provision: Claims on Death (2011) Law Com No 331. In 2011, Government announced that it did not intend to take forward our recommendations for reform of cohabitation law during that Parliamentary term. For more information, see https://www.lawcom.gov.uk/project/cohabitation/. In 2013, Government announced that our recommendations to reform intestacy law in relation to cohabitants would not be implemented during that Parliament. For more information, see https://www.lawcom.gov.uk/project/intestacy-and-family-provision-claims-on-death/.

Chapter 3: Preliminaries

INTRODUCTION

3.1 The preliminaries – the steps that a couple must take before the legal authority is issued for their wedding to go ahead – play a crucial role in the process of getting married. Their role is to ascertain, so far as this is possible, that the couple are free to marry each other and to prevent forced and sham marriages. While there were different views as to how these purposes could be achieved, consultees did not disagree with our view that there needs to be a robust system of preliminaries in order to protect the interests of both the state and the individuals involved.

3.2 As we explained in the Consultation Paper, under the current law there are different preliminaries depending on the nature of the intended wedding. Most weddings – whether civil, Jewish, Quaker, or in a registered place of worship – must be preceded by civil preliminaries. Anglican weddings can be preceded by their own preliminaries – banns, common licences, and special licences. However, civil preliminaries can also be used to authorise an Anglican wedding and must be used instead of banns or a common licence if one, or both, of the couple is not a relevant national.[1]

3.3 There have been some changes to the preliminaries since the publication of the Consultation Paper. First, following the withdrawal of the United Kingdom from the European Union ("EU"), the definition of relevant national is now more limited. The term now extends only to British or Irish citizens, and those who have settled or pre-settled status under the EU Settlement Scheme or who have a decision pending on an EU settlement scheme application that was submitted on or before 30 June 2021.[2] As a result of this, changes were also made to the rules on where people who are not relevant nationals and not exempt from immigration control must give notice.[3]

3.4 Second, there has been a change in the documentation that is issued once the preliminaries are completed. For weddings preceded by civil preliminaries, registration officers will issue a single "schedule" (rather than, as previously, two certificates).[4] For Anglican weddings, the member of the clergy who is to conduct the wedding is responsible for issuing a "marriage document" or ensuring that one is issued and provided to them.[5] While our provisional proposals were devised in the expectation that a schedule system would be introduced, some of the details of the new system proved to be different from those Government envisioned at the time of our

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1 See Consultation Paper, paras 4.10 and 4.103 to 4.106.

2 Marriage Act 1949, s 78(1).

3 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (SI 2020 No 1309). See the Glossary for the meanings of "relevant national" and "exempt from immigration control". See further para 3.34 below for details of the different procedures required for those who do not fall within these categories.

4 Registration of Marriage Regulations 2021 (SI 2021 No 411).

5 Marriage Act 1949, s 21A.

Consultation Paper.[6] There were also some consequential changes that had not been anticipated.[7] We have reviewed our provisional proposals in the light of these changes and adapted them as necessary.

3.5 The provisional proposals that we put forward in the Consultation Paper were designed to work with other elements of our scheme. For example, the shift from a buildings-based system to one based on the regulation of officiants affects the information that will need to be given as part of the preliminaries. Our proposals were also guided by our five principles for reform.[8] Our aim was to make the process simpler for couples to navigate, while also making the process more robust and protecting the interests of the state.

3.6 This chapter will first discuss whether there should be universal civil preliminaries, and then our recommendations for reform.

SHOULD THERE BE UNIVERSAL CIVIL PRELIMINARIES?

3.7 As our Terms of Reference set out, one of the policy assumptions underpinning our project was that we would not be considering universal civil marriage but should consider the potential for introducing universal civil preliminaries. In the Consultation Paper we set out our view that the principles underpinning our scheme – simplicity, certainty, fairness, and protecting the interests of the state – pointed to universal civil preliminaries.[9] We also noted the greater rigour of the existing civil preliminaries, which our scheme would further strengthen, and the specific training that registration officers receive. Our view was that there was a strong case for requiring all weddings to be preceded by the same rigorous preliminaries.

3.8 However, given the significance of the issue we made no specific recommendation. Instead we asked an open question as to whether Anglican preliminaries should continue to be recognised as legal preliminaries to Anglican weddings or whether all weddings should be preceded by civil preliminaries.[10]

Consultation

3.9 Only a minority of consultees favoured universal civil preliminaries. Among them, many suggested that universal civil preliminaries would ensure standardisation, simplicity, and consistency. Consultees identified that universal civil preliminaries would be easier for couples to understand and avoid the risk of other religious groups assuming that their own preliminaries would also be sufficient.

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6 Specifically, as outlined in Explanatory Notes to the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, paras 3 to 7; *Hansard* (HL), 26 January 2018, vol 788, col 1248; and Registration of Marriages Regulations (draft statutory instrument), reg 16, deposited in the House of Lords Library on 17 April 2018 by Baroness Williams of Trafford.

7 One such change was that it is no longer possible for one of the couple to give notice from a specified Commonwealth country or territory. This was the subject of Consultation Question 8 and is discussed further at para 3.156 and following below.

8 The full Terms of Reference for the project are included in Appendix 1.

9 Consultation Paper, paras 4.163 to 4.172.

10 Consultation Paper, para 4.173, Consultation Question 18.

3.10 Some consultees also supported universal civil preliminaries as making the law fairer and more inclusive. Among them were religious groups conducting weddings preceded by civil preliminaries as well as Humanist and Secularist Liberal Democrats and the National Secular Society. Other consultees noted that only a minority of the population now attend an Anglican church.

3.11 Some consultees also favoured universal civil preliminaries as more robust and better able to deal with sham and forced marriage or suggested that the preliminaries were better dealt with by registration officers than by clergy. Some highlighted the challenges for clergy in checking the required documentation when they conducted relatively few weddings. Others pointed to the state's interest in marriage or the importance of marriage more generally. Dr Rachael Clawson (an academic responding on behalf of her research project team) argued that universal civil preliminaries would enable more consistent and effective safeguarding policies, whereas "different policies, training, expectations, value bases etc can lead to discrimination and unsafe practice".

3.12 However, a significant majority of consultees, including the Church of England, the Church in Wales, and the Faculty Office of the Archbishop of Canterbury, were of the view that Anglican preliminaries should continue to be recognised as legal preliminaries to Anglican weddings. Consultees' responses to this issue did not appear to be guided by any briefing text and made a number of different arguments.

3.13 A few consultees specifically argued that different treatment did not necessarily constitute inequality. In advocating for the Anglican churches to retain their "unique ability" to offer couples "a one-stop-shop for their wedding", the Faculty Office of the Archbishop of Canterbury, for example, stated that "a choice of forms of preliminaries and ceremonies does not mean that there is inequality".

3.14 Some consultees also justified the special rules relating to Anglican preliminaries on the basis that the Church of England was the established church (with only a couple acknowledging that this is not the case for the Church in Wales). For some the existence of these special rules was a matter of status and authority, with Anglican preliminaries being both a consequence and a symbol of establishment. For others Anglican preliminaries were linked to the common law duty of Anglican clergy to conduct the weddings of eligible couples; this duty, the Faculty Office of the Archbishop of Canterbury suggested, also meant that Anglican preliminaries needed to be retained to enable clergy to "determin[e] (albeit in accordance with statute law) who is to be married in their churches".

3.15 The Faculty Office of the Archbishop of Canterbury, along with the Church in Wales, also raised questions about the relationship between canon law and statute law. Noting that the canon law of the Church of England is only binding on the clergy, and not on lay people, and that the canon law of the Church in Wales is only binding on its members, both expressed concerns about the Anglican churches not being able to enforce their own laws as to how weddings should be conducted. The Faculty Office also contended that any changes to the legal status of Anglican preliminaries should be a matter for the General Synod of the Church of England rather than Parliament.

3.16 The Church in Wales highlighted the importance of banns from a pastoral perspective. The Faculty Office of the Archbishop of Canterbury made a similar point, suggesting

that removing banns "would more likely lead to couples short-circuiting the traditional early approach to the priest and presenting them with a civil preliminary at a later juncture with an expectation to be married forthwith", with clergy being "bounced into" conducting the ceremony.

3.17 Other consultees argued that a couple who wished to marry in an Anglican church should be able to choose to have Anglican preliminaries, or that it was important to have consistency between the preliminaries and the ceremony. For some, the logical implication was that other types of religious weddings – or indeed those conducted by non-religious belief organisations such as Humanists – should also be preceded by their own (legally recognised) preliminaries.

3.18 The Church of England noted that "the current system has served the nation well for centuries" and, while noting its "obvious limitations in an increasingly mobile society", suggested that "those limitations have not been demonstrably overcome in any alternative system". A few consultees suggested that Anglican clergy were well placed to oversee the preliminaries or argued that Anglican preliminaries were more stringent than civil ones. Others simply noted that Anglican preliminaries worked well, or were at least no less effective than civil preliminaries.

3.19 Consultees also noted that a system of universal civil preliminaries placed considerable dependence upon registration officers. The Faculty Office of the Archbishop of Canterbury and the Church in Wales drew attention to experiences during the pandemic when the Anglican churches had been able to facilitate weddings taking place when register offices were closed, while others questioned whether registration officers would be able to cope with the extra demand.

3.20 Some consultees qualified their support for retaining Anglican preliminaries by making it conditional on them meeting a certain standard. In addition, a number of consultees were receptive to the idea of changes being made to align Anglican and civil preliminaries, and some consultees who contended that there was no need for legal reform displayed confusion as to what the current requirements are.

3.21 It should also be noted that a number of consultees who were opposed to universal civil preliminaries seem to have assumed that we were proposing a civil *ceremony* as a preliminary to an Anglican wedding and so focussed on the importance of being able to have a religious ceremony.

Discussion and conclusions

3.22 As noted above, we asked an open question as to whether there should be universal civil preliminaries or whether Anglican preliminaries should remain as legal preliminaries. In doing so we were conscious of the constitutional position of the Church of England as the established church, with the Queen as its Supreme Governor. Any change to its powers and privileges would have a wider significance.[11] While the disestablished Church in Wales is in a different position constitutionally, having different rules for it would add an additional layer of complication to the law.

[11] That is not to imply that establishment is simply a matter of power and privilege: for a theological view see M Brown, "Establishment: Some Theological Considerations" (2019) 21(3) *Ecclesiastical Law Journal* 329.

3.23 Given the lack of any consensus among consultees, and the strong opposition from key Anglican stakeholders, we do not think it would be appropriate for the Law Commission to recommend the replacement of Anglican preliminaries by universal civil preliminaries. The wider constitutional issues engaged by the issue are not matters on which the Commission can reach a conclusion. We therefore proceed on the basis that the dual system of civil and Anglican preliminaries will remain.

3.24 That said, we think that it would be open to Parliament to legislate for universal civil preliminaries if Government were to decide on that course. From a purely legal perspective, we do not think that the established position of the Church of England *requires* the retention of Anglican preliminaries. The duty of Anglican clergy to conduct the wedding of any eligible couple does not connote a duty to conduct all stages of the process. Indeed, that duty should reduce the need for Anglican clergy to act as gatekeepers by being responsible for the preliminaries, since eligibility is determined by law[12] and does not depend on the discretion of individual clergy controlling the preliminaries. The fact that couples cannot be punished by the church courts for failing to comply with the requirements of the canon law[13] does not preclude the church setting its own rules for couples wishing to be married according to its forms. The Immigration Act 2014 already effectively requires Anglican clergy to accept civil preliminaries for non-relevant nationals (or require such couples to obtain a special licence).[14]

3.25 We also acknowledge that many consultees thought that universal civil preliminaries would be preferable in terms of simplicity, clarity, consistency, fairness, and rigour. We have therefore given further thought to how Anglican preliminaries might be reformed to align them more closely with civil preliminaries.

3.26 The remainder of this chapter is therefore divided into two parts. In the next part we explain our recommendations for reform in relation to civil preliminaries. In the final part we consider recommendations for reform of Anglican preliminaries.

CIVIL PRELIMINARIES

3.27 Before discussing our specific recommendations, we provide a brief overview of both the current law and our recommended scheme, to show how the different elements work together and what will change.

3.28 Assuming both of the couple are relevant nationals,[15] the current law requires each to:

(1) have been resident in England and Wales for the seven days prior to giving notice;

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12 Eligibility includes whether a couple qualifies to be married in a particular parish, whether a member of the clergy is able to marry them, and whether a member of the clergy is entitled to refuse to marry them: see Consultation Paper, paras 2.68 and 2.95 to 2.98 for explanation.

13 This was the issue in *Middleton v Crofts* (1736) 93 ER 1030, cited by the Faculty Office of the Archbishop of Canterbury in its response.

14 Immigration Act 2014, s 57, amending Marriage Act 1949, ss 5 and 8.

15 See the Glossary for the meaning of “relevant national”.

(2) give notice in person to the superintendent registrar of the district where that person has lived for the previous seven days; and

(3) wait for a period of 28 days (the "waiting period") while this notice is displayed in the register office.

Once the required waiting period has been completed, and assuming no objections are made, a schedule authorising the wedding to take place at a specified location will be issued. The couple must marry within 12 months of the notice of marriage being recorded in the marriage register, which will generally be when the couple give notice.[16]

3.29 The scheme that we recommend would be different in several important ways.

(1) No prior period of residence would be required in order to give notice.[17]

(2) Individuals would be able to give notice in person in any registration district or give initial notice online.[18]

(3) The notice would then be displayed on a publicly accessible Government website for the waiting period.

(4) If notice had been given in person and no objections have been made, the schedule would be issued once the waiting period had been completed. If initial notice had been given online, an in-person interview would be required to take place before the schedule is issued. This interview could take place any time after notice had been given, subject to a minimum of five days elapsing between the interview and the schedule being issued.

As the focus of regulation under our scheme is the officiant, the schedule would identify the individual officiant or type of officiant who would be responsible for officiating at the wedding. There would be a process for amending the schedule in the case of changes to the individual officiant or type of officiant, and the possibility of last-minute substitutions. The schedule would then be valid for 12 months from the date of issue.

3.30 While our recommendations will mark a change in how the civil preliminaries operate in England and Wales, all of the elements outlined above are already in place in neighbouring jurisdictions. No prior period of residence in the jurisdiction is required for a couple to give notice of their intention to marry in Scotland, Northern Ireland, Jersey, or Guernsey. Notice need not always be given in person in any of these

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16 Marriage Act 1949, s 33(3). Section 27(4) notes that a superintendent registrar must enter the details into the marriage register "as soon as reasonably practicable" after notice is given by the parties. In practice we understand that this is done electronically at the meeting with each of the couple but there may be circumstances when that is not possible and the details are entered at a later date.

17 However, it would no longer be possible for the preliminaries to be completed in another jurisdiction or on a naval ship at sea: see para 3.156 and following below.

18 It will be for Government to consider whether (and if so, how) the option of giving initial notice online could apply to those who are not exempt persons, or if they will continue to have to give notice in person: see para 3.34 below. See the Glossary for the meaning of "exempt person".

jurisdictions;[19] in Scotland, Northern Ireland and Jersey the alternative is for notice to be given by post but in the more recent Guernsey reforms the form is to be sent by email.[20] Notices of marriage are displayed online in Jersey and Guernsey.[21]

3.31 In terms of the in-person meeting, neither Scotland nor Northern Ireland require both of the couple to meet with a registration officer before the schedule is issued.[22] In Jersey, both parties must attend the office of the Superintendent Registrar (together or separately) to sign a "signature verification form" before the marriage schedule can be issued; this will be between two and 10 days before the ceremony is to take place.[23] In Guernsey the parties are similarly required to attend the office of the Registrar-General no later than the last working day before the date of the intended marriage.[24]

3.32 In short, we think that our scheme brings the law in England and Wales into line with that in Scotland, Northern Ireland, Jersey, and Guernsey in removing barriers to couples who wish to marry here, while maintaining and in some cases enhancing key protections against forced, sham and predatory marriages.

3.33 Overall, most of the changes to civil preliminaries that we had provisionally proposed were supported by consultees. In discussing consultees' responses, we will focus on those that raised specific issues or concerns and how we have taken these responses into account in framing our recommendations.

Protecting against forced, sham and predatory marriages

3.34 We should emphasise that none of our recommendations undermine existing protections against sham marriages. Currently, if either or both of the couple are not relevant nationals and are not exempt from immigration control, then they are required to give notice together.[25] Under our scheme they will either give notice together as they currently do, or have their in-person interview together if they have given initial notice separately.[26] The existing provisions relating to those who are not exempt persons[27] will also continue. Their intended marriages would still be referred to the Secretary of State to determine whether the marriage should be investigated as a

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19 In Northern Ireland the registrar may require notice in person where there appears to be doubt about the identity of a party or a legal impediment and/or if any of the documentation was incorrect or "not in order": The Marriage (Northern Ireland) Order 2003 (SI 2003 No 413), art 3(4); The Marriage Regulations (Northern Ireland) 2003 (SI 2003 No 468), reg 4.

20 The Royal Court of Guernsey, *New Marriage Law* http://www.guernseyroyalcourt.gg/article/182137/Marriages (last visited 1 July 2022).

21 Marriage and Civil Status (Jersey) Law 2001, art 11(1); Marriage (Bailiwick of Guernsey) Law 2020, s 24(3)(a).

22 Marriage (Scotland) Act 1977, s 6; Marriage (Northern Ireland) Order 2003 (SI 2003 No 413), art 7(2)(c).

23 Marriage and Civil Status (Jersey) Law 2001, art 15.

24 Marriage (Bailiwick of Guernsey) Law 2020, s 28(2).

25 Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s 19(2A). See the Glossary for the meaning of "relevant national" and "exempt from immigration control".

26 These alternative requirements where either or both of the couple are not relevant nationals represent a slight modification of our general scheme.

27 See the Glossary for the meaning of "exempt person".

potential sham, in which case the waiting period could be extended to 70 days.[28] It will be for Government to consider whether (and if so, how) the option of giving initial notice online could apply to those who are not exempt persons, or if they will continue to have to give notice in person. However, given the possibility of a person being coerced into a marriage for immigration purposes, we think that such individuals should also be seen separately at some point in the process.

3.35 Our recommendations are also intended to strengthen existing protections against forced marriages. We have given careful consideration to the role of the preliminaries in protecting individuals from being forced into a marriage. We explain below how giving initial notice online could be used to make individuals aware of the remedies and sanctions that are available in cases of forced marriage. A court can grant a forced marriage protection order to protect a person who is at risk of being, or has already been, forced into a marriage.[29] A forced marriage will also be voidable.[30] Forcing a person into a marriage by violence, threats or other forms of coercion, or causing a person lacking capacity to enter into a marriage, is a criminal offence punishable by up to seven years' imprisonment.[31] We also explain below how the online publication of notices will make it easier for others to discover an intended wedding. The need to protect against forced marriages is the key reason for our recommendation that each of the couple must have their in-person interviews separately.[32] The need to allow sufficient time for protective action to be instigated should concerns arise also underpins our recommendation that a minimum of five days should elapse between the in-person interview and the schedule being issued.

3.36 Protections against forced marriages can also be used to protect victims of predatory marriages, assuming such victims lack the capacity to consent to a marriage.[33] A marriage will be forced if one or both of the parties enters into it without free and full consent, whether this is on account of violence or threats or other forms of coercion, including where one party lacks the capacity to consent to the marriage. The scope of a forced marriage protection order is broad enough to cover the situation where a person is not capable of giving a valid consent on account of the coercive or controlling behaviour of another person,[34] which makes it a useful tool in dealing with predatory marriages. In addition, having notices of marriage displayed online will make it easier for concerned families to discover that a wedding is planned to take place. We are also recommending that it should be possible for certain persons to enter a pre-emptive caveat where there is a risk that a person lacks the capacity to consent to a marriage.[35]

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28 Marriage Act 1949, s 28H.

29 Family Law Act 1996, s 63A.

30 Matrimonial Causes Act 1973, s 12(1)(c).

31 Anti-social Behaviour, Crime and Policing Act 2014, s 121.

32 We understand that the Forced Marriage Unit is developing a workshop for registration officers on forced marriage which it plans to offer quarterly.

33 See para 1.73 and following above.

34 *WU v BU* [2021] EWCOP 54, [2022] COPLR 46.

35 See the Glossary for the meaning of "caveat".

The residency requirement

3.37 The current law requires each of the couple to give notice in the registration district in which they have been resident for the previous seven days.[36] As we explained in the Consultation Paper this seven-day residency requirement poses an obstacle to couples resident overseas who wish to marry in England and Wales.[37] These may be British nationals who are temporarily resident overseas for study or work, couples who have family or roots in England and Wales, or those who are attracted by the idea of marrying in a particular heritage location. The residency requirement may also pose a problem for those who regularly move between registration districts *within* England and Wales, for example those living on houseboats or in caravans. We therefore provisionally proposed that the residency requirement should be abolished.[38]

Consultation

3.38 A sizeable minority of consultees supported the abolition of the residency requirement. Among them were most of the local authorities who responded, some of whom noted that the requirement could be satisfied simply by staying with friends or in a hotel. One consultee noted that there was no means of verifying a letter from a third party claiming that the couple had been living with them for seven days. Other consultees saw the requirement as unnecessary in the light of other requirements.

3.39 Some consultees specifically favoured abolition on the basis that it would make it easier for couples living abroad to get married in England and Wales and welcomed the economic benefits that this might bring. The Heritage Alliance commented that abolition "would have an important and significant impact on the heritage sector".

3.40 While the majority were opposed to the abolition of the residency requirement, many consultees had misunderstood its purpose and assumed that it was a safeguard against forced, sham, or hasty marriages, or that it facilitated the discovery of potential impediments to the marriage. Many of those who spoke of the importance of having a link between the couple and the local community also assumed that the residency requirement determined where a couple could marry. Only a few consultees expressed concerns about marriage tourism.

3.41 Some consultees suggested that the residency requirement should remain but in a different form. Some thought that couples should still have to be resident in England or Wales for seven days, but not necessarily in a single registration district. Others suggested that the requirement should be retained, but with limited exceptions for those in the army or in care, those without a permanent address, or those unable to take time off work to establish residence.

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36 There are separate rules for couples who are not relevant nationals and not exempt from immigration control, who must give notice together: Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s 19(2A). See the Glossary for the meaning of "relevant national" and "exempt from immigration control".

37 Consultation Paper, paras 4.13 to 4.19.

38 Consultation Paper, para 4.92, Consultation Question 4.

Discussion and conclusions

3.42 The residency requirement is simply a precondition for giving notice and is a very poor measure of a couple's connection to a district.[39] Removing the requirement will not allow a wedding to take place immediately or without checks taking place and will have no impact on the current protections against forced[40] or sham[41] marriages.

3.43 Removing the residency requirement will enable couples to choose where to give notice. It will also make it easier for some couples to marry in the place of worship of their choosing. At present couples who wish to marry in a registered place of worship are limited to places in their district of residence, unless there is no registered building of their religious group in their registration district or their usual place of worship lies outside the district.[42] This limitation poses particular difficulties for same-sex couples, given how few registered places of worship have opted in to conduct same-sex weddings.[43]

3.44 Removing the residency requirement will also make it easier for couples resident overseas (whether temporarily or permanently) to get married in England and Wales. As we note above, we think that this will benefit those with family links to England and Wales. We also think that it could increase the number of couples marrying in England and Wales, potentially bringing wider financial benefits to the different groups offering wedding services in England and Wales. Although the economic benefits of a particular reform would not be a reason to pursue it if there were principled or practical objections against it, we think that it is legitimate to take into account that our recommendation would bring economic as well as social benefits.

3.45 The alternative suggestion from a few consultees that the residency requirement should remain but in a different form does not provide a solution to the problems that we identified in the Consultation Paper. The difficulty of creating exceptions was apparent in the range and breadth of the exceptions suggested by consultees. Keeping a residency requirement but introducing exceptions would add an additional layer of uncertainty and complexity.

3.46 Within our proposed scheme, abolition will also allow for greater flexibility in how notice is given, a proposal which was supported by a majority of consultees. In our view the (relatively few) arguments made against marriage tourism do not outweigh the advantages that we identified in the Consultation Paper, or the broader benefits that abolishing the residency requirement will bring both to couples wishing to be married in England and Wales and to the wider economy.

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39 As we noted in the Consultation Paper, para 4.18, its original purpose seems to have been to ensure that civil preliminaries could not be any speedier than their Anglican equivalents.

40 As confirmed by the Forced Marriage Unit during the pre-consultation stage: Consultation Paper, para 4.34.

41 As confirmed by the Home Office during the pre-consultation stage: Consultation Paper, para 4.34.

42 Marriage Act 1949, ss 34 and 35. There are no equivalent restrictions for civil, Jewish or Quaker weddings. Different restrictions apply to Anglican weddings.

43 S Falcetta, P Johnson and RM Vanderbeck, "The Experience of Religious Same-Sex Marriage in England and Wales: Understanding the Opportunities and Limits Created by the Marriage (Same Sex Couples) Act 2013" (2021) 35(1) *International Journal of Law, Policy and the Family* 1.

Recommendation 1.

3.47 We recommend that the requirement that couples are resident in an English or Welsh registration district for seven days prior to giving notice of their intention to marry to a registration officer should be abolished.

A two-stage process: giving initial notice remotely and an in-person interview

3.48 At present each of the couple must give notice in person, which involves an interview with a registration officer. At this stage each of the couple provides certain required information about their eligibility to marry. The interview is an opportunity for the person conducting the interview to make an assessment about whether each of the couple has capacity to marry and are freely consenting to the marriage. It is also a necessary pre-requisite for the 28-day waiting period to begin.

3.49 In the Consultation Paper we explained the potential benefits in having an alternative two-stage process.[44] Having the option of giving initial notice online or by post would make it easier for couples to start the process. Having information in advance would remove the need for registration officers to spend time in the interview taking down the details of the couple and enable better use to be made of the in-person interview.

3.50 As noted above, it would be for Government to consider whether and how the option of giving notice remotely should be extended to those who are not exempt persons. Following current requirements, those who are not relevant nationals or exempt from immigration would also need either to give notice together or have their in-person interview together.[45]

3.51 We therefore provisionally proposed that it should be possible to start the 28-day waiting period by giving notice online or by post and then attending a separate in-person interview, or by giving notice in person in any registration district.[46]

Consultation

3.52 A substantial majority of consultees supported this proposal. Many commented that being able to give notice remotely would help modernise the process and allow it to be conducted in a more cost-efficient way. One local authority highlighted the benefit of questions being answered and documents uploaded in advance, commenting that couples often forgot to bring the necessary documents to their appointment.

3.53 Others described the option of starting the process remotely as more convenient, flexible and accessible for couples. Dr Islam Uddin (an academic) thought that our proposal "could encourage couples to have a civil ceremony". Some consultees highlighted the bottlenecks that had been created as a result of Covid-19 and supported enabling couples to start the process without waiting for an appointment at

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44 Consultation Paper, paras 4.36 to 4.47.

45 See the Glossary for the meaning of "relevant national", "exempt from immigration control", and "exempt person".

46 Consultation Paper, para 4.93, Consultation Question 5.

their local register office. Others commented that this proposal would also make it simpler for couples from outside England and Wales to give notice of their intention to get married here, as they could complete the first step without being physically present.

3.54 However, some consultees were concerned that one of the couple would be able to start the process without the other's knowledge or against their will. One consultee, although acknowledging that there would be a later in-person interview, thought that by this time the person being forced into the marriage might think that it was too late to do anything about it. Some registration officers and local authorities were also concerned about the implications for the detection and reporting of potentially sham marriages.

3.55 Some local authorities thought that having a two-stage process would be impractical and administratively burdensome. Dudley Registration Service was concerned that registration services would be under pressure to provide an appointment for the in-person interview if an individual had "started the process online regardless of appointment availability". It was also concerned about the implications for couples' expectations as to when they would be able to marry.

3.56 Some local authorities were also concerned about the possibility of couples giving notice at any register office and how to manage demand. Others commented on the importance of local knowledge, noting that it would be more difficult to carry out checks with social services in a different registration district or suggesting that local knowledge was helpful in identifying immigration fraud.

3.57 In addition, some consultees were less in favour of allowing notice to be given by post, querying the reliability of the postal services and noting that registration officers would still need to enter the details provided into the system.

3.58 Local authorities and registration officers also expressed concerns about how the required documentation would be dealt with. The National Panel for Registration suggested documents should be uploaded when notice was given remotely but that the original documents should also be brought to the in-person meeting.

3.59 Finally, a small number of consultees thought that the 28-day waiting period should only begin once the in-person interview had taken place or once it had been ascertained that the submitted information was correct. Registration officers thought that there would need to be time to rectify incorrect information submitted at the online stage and to check any issues relating to divorce, nationality, or the status of foreign weddings. One local authority raised a specific issue about the time needed to clear foreign divorce documents with the General Register Office, suggesting that the turnaround time for this would usually be six to eight weeks.

Discussion and conclusions

The desirability of having an option for giving initial notice remotely

3.60 We have explained how our proposals will not undermine protections against sham marriages at paragraph 3.34 above.

3.61 The concerns that were expressed about fraudulent or forced marriages were ones that we had considered in the Consultation Paper.[47] In our view, an online system of giving notice could be used to try to help those at risk of forced marriage. The online form could ask appropriate questions and provide links to sources of information about capacity and consent, signposting services where the person could seek help, including for example the contact details of the Forced Marriage Unit.[48] The online system could also emphasise the importance of each of the couple having capacity to marry and freely consenting to being married. For some individuals, having such information may even be a necessary pre-requisite to enable them to recognise that they are being forced into a marriage rather than taking their lack of choice for granted.[49]

3.62 We note that there is a risk of one person pretending to be another when giving initial notice online. The fact that they will need to upload specific documentary evidence should mitigate that risk, since they may not have access to that person's documents, but cannot eliminate it. The system could however make clear that it is a criminal offence to give notice on behalf of another if that is done to cause that other to enter into a marriage without their free and full consent.[50] As we noted in the Consultation Paper, we think that a registration office should cancel an initial notice if they discover that such notice was not given by the person to whom it related.[51]

3.63 Moreover, as at present, the in-person interview will provide an opportunity for registration officers to check both the identity of the person and their willingness to marry. As a result, there is no reason why there should be any greater risk of impersonation than under the current law. In addition, as we noted in the Consultation Paper, we think that the two-stage process will enable registration officers to make best use of the interview: they will have information about the couple in advance and will not need to spend the interview entering their details into the online database.[52]

3.64 The in-person interview will also continue to give an individual the opportunity to disclose that they are being forced into a marriage. We do not think that there is any reason why a person being coerced will be any less inclined to disclose that this is the case during the interview just because initial notice had already been given. If the fact that arrangements have already been made for the wedding discourages individuals from disclosing coercion, this is a problem that applies equally to the current law, since couples have to specify where they are planning to marry when they give notice. We will however return to the issue of forced marriages when we consider what the

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47 Consultation Paper, paras 4.43 to 4.45. In particular, we noted the criminal offences that would be committed by one person forcing another to give notice or pretending to be someone else for the purpose of giving notice.

48 Consultation Paper, para 4.39.

49 See K Chantler and M McCarry, "Forced Marriage, Coercive Control, and Conducive Contexts: The Experience of Women in Scotland" (2020) 26(1) *Violence Against Women* 89 for discussion of how some individuals did not conceptualise what had happened to them as a forced marriage.

50 Anti-social Behaviour, Crime and Policing Act 2014, s 121.

51 Consultation Paper, para 4.45.

52 Consultation Paper, para 4.40.

minimum time between the in-person interview and the issue of the schedule should be.

3.65 The option of giving notice remotely will also bring some important benefits. Couples will be able to give initial notice without waiting for an appointment. Virtually all of the couples in the Nuffield project who had a religious ceremony before their legal wedding would have had time to satisfy the waiting period if they had been able to give notice as soon as they had decided to marry.[53] One imam also identified that giving notice online would be beneficial to those communities that did not approve of the bride and groom being alone together before their wedding: as he pointed out, such disapproval makes it difficult for such couples to give notice together unless they have already had a religious wedding ceremony.[54]

3.66 We acknowledge that our policy will have implications for local authorities. At present many local authorities use booking systems for couples to make their appointment to give notice. Under our scheme registration services will not have the same ability to delay couples from giving notice based on their own resources and staffing. In practice, we do not think that giving couples the option of starting the notice period remotely will lead to any greater pressure on registration officers. In our view, it is important to enable couples to give notice and start the waiting period, particularly if the alternative is that the couple have a religious-only marriage without a legal wedding. We consider the implications for the timing of the in-person interview further below.

How notice will be given remotely

3.67 In the light of the operational points raised by consultees, we have given further thought to what couples will be required to do when giving notice remotely. We envisage a thoughtfully designed and comprehensive online notice system that will guide individuals through the process, require key information and evidence to be provided, set a date for the in-person interview, and signpost them to further sources of information.

3.68 An online system that guided couples through the process of giving notice will save some unnecessary appointments with registration officers. Once couples are aware of the process, they will know what decisions need to be made – for example about the type of wedding and intended officiant – before they could give notice.

3.69 The same information and supporting documents will be required as when giving notice in person at present.[55] If documents are in a language other than English, translations will need to be provided. Each of the couple will also be required to book a date for their in-person interview. The system will therefore need to be an intelligent and interactive system that adapts to the answers given to ask appropriate follow-up

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53 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 2.32.

54 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 2.36.

55 Marriage Act 1949, s 28B requires a notice of marriage to be accompanied by "specified evidence" of each person's name, date of birth, place of residence and nationality and, if they have previously been married or in a civil partnership, of the ending of that marriage or civil partnership.

questions and requires specific pieces of information and supporting documents. It will ensure that notice cannot not be submitted until all the required information, including scans of all necessary documents, has been submitted and a date booked for the in-person interview. Notice will not have been given, and the waiting period will not begin, until all this has been completed.

3.70 We think that the system could also be developed to signpost individuals to further sources of information about the process of getting married. Many individuals will only give notice when they have decided how and when they wish to marry. Others, however, may be uncertain about the options available to them. Rather than making a specific appointment with registration officers just to find out how to get married, or having to make a follow-up appointment where they did not have the necessary information,[56] the system could provide links to further information about the process of getting married, allowing individuals to check points on which they were unsure or make the necessary decisions.

3.71 The system could also provide information about the consequences of getting married in terms of the legal rights and responsibilities that follow. We think that this means of providing information would be more effective and more comprehensive than tasking either registration officers or officiants with the role of providing it.

3.72 While only a few consultees specifically opposed the idea of giving notice by post, others raised concerns – for example about incorrect documents being submitted – that would be more difficult to address if notice had been sent by post. In addition, there is the risk of a postal notice going astray or being sent to the wrong address. The worst-case scenario would be a couple believing that they have given notice and done all that is necessary and going ahead with the ceremony only to discover later that the marriage is void.[57] Given the importance that is attached to giving notice under our scheme, we think it is more important for couples to be certain that they have given notice than to provide a range of options for doing so remotely. We are therefore not recommending that there should be the option of giving notice by post. The ability for notice to be given in-person will remain, so those who do not wish to use the online system, or who are unable to do so, will not be placed at a disadvantage.

The requirement for a separate in-person interview

3.73 Even though we did not ask consultees a specific question on whether there should continue to be an interview, their responses nonetheless provided clear support for this remaining a requirement. We do not think that requiring an interview negates the advantages of giving initial notice online.

3.74 Each of the couple will need to bring the originals of the documents that had been submitted online to the in-person meeting to be checked by the registration officer. These checks will be limited to ascertaining that the physical documents were authentic and the same as those that had been submitted online.

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[56] See R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) paras 1.21 to 1.22.

[57] See para 9.28 and following below.

3.75 In the Consultation Paper we spoke of a "separate" interview taking place. By this we meant not only that this will be separate from the initial giving of notice but also that each of the couple will be interviewed separately.[58] As consultees have pointed out, seeing the couple separately is a key tool in identifying forced marriages, and can also help to identify sham marriages. The very purpose of an in-person interview in assessing capacity and consent would be undermined if one of the couple felt unable to speak out because of the presence of the other.

Conclusion

3.76 We think that there are clear benefits to giving initial notice online in terms of the greater flexibility for couples. Those giving notice online will provide the same information and documents as those giving notice in person and will be required to book a date for their in-person interview. Given the need for certainty on the part of couples that notice has been given and the waiting period has commenced, we are not recommending that it should be possible to give initial notice by post.

3.77 Each of the couple will then have a separate in-person interview, giving the registration officer an opportunity to ascertain that each was freely consenting to the marriage and has capacity to do so, and to check the documents submitted online against the originals. There is no reason why this two-stage process will result in increased work for registration officers, given the efficiency savings that could result from initial notice being given online.

Recommendation 2.

3.78 We recommend that it should be possible to start the waiting period by giving notice online or in person at any registration district, and that any person giving notice online should be required to attend a separate in-person interview at a later date.

The timing of the in-person interview

3.79 If a couple give initial notice online to start the 28-day waiting period, when within that period should the in-person interview take place? In the Consultation Paper we considered whether there should be a minimum period between the in-person interview and the issue of the schedule authorising the wedding. We noted that a shorter period would be easier for those who do not live in England and Wales, enabling them more easily to combine the interview and wedding in one trip. Against this, we noted that the interview might raise concerns that needed to be investigated, highlighting issues about consent and capacity. While a forced marriage protection order can be made very speedily where necessary, time is still needed for an application to be made, and registration officers who have doubts about a person's capacity may need to make a referral to the local authority safeguarding team.

[58] While those who are subject to immigration control will have their in-person interview together, following on from the current requirement that they give notice together, some part of the interview should take place separately for the reasons given.

3.80 In the light of these issues we made no provisional proposal but invited consultees' views as to whether the minimum period between the in-person interview and the schedule being issued should be three days, seven days, or some other period.[59]

Consultation

3.81 Many consultees appeared to think that the period being proposed was the entire waiting period between giving notice and getting married or that the wedding would have to take place within that specified period. Understandably, then, only a small minority of consultees favoured a minimum period of three days. The remaining responses were split between those who favoured seven days and those who proposed an alternative period of time.

3.82 Those who thought three days was sufficient highlighted benefits such as flexibility, speed, and simplicity. Some highlighted the benefit to couples travelling from abroad to be married in England and Wales. Dr Rajnaara Akhtar (an academic) also suggested that it would encourage Muslim couples to have a legal wedding as well as a religious one.

3.83 Consultees favouring a period of seven days noted the need to resolve issues, correct errors, address omissions, produce missing documents, or deal with expired documents, or made comments about identifying and investigating concerns about forced or sham marriages. Opinions were more divided as to whether a minimum period of seven days would work for couples travelling from abroad to be married in England and Wales.

3.84 Among those who favoured a different period, a few suggested that it should be shorter than seven (or even three) days. Leicester Diocesan Registry drew a parallel with Anglican preliminaries, noting that five working days would equate to the wedding taking place on the Saturday after the final publication of banns. However, most who favoured a different period thought that it should be longer; suggested periods ranged from ten days to six months, with four weeks / one month being the most common suggestion. Many seemed to believe that the period was intended to function as a waiting period to allow the couple to reconsider getting married.

3.85 In relation to the specific concerns about forced marriages that we had noted in the Consultation Paper,[60] some consultees thought that seven days would be sufficient for any necessary follow-up action to be taken, for example obtaining a forced marriage protection order. Nazia Rashid (a solicitor) thought that "such a time frame would allow the appropriate support to be arranged and be in place when dealing with delicate and sensitive cases". Dr Rachael Clawson (an academic responding on behalf of her research project team) thought that seven days should "be the absolute minimum", commenting on the time needed for individuals at risk of forced marriage to seek help or for registration officers to ensure a person had capacity to consent, noting that if a multi-agency assessment was required this would take longer than seven days.

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59 Consultation Paper, para 4.94, Consultation Question 6.

60 Consultation Paper, paras 4.57 to 4.61.

3.86 Others thought that a longer period would be required to deal with any issues that might have arisen as a result of the interview. The National Commission on Forced Marriage[61] suggested the period should be at least two weeks "to make proper checks", although it did not specify what steps would need to be taken. One local authority noted that safeguarding referrals might have to be sent to a different local authority if the couple were not giving notice within their district of residence.

3.87 Some consultees identified other operational concerns. One such concern related to the likely demand for interviews and the workloads of local authorities. Two local authorities commented that demand could be managed as long as the requirement was not that all interviews had to take place exactly seven days before the wedding. Others argued that a longer minimum period was needed to manage demand.

3.88 Some local authorities and registration officers raised specific concerns about documents. They highlighted the need for foreign divorce documents to be cleared, the risk of issues only being detected when the physical documents were checked, and the risk of couples forgetting to bring the documents with them. A few consultees also suggested that more time would be needed after the interview in order to issue the schedule or send the schedule to the officiant.

3.89 A final operational concern was that scheduling the interview too close to the wedding would raise the risk of the wedding not being able to go ahead if the couple were unable to attend for some reason or if issues arose at the interview stage that could not be addressed in time.

Discussion and conclusions

3.90 As noted above, this question was not directed at what the waiting period to get married should be: that will remain 28 days in most cases. Nor is the question directed at what the gap between the in-person interview and the wedding should be: once the schedule is issued, the wedding will be able to take place at any time in the next 12 months. The question is directed solely at what the minimum period should be between the in-person interview taking place after initial notice has been given online and the schedule being issued.

3.91 That said, some couples may be planning to marry as soon as the schedule is issued and may also want the in-person interview to be as close to the wedding as possible. In particular, couples who are resident overseas might be combining the in-person interview and wedding in a single trip; for such couples, it would be convenient for both to take place in the same week. Any longer period is likely to reduce the likelihood of overseas residents coming to England and Wales to be married, particularly when they have the alternative of getting married in Scotland where no in-person interview is required. Some consultees disagreed that this factor should influence the law and criticised us for considering the economic benefits of reform. As noted above, although the economic benefits of a particular reform would not be a reason to pursue it if there were principled or practical objections against it, we think that it is legitimate to take potential economic benefits into account. Further, making it easier for couples resident overseas also provides benefits in saved time and ease for

[61] Founded in 2013, the National Commission on Forced Marriage is an independent body chaired by the Rt Hon Baroness Butler-Sloss.

those couples, who may be temporarily resident overseas for work or study and have chosen to be married in England and Wales so that family and friends can attend.

3.92 At the same time, the benefits to such couples need to be balanced against other factors. The key issue to be determined is the likelihood of issues arising from the in-person interview that will need to be addressed before the schedule is issued, and how long such issues might take to resolve.

3.93 Various factors point towards requiring a period of more than three days. From a practical perspective, there is the need to take account of weekends and bank holidays, given that the 28-day waiting period is not limited to working days. More importantly, there is the need to allow sufficient time for steps to be taken in relation to any forced marriages, including those cases where one of the couple lacks the capacity to consent.

3.94 Having carefully considered the various concerns, we think that requiring a minimum period of five days between the in-person interview and the issue of the schedule enabling the wedding to go ahead strikes the right balance. We discuss below why we think that this period is sufficient for protective measures to be taken to address forced marriage and why we do not think that it will pose problems operationally.

Forced marriage

3.95 In the Consultation Paper, we highlighted that the need to identify and provide support to persons being forced into a marriage was an important, if not the most important, factor which pointed towards there being a longer minimum period between the in-person interview and authority to marry being given.[62]

3.96 Unsurprisingly, when consultees argued for longer periods, they frequently cited the need to protect against forced marriage. However, it should be noted that some thought that the purpose of a longer period was to allow the person time to change their mind. To talk of a person "changing" their mind assumes that they have made the decision to marry in the first place. This is at odds with the legal definition of duress, which requires it to be shown that the will, or decision-making capacity, of the person being forced into marriage has been negated by the pressure that has been exerted on them.[63] It is also at odds with the research into forced marriages that emphasises the importance of conceptualising forced marriage as a process rooted in gender-based violence rather than a single event, with individuals being "groomed" for marriage and their ability to consent (or to withdraw consent) gradually being compromised over time.[64]

3.97 If the person who is being forced into a marriage discloses this fact at the interview and indicates that they do not want the marriage to proceed, there would be no question of a schedule being issued. Similarly, if it is apparent to the registration officer conducting the interview that the person is being forced into a marriage, then they should immediately refer the case to the relevant safeguarding unit. As

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62 Consultation Paper, para 4.64.

63 *Hirani v Hirani* (1983) 4 FLR 232, [1983] CLY 1118.

64 K Chantler, N Mirza and M Mackenzie, "Policy and Professional Responses to Forced Marriage in Scotland" (2022) 52(2) *The British Journal of Social Work* 833.

consultees noted, such referrals may involve liaising with other local authorities (if the person is resident in a different district from where they were interviewed), or other bodies or agencies.

3.98 Consultees' references to safeguarding units highlighted the fact that many different professionals have a role in protecting individuals against forced marriage, a point reinforced by recent research.[65] One study of forced marriage protection orders found that forced marriages were often accompanied by other forms of violence or child abuse or neglect.[66] Another study, this time of the forced marriages of persons with learning disabilities, found that 78% of victims were receiving some kind of support services.[67] Other researchers have emphasised that a forced marriage is a process rather than an event and that preventative work needs to address the factors that give rise to forced marriages rather than solely focussing on the wedding itself.[68] While registration officers undoubtedly have an important role to play, they are not the only bulwark against forced marriages.

3.99 It is also important to put the in-person interview in the context of the preliminaries as a whole. Where initial notice has been given remotely, registration officers will be able to check the information submitted in advance of the interview. The display of notices online will make it easier for concerned friends and family to discover an intended marriage and raise objections. In addition, our recommendation that it should be possible for objections to be made in advance of notice being given means that concerns about an individual's lack of capacity can be flagged in advance. We think that combination of checks should reassure organisations such as the National Commission on Forced Marriage who thought that more time was needed for checks to be made.

3.100 As a result, we think that five days would be sufficient for protective action to be instigated in those cases – which we think will be rare – in which concerns about a forced marriage only arise at the interview. We note that if needed, a forced marriage protection order may be obtained on the day of application, without notice of the application being given to the respondent.[69] However, we also note that a forced marriage protection order is not necessary to prevent a forced marriage from going ahead. Nor will it be necessary for any investigations to be *completed* in the five days. As under the current law, a superintendent registrar will not issue a schedule if they are not satisfied that there is no lawful impediment to the marriage, which for these purposes includes concerns about forced marriage.

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65 R Clawson, "Safeguarding People with Learning Disabilities from Forced Marriage: The Role of Safeguarding Adult Boards" (2016) 18(5) *Journal of Adult Protection* 277; T Miles-Johnson and T Courtenay, "Recognition and response: policing 'Forced marriage' in England" (2021) 31 *Policing and Society* 1248.

66 K Noack-Lundberg, AK Gill and S Anitha, "Understanding forced marriage protection orders in the UK" (2021) 43(4) *Journal of Social Welfare and Family Law* 371.

67 R Clawson and R Fyson, "Forced marriage of people with learning disabilities: a human rights issue" (2017) 32(6) *Disability & Society* 810.

68 K Chantler, N Mirza and M Mackenzie, "Policy and Professional Responses to Forced Marriage in Scotland" (2022) 52 *The British Journal of Social Work* 833.

69 For an outline of the process see J Hitchens and N Daly, *Forced Marriage Law and Practice* (2021) ch 10.

Operational issues

3.101 There is in principle no reason why a minimum five-day gap between the in-person interview and the schedule being issued would be any more likely to lead to additional demands of local authorities at popular times of year for weddings than the current 28-day gap does. As at present, couples would no doubt be encouraged to give notice, and have their in-person interview, well in advance of their intended wedding.

3.102 In addition, other changes in our scheme may have the effect of freeing up capacity within local authorities for in-person interviews. For example, only one registration officer will be required to attend any given civil wedding and giving initial notice online may result in fewer wasted or duplicated appointments. Moreover, with the removal of the residency requirement, the system could direct couples to where the earliest available interview slot would be.

3.103 One additional way of accommodating the operational needs of local authorities would be to view the 28-day waiting period as a minimum rather than a maximum. Taking it as a maximum would mean that the in-person interview would have to take place in the 23 days after initial notice was given. If it did not, the notice would expire, and the person would have to give notice again. The notice expiring would waste both the couple's and the local authority's time. To prevent this outcome, we think it would be useful to have flexibility in the requirement, so that it should be possible for the waiting period to be extended for an additional 28 days or such other period as the General Register Office might provide to enable the in-person interview to take place.

3.104 We are not envisaging that the registration officer would check the documentary evidence in the five days between the in-person interview and the schedule being issued. As we have explained above, documents would need to be provided at the initial stage, when notice is given online. These documents should be checked in advance of the in-person interview. If these checks identified that the wrong documents had been submitted, or that the documents were forged, the notice process would have to begin again.

3.105 One specific concern that was flagged in relation to documents was the time needed for evidence of a foreign divorce to be considered by the Registrar General, which one consultee suggested would usually take six to eight weeks. However, under the current law documents are only considered once notice is given, so the time available for their consideration will be the same under our scheme. Moreover, the General Register Office's information leaflet advises couples that their cases will be reviewed within 10 working days of receipt.[70] Although particularly complex cases may take longer to consider, six to eight weeks would appear to be exceptional.

3.106 Other concerns were that the period needed to be long enough for any discrepancies between the documents submitted online and those provided in person to be addressed. We think this can be dealt with by clear rules about what couples need to do in order for the in-person interview to be completed. As noted above, couples would be required to bring the original versions of the documentary evidence they had submitted online (and any required translations). If they failed to do so, or if there were

[70] HM Passport Office, General Register Office, *Information leaflet on the referral of documents to the General Register Office* (GRO FD2).

discrepancies between the documents submitted online and those brought in, then a further in-person interview would be needed for them to bring the correct documents. If the documents were judged to be forged,[71] then the process would have to begin again, with a new notice being given and appropriate documents being submitted.

3.107 It is possible, then, that the parties might discover at their in-person interviews that they could not be granted the authority to marry as soon as they had expected. Whether this delay would result in them having to reschedule their wedding would depend on whether they had planned to marry immediately upon the schedule being granted. But this is no different to the position under the current law: if a couple have scheduled their appointment to give notice with only just enough time for the 28-day period to be satisfied before their intended wedding day, then they will not be able to go ahead if they have brought the wrong documents or miss that appointment on account of illness, travel delays or simply forgetting.[72] Couples are already advised to give notice well in advance of their intended wedding, and the same advice would remain under our scheme.

The content of the in-person interview

3.108 We did not ask consultees for their views on the content of the interview. However, more than 20 consultees suggested that in-person interviews should include questions about domestic abuse, describing this potential routine enquiry as an important means of preventing and addressing domestic abuse. This is a difficult issue and one that lies outside the scope of our project: unlike issues of capacity and duress, domestic abuse has no impact on the validity of the marriage. We would welcome the General Register Office considering whether such questions should be included in their guidance for registration officers or what training registration officers might need to spot signs of abuse and ask appropriate follow-up questions.

Recommendation 3.

3.109 We recommend that the minimum period between the in-person interviews and the date on which the schedule is issued should be five days.

3.110 As we discussed in the Consultation Paper and at paragraph 3.100 above, superintendent registrars can already refuse to issue the schedule if they are not satisfied that there is no lawful impediment, but they must have reasonable grounds for this decision.[73] We did not think that they should have a more general power to refuse to issue the schedule on the basis of suspicions alone, and no consultees addressed this specific issue in their responses. Therefore, under our scheme, a

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71 For example, if an individual had submitted evidence that they were an exempt person that turned out to be false.

72 Alternatively, they may go ahead with a religious-only ceremony: see eg R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 2.11.

73 Marriage Act 1949, s 31(2)(a). See Consultation Paper, para 4.62.

registration officer must have reasonable grounds to refuse to issue the schedule five days after each of the couple has had their in-person interview.

Publicising the notice of marriage online

3.111 As we explained in the Consultation Paper, modern technology could be used to give greater publicity to notices of marriage than they receive being displayed in a register office where few people will see them. Online publication of notices, which as noted above is already in place in Jersey and Guernsey,[74] would ensure that intended marriages would be easier to discover and any impediments easier to identify.

3.112 However, we were mindful of the potential risks of online publication. Although some risks could be mitigated by limiting the information that would be publicly displayed (rather than, as at present, including the home address(es) of the couple and the location of the wedding), we also thought that it should be possible for the requirement of publicity to be waived where necessary for the protection of the couple. We therefore provisionally proposed that "notices of marriage should be publicly displayed online, save where this would expose either of the couple to a risk of harm".[75]

Consultation

3.113 A substantial majority of consultees supported our proposal that notices of marriage should be published online. Many commended the proposal as a practical measure that would update outdated law. Some consultees noted that displaying notices in the local register office served little purpose. For example, West Sussex County Council commented that there had "virtually never" been any objections to a marriage as a result of the notices being publicly displayed, adding that family members concerned about lack of capacity contacted them on the basis of their personal knowledge rather than on account of seeing the notice.

The principle and extent of publicity

3.114 A few consultees stated that notices should not be publicly displayed, arguing that marriage is a private matter for the couple. Others, however, took the view that notices should be publicly displayed as a symbol of the public dimension of marriage.

3.115 Some consultees expressed a concern about the extent of (unwanted) publicity that might be generated by online publication. Such concerns included press interest in high-profile individuals, and the unwelcome use of the information to target the couple with advertising for services relating to weddings. Others accepted the principle of online publication but emphasised the need to observe data protection laws.

The scope for objections to be made

3.116 Many consultees commented that online publication would increase the accessibility and discoverability of notices and so help to identify any legal impediments to the marriage, such as a prior marriage. Some consultees also commented on how common it was for information to be accessed online.

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74 See para 3.30 above.

75 Consultation Paper, para 4.97, Consultation Question 9.

3.117 Some consultees saw online publication as an additional safeguard against forced marriages, in making it easier for people with concerns others to come forward. However, the Welsh Government Officials and National Adviser for Violence against Women, Gender-based Violence, Domestic Abuse and Sexual Violence doubted whether this would happen unless others with concerns about an individual "know where to look for the on-line notice and feel sufficiently assured that their objections are not shared with others".

The scope for information not to be published if there is a risk of harm

3.118 Consultees identified the competing considerations to take into account in devising any exemption from publication. A broad exception would undermine the principle of public notice, but one that was too narrow might put couples at risk. Some identified potential reprisals from families or former partners as justifying an exemption, although one consultee noted that the couple might not be aware of the risk of harm until after the notice had been displayed.

3.119 Conversely, some consultees were concerned that couples could invent a risk of harm to avoid online publication. Other consultees commented that corroborating evidence would need to be provided. Some local authorities helpfully suggested a suitable model in the process for voters to be registered anonymously.

Operational concerns

3.120 Some consultees raised specific concerns about the security of the information posted online or the risk of that information being misused. Others made their agreement with the proposal conditional upon the notices being displayed upon a secure Government website or upon the extent of personal information that would be displayed.

3.121 A few consultees opposed the proposal on the basis that not everyone would have access to an online system. Others agreed with our proposal subject to the proviso that there should continue to be public displays of notices in the register office or, alternatively, a way for those who do not have access to the internet to access the notices. Some, however, suggested that access to the online system should be limited, either to specific persons (upon production of evidence of identity) or to specific geographic areas.

Discussion

3.122 Many consultees highlighted the benefits we had set out in our Consultation Paper, including how having notices online would be the "most effective way of bringing intended marriages to the attention of the public and ensuring that those who may wish to make an objection have a realistic opportunity to do so".[76] However, some consultees also raised concerns, prompting us to consider in more detail the scope of the requirement to publish and the risk of harm exception.

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[76] Consultation Paper, para 4.74.

The principle and extent of publicity

3.123 As detailed in the Consultation Paper, we think that the publication of notices plays a powerful role in sending a message that marriage is a public matter.[77] This will be enhanced by displaying notices of marriage on a single official website that is publicly accessible. We have however given careful thought as to exactly what information should be displayed online. Given the concerns expressed by consultees, we think that the information displayed should be the minimum necessary to identify the marrying couple. As at present, the notice will only be displayed during the 28 days of the waiting period.

3.124 In our view, notices of intended marriage should no longer include the address(es) of the couple or the location of the wedding, although registration officers will still need to take an address for the purpose of contacting the couple. Excluding addresses from the online notice will deal with concerns about notices being used for marketing, advertising or campaigns, or to target the couple in other ways. Similarly, excluding the location of the wedding protects the couple against those who might wish to cause harm or to disrupt the ceremony.[78] Notices of marriage do not currently include the date of the intended wedding and there seems no good reason to require this: if the purpose of publicizing an intended wedding is to identify any potential impediment, the intended date will be immaterial.

3.125 Similarly, we do not think that the online notice needs to identify the officiant.[79] The identity of the officiant is not material to whether there is any impediment to the marriage, and any impediments should be brought to the attention of the registration service rather than the officiant. Identifying the officiant is therefore not necessary and could create confusion as well as indirectly publishing information about a couple's religious (or non-religious) beliefs.

The scope for objections to be made

3.126 As at present, an objection to a wedding going ahead[80] will have to be based on legal grounds – that is, that either of the couple is under 16,[81] already married, lacks the mental capacity to consent to a marriage or is otherwise being forced into the marriage, or that the couple are related to each other within the "prohibited degrees".[82]

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77 Consultation Paper, para 4.78.

78 We also recommend that weddings should not be required to take place with open doors, or otherwise be open to the public, in Ch 5: see para 5.120 and following below.

79 As distinct from the schedule: see Recommendation 8 at para 3.201 below.

80 This is termed "entering a caveat", although we suggested in the Consultation Paper that it would be helpful for the language to be updated: Consultation Paper, para 4.72 n 53.

81 Once the Marriage and Civil Partnership (Minimum Age) Act 2022 is in force, the current provisions permitting 16- and 17-year olds to marry with the consent of specified persons will be abolished and so the minimum age to marry will be 18 years.

82 Generally referred to as impediments to marriage. For the prohibited degrees, see Marriage Act 1949, s 1.

And, as at present, there should be financial consequences if objections are made on "frivolous" grounds.[83]

3.127 We did not envisage that the website on which notices of intended marriage will be displayed would be an interactive one. There will be no scope for objections or comments to be made on the website itself. However, the website will need to give details as to how an objection should be made. How objections may be made will depend on whether there is a central online hub dealing with all notices; if not, individuals will still need to make their objection via a register office.[84]

3.128 We note that some consultees were concerned that a person making an objection might thereby obtain further information about the couple that would put them at risk.[85] However, any data held by the registration service on individuals and couples would be protected by the general laws governing data protection, including the protections against unnecessary disclosure.[86] As a result, we do not think that making an objection would give an objector access to any additional information.

Risk of harm exemption

3.129 It is important to strike a balance between publicity and protection. In the Consultation Paper we envisaged that there would need to be a risk to the physical safety of one or both of the parties to justify an exemption from publicity.[87] The examples we gave were the risk of an attack by a violent ex-partner or a potential perpetrator of so-called "honour"-based abuse. We did not envisage, and do not recommend, that public figures should be able to request that their notice should not be displayed simply in order to avoid publicity about the wedding.[88] Nor do we think that the possibility of disapproval, criticism or other adverse comments (whether from family or the wider public) should justify dispensing with publicity. However, where publicity would bring a risk of psychological harm amounting to at least serious distress, we think an exemption would be justified.

3.130 Those seeking an exemption will need to provide supporting evidence. Allowing couples simply to claim a risk of harm would effectively allow those who wished to opt out of publicity to do so. There is also the risk of the exemption being abused by those who wanted to conceal the fact of their wedding for problematic reasons, such as that one of the couple is being forced into the marriage.

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83 Under Marriage Act 1949, s 29(4), if an objection is made on grounds that the Registrar General deems to be frivolous, that person "shall be liable for the costs of the proceedings before the Registrar General and for damages recoverable by the person against whose marriage the caveat was entered".

84 In addition, individuals without internet access will still be able to check the database at the register office and make an objection to registration officers: Consultation Paper, para 4.80.

85 The specific concern was of a violent ex-partner obtaining details of the couple's address(es).

86 Under the retained EU version of the General Data Protection Regulation (EU) No 2016/679 and the Data Protection Act 2018.

87 Consultation Paper, para 4.30.

88 The Consultation Paper referred to protecting couples from having their address given to the press or those marketing wedding-related services, but this was in the context of what information would be displayed, not in relation to when it would be appropriate to dispense with publicity altogether.

3.131 One possible model, suggested by a couple of local authorities, would be the process whereby individuals can request that their name and address should not appear on the electoral register.[89] Adapting this process to the context of weddings, an individual will need to complete a form explaining why their safety (or that of someone in their household or a family member) would be at risk if notice of their intended wedding was published online. This form will need to be accompanied by supporting evidence: either a court document[90] or (probably more commonly) an attestation from a person who is in a position to attest to the risk of harm.[91] We think that the General Register Office should compile a list of examples of persons able to provide an attestation for this purpose but that any such list should be open ended.

3.132 In the Consultation Paper we envisaged that it would be for the registration officer to decide whether an exemption should be granted.[92] In line with our aim of making the process simple to access we do not think that claiming an exemption should require an application to the Registrar General. It might be worth considering, however, whether any such application should be reviewed by a superintendent registrar as the more senior officer.

3.133 There is no reason why requesting an exemption could itself put an individual at risk. The request will not be known outside the couple and the registration service. The exemption is intended to deal with threats external to the couple rather than the situation where one is forcing the other into a marriage.

3.134 An exemption of this kind will not remove the risk of harm to those who were unaware of any such risk before the wedding was announced. However, it is difficult to see how such risk could be removed without abandoning the principle of publicity altogether. Moreover, while online notices are likely to have a wider reach than under the current law, the information provided about the couple will be far less.

Conclusion

3.135 Consultees' responses reinforced our view that the online publication of notices has much to commend it, but that provision should be made for an exemption in certain clearly defined (and evidenced) cases. Requests for an exemption should explain why online publication would put the couple applying, or a member of their household or family, at risk of harm.

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89 Electoral registration form for registering anonymously (ITR-A-E), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/931866/Register-to-vote-anonymously-resident-in-England.pdf (last visited 1 July 2022); Representation of the People Act 1983, s 9B.

90 This could include an injunction or restraining order under the Protection from Harassment Act 1997, a non-molestation order or forced marriage protection order under the Family Law Act 1996, or a domestic violence protection order under the Crime and Security Act 2010.

91 Based on the list of those who can provide an attestation when a person is applying for anonymity on the electoral register, that list could include police officers, directors of social services, medical practitioners, nurses, midwives, and those who manage refuges.

92 Consultation Paper, para 4.84.

Recommendation 4.

3.136 We recommend that, as part of the civil preliminaries process, notices of marriage should be publicly displayed online, save where this would expose either of the couple or a member of their family or household to a risk of a specific and identifiable physical or psychological harm.

Allowing objections to be made before notice is given

3.137 In responding to our proposal for notices to be publicised online,[93] a few consultees suggested that there should be a notification system whereby people could be alerted when a specific notice of marriage appeared. The primary concern here was with vulnerable individuals at risk of being coerced into a predatory marriage.

3.138 Alert systems exist in certain areas of law, but in the context of weddings we have concerns with how such a scheme might operate. A scheme that allowed anyone to be alerted of an individual's intended wedding might be used by abusive former partners or controlling family members, or by members of the media interested in celebrities. Moreover, while an alert system could be of benefit where a person has been judged to lack capacity to marry, it is important to bear in mind that being vulnerable is not equated with lacking capacity. It might be possible to limit who could request an alert, and to require specific evidence of the reason for concern, but it would necessitate the General Register Office or another member of the registration service having to assess each individual request for an alert. The burden therefore seems disproportionate to the potential benefits, particularly where a person with concerns would themselves be able to check online for any notice of a wedding.

3.139 North Yorkshire County Council proposed an alternative "system whereby people could register an objection at any time". It is in fact already possible for a caveat to be entered in anticipation of a notice of marriage being given but we think that there would be value in setting out a clear process for such pre-emptive caveats.[94] There would need to be evidence to support such an objection being made. Such evidence could be a forced marriage protection order; the fact that the person entering the caveat has been appointed as an attorney under a Lasting Power of Attorney[95] or as a deputy by the Court of Protection;[96] or, if there is a risk of a bigamous marriage, a marriage certificate from an existing marriage.

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93 Consultation Paper, para 4.97, Consultation Question 9.

94 See the Glossary for the meaning of "caveat".

95 Under the Mental Capacity Act 2005, s 9. A Lasting Power of Attorney is a legal document under which a person ("an attorney") can be appointed to make decisions on behalf of a person who is unable to make their own decisions regarding welfare, money or property. A person must have capacity to make a Lasting Power of Attorney. Once it is registered, the attorney can with the person's permission make decisions about their money and property; but the attorney can only make decisions regarding the person's welfare if and when the person loses capacity to make their own decisions.

96 Under the Mental Capacity Act 2005, s 16. A deputy is a person appointed by the Court of Protection to manage the welfare of property and affairs of a person who lacks the capacity to make such decisions on their own behalf.

3.140 We note that the appointment of an attorney under a Lasting Power of Attorney does not mean that the person who granted that power lacks capacity to consent to marry. We think that it might be considered vexatious for an attorney to enter a caveat in the absence of concerns about capacity. However, given the concerns about predatory and forced marriages we think an attorney should be able to enter a caveat where they have concerns, to enable the issue of capacity to be investigated. We think this approach is preferable to requiring them to provide evidence that the person has lost capacity as a pre-requisite for entering a caveat.

3.141 A system of pre-emptive caveats would be preferable to a system of alerts and would not depend on notices being displayed online but rather on there being a single national database into which all notices of marriage are entered.[97] Because many people share the same name, it will not be sufficient to object to any marriage of any named person; further information will be needed in order for a connection to be made between the objection and a later notice of intended marriage.

Recommendation 5.

3.142 We recommend that caveats should be able to be given before or after a person gives notice of marriage, so long as evidence is provided. That evidence could include:

(1) a forced marriage protection order in relation to the individual;

(2) that the person entering the caveat has been appointed as the individual's attorney under a Lasting Power of Attorney and has grounds to believe that the individual does not have capacity to marry;

(3) that the person entering the caveat has been appointed the individual's deputy by the Court of Protection; and/or

(4) where there are concerns in respect of a bigamous marriage, a marriage certificate.

The possibility of remote interviews

3.143 In the Consultation Paper we discussed whether it should be possible for the interviews to be carried out remotely. We noted that doing so would facilitate the process for overseas residents who wish to marry in England and Wales, and that other couples might also find a video-conference more convenient than attending a meeting at the register office. We further noted how greater use of video-conferencing was being made across the court system. Against this, we considered that an interview conducted remotely might be less effective than one conducted in person in detecting and dealing with forced marriages.[98]

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97 To an extent this already exists with the Registration Online (RON) system.

98 Consultation Paper, paras 4.65 to 4.68.

3.144 In the light of these concerns, we did not propose that it should be possible to conduct interviews remotely. However, we invited consultees' views as to whether it should be possible for interviews to take place remotely in the future, with the possibility of an in-person interview still being required if concerns arose about sham or forced marriages or the capacity of either party to consent to the marriage.[99]

Consultation

3.145 Only a minority of consultees thought that it should be possible for interviews to take place remotely. Some noted that people increasingly expect to be able to do things online and that remote interviews would be more efficient and more flexible. Others highlighted that it would be helpful to those overseas or who would otherwise have a long way to travel and would facilitate access for people with mobility issues or those who are housebound.

3.146 A number of consultees reflected that the Covid-19 pandemic had demonstrated that it is possible or beneficial to do many things remotely. Others suggested that having remote interviews would make it possible to give notice in the face of future lockdowns or restrictions, or that remote interviews should only be permitted in exceptional circumstances of that kind.

3.147 In addition, some consultees qualified their agreement by referring to the need for robust processes for checking identity, further training in how to identify forced marriages, or specific safeguards such as requiring witnesses to be present.

3.148 Consultees opposed to remote interviews were primarily concerned about forced and sham marriages. Many echoed the points we had made in the Consultation Paper about the difficulty of assessing body language or determining whether an interviewee was alone in the room (and so free from immediate coercion or influence).[100] Others were concerned that a person's home was not necessarily a neutral safe environment. Some consultees also saw in-person interviews as necessary to verify a person's identity.

3.149 The option of requiring a further interview if concerns arose about sham or forced marriages or the capacity of either party to consent also generated some concern. Some consultees were worried that asking only selected persons to attend in person would be unfair and potentially discriminatory. Others said that asking an individual or couple to attend an in-person interview would alert them to the fact that there were concerns. Local authorities noted this could endanger registration officers and the person being forced into marriage.

3.150 Consultees also pointed out that a requirement to meet in person might have timing implications. If there were concerns that the marriage was forced or sham, or that one of the couple lacked capacity, but those concerns were not raised until the remote interview, it might be difficult to ensure that an in-person interview could then be arranged within the timeframe that the schedule was intended to be issued.

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99 Consultation Paper, para 4.95, Consultation Question 7.

100 Consultation Paper, para 4.67.

Discussion and conclusions

3.151 It is possible that some consultees disagreed with the idea of remote interviews because they had not appreciated that we were only considering a power to allow remote interviews "when technology can satisfy concerns about safeguarding".[101]

3.152 The responses from consultees did, however, reinforce the need for caution. It would be hard to disagree with the concerns about the adequacy of current technology for remote meetings. Nor do we think that experiences of remote working in other contexts are necessarily comparable. For example, we do not think that the remote court hearings process could be replicated in the preliminaries process: a person participating in a court hearing would, prior to the hearing, have had opportunities to speak or meet with counsel or others involved in the process, to raise concerns or for their ability to participate to be assessed; this will not be the case for those giving notice.

3.153 It was also understandable that consultees were concerned that a two-tier approach would result in unfairness, with only some couples being required to have an additional in-person interview. If remote interviews were to be introduced, with additional in-person interviews being required where concerns arose, there would need to be specific training for registration officers or a clear list of factors that would indicate that an in-person interview was required.

3.154 Although consultees identified many potential benefits to allowing remote interviews, many focussed on the particular circumstances of the pandemic. However, we asked a separate question about providing a power to allow for preliminaries to take place entirely remotely during a future national emergency, such as another pandemic.[102] Since it appears to us that allowing preliminaries to proceed during a pandemic is the primary benefit of allowing remote interviews, it is only necessarily to enable them in exceptional circumstances.

3.155 On balance, given the concerns expressed by consultees about dispensing with in-person interviews, and the separate possibility of making special provision to deal with emergencies, we think that there is no need for a future Marriage Act to include a power to allow interviews to take place remotely in the future. Should technology develop to the point where the safeguarding issues raised by concerns would be addressed, the issue can be revisited. We therefore make no recommendation in this respect.

The possibility of completing the preliminaries outside England and Wales

3.156 At the time that we published our Consultation Paper there were certain specified situations in which the preliminaries could be completed outside England and Wales. These applied if one of the couple was on a naval ship at sea,[103] or resident in

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101 Consultation Paper, para 4.69.

102 Consultation Paper, para 11.82(2), Consultation Question 67. See Ch 11.

103 Marriage Act 1949, s 39.

Scotland[104] or in a specified Commonwealth country or territory,[105] and both parties were relevant nationals or exempt from immigration control.[106] In our Consultation Paper we made no provisional proposal on whether these options should continue to be available but invited consultees' views.[107]

3.157 In the meantime, however, the Marriage Act 1949 has been amended by the Registration of Marriage Regulations 2021. As a result, it is no longer possible for parties resident in certain Commonwealth countries to give notice under the Marriage of British Subjects (Facilities) Act 1915.[108] We therefore address only the remaining options for giving notice in Scotland or on a naval ship at sea.

Consultation

3.158 A substantial majority of consultees were in favour of couples having the option to complete the necessary preliminaries outside England and Wales in these defined circumstances. Many expressed their support in general terms, stating that it was sensible, reasonable or logical. Some suggested that it was in keeping with the general aim of the project to make it easier to get married or that it would offer flexibility which some couples would need.

3.159 A few expressed the view that it was better for notice to be given where the person was resident. Some consultees thought that the option should be expanded, with suggestions including Northern Ireland, Ireland, UK Crown Dependencies, UK Overseas Territories and the Common Travel Area. Others thought that relevant nationals or those exempt from immigration control should be able to give notice anywhere in the world.

3.160 Some consultees disagreed on the basis that anyone wishing to marry in England and Wales should give notice in England and Wales or favoured a single process for all couples. Others disagreed because of concerns about forced and sham marriages.

3.161 A number thought that an in-person interview should still be required to take place in England and Wales. Others noted that their view would depend on the requirements

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104 Marriage Act 1949, s 37. Under Marriage (Scotland) Act 1977, s 7(2), the person resident in Scotland must give notice of the intended wedding to the appropriate registrar in Scotland, and obtain a certificate confirming their legal capacity to marry.

105 Marriage of British Subjects (Facilities) Act 1915. The list of specified countries and territories comprised Bahamas, Barbados, Belize, Bermuda or Somers Island, Botswana, Canada (Newfoundland only), Cyprus, Dominica, Eswatini, Fiji, The Gambia, Ghana (former Gold Coast Colony only), Gibraltar, Gilbert and Ellice Islands Colony, Grenada, the Bailiwick of Guernsey (including Alderney and Sark), Isle of Man, Jamaica, Jersey, Kenya, Leeward Islands, Lesotho, Malawi, Malaysia (former Straits Settlement of Labuan, Malacca and Penang only), Mauritius, New Zealand, Nigeria, Pacific Protectorate (ie any island or group of islands, or place under the jurisdiction of HM High Commissioner for the Western Pacific, St Lucia, St Vincent, the Seychelles, Sierra Leone, Sri Lanka, Tanzania (Zanzibar only), Trinidad and Tobago, Uganda, Zambia and Zimbabwe. In such cases notice would be given according to the requirements of the country or territory of residence.

106 Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s 19.

107 Consultation Paper para 4.96, Consultation Question 8.

108 Registration of Marriages Regulations 2021 (SI 2021 No 411), reg 8.

for giving notice elsewhere. Many made comments about additional checks that might be required, or about evidence or documents that would be necessary.

Discussion and conclusions

3.162 As we explained in the Consultation Paper, the possibility of completing the first stage of giving notice remotely, from anywhere in the world, will reduce the need for these special provisions. At the same time, we recognised that it would not be a complete substitute if individuals were still required to attend an in-person interview in England and Wales in advance of the schedule being issued.

3.163 As noted above, The Registration of Marriages Regulations 2021 removed the option for British subjects resident in certain specified Commonwealth countries and territories to give notice according to the requirements of their country of residence. The only remaining provisions are those relating to giving notice in Scotland or at sea.

3.164 Although consultees were largely supportive of there being an option for the preliminaries to be completed outside England and Wales, many appeared to misunderstand the question. Some consultees appeared to confuse the option of completing the preliminaries outside England and Wales with our proposal that it should be possible to start the process of giving notice remotely. The key difference is that the way in which the preliminaries were completed outside England and Wales would not be governed by the law of England and Wales but by the law of the place where the preliminaries were completed.

3.165 However, the Ministry of Defence is not in favour of notice being given on naval ships at sea: the provisions are difficult to use given the requirement that the ship be under way and the narrow class of persons to whom notice can be given. The Ministry of Defence favoured notice being given according to the usual process. Under Recommendation 2 the notice process can begin online, effectively removing the need for special provision to be made for those at sea.

3.166 The remaining provision allows notice to be given in Scotland where one party is resident in Scotland and the other in England and Wales. Given that a similar provision for notice to be given in Northern Ireland was abolished in 2014, it seems somewhat anomalous that this provision should remain. With residential requirements being abolished and the possibility of giving notice remotely, the main impact on the partner resident in Scotland will be that they will need to attend an in-person interview in England or Wales before the schedule can be issued. The potential inconvenience to that person needs to be balanced against the importance that we (and our consultees) have attached to that interview. In light of the importance of the in-person interview, the possibility of giving notice in Scotland should be abolished.

Recommendation 6.

3.167 We recommend that it should no longer be possible for couples marrying in England or Wales to give notice in Scotland or on a naval ship at sea.

The period for which the schedule is valid

3.168 Once the couple have given notice, had their in-person interview, and completed the required waiting period, a schedule will be issued to authorise the wedding going ahead. Since the schedule will not require them to marry on a specific date, the question arises as to whether there should be a time-limit on its validity. Under the current law, a schedule is valid for 12 months from the date on which the notice was recorded in the marriage register.[109] This choice of start date was logical when superintendent registrar's certificates were issued on the request of the party who gave notice, which could be some time after notice had been given. With the introduction of the schedule system, however, schedules are now issued immediately upon the expiry of the waiting period.[110]

3.169 In the Consultation Paper we explained that we had not heard of any reason why a different period of validity would be appropriate. We therefore provisionally proposed that a schedule should continue to be valid for 12 months. We also proposed that the 12-month period should run from the date on which the schedule was issued.[111]

Consultation

3.170 A substantial majority of consultees supported the proposal that a schedule should be valid for 12 months. A number commented that this period provided flexibility for couples to give notice well in advance of the wedding or to reschedule the wedding in the event of illness without the need for a further notice to be given. A few local authorities also thought that it would be beneficial for the period of validity to run from the date of issue rather than the date of notice, explaining that this would be easier for couples to understand.

3.171 Only a few consultees argued that the schedule should be valid for less than 12 months, with alternative suggestions ranging from between six months and one month. Some argued that the schedule should be valid for up to two years, and a few thought that there should be no time limit. Some pointed to the fact that the Covid-19 pandemic had led to many weddings being postponed and to couples having to give notice again. Others, while generally favouring a period of 12 months, argued that there should be scope to extend the schedule in circumstances such as the Covid-19 pandemic or an unforeseen illness.

Discussion and conclusions

3.172 Consultees' responses suggested that the current law that the schedule is valid for 12 months strikes the right balance between competing considerations. While a longer period might offer additional flexibility, it would also increase the risk that the eligibility (or capacity) of one or both of the couple might change. Shortening the period would limit flexibility, could cause operational difficulties for local authorities, and could result in more couples marrying after their schedule had lapsed. We are aware of the

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109 Marriage Act 1949, s 33(3).

110 Marriage Act 1949, s 31(2).

111 Consultation Paper, para 4.98, Consultation Question 10.

problems caused by the Covid-19 pandemic and address these in Chapter 11. No consultees raised evidence of other problems arising in practice.

3.173 Having the 12-month period of validity running from the date the schedule is issued should be easier for couples to understand. It will also ensure greater consistency: the period will be 12 months regardless of the period between giving notice and the schedule being issued.

Recommendation 7.

3.174 We recommend that the schedule should be valid for 12 months from the date of issue.

Identifying the officiant on the schedule

3.175 Under the current law, the schedule specifies where the wedding is to take place. The requirement for it to do so is logical given the focus of the current law: most weddings can only take place in certain defined locations. However, under our scheme the focus of regulation will shift from the location to the officiant. To reflect this shift, we provisionally proposed that the schedule authorising the wedding should specify the name of the officiant who will be responsible for officiating at the wedding.[112]

3.176 Given that many couples give notice well in advance of their wedding, we recognised that circumstances might change after the issue of the schedule, resulting in the intended officiant no longer being able to officiate at the wedding. Under the current law, a change to the intended location of the wedding requires a new notice of marriage to be given. We took the view that it should be possible for amendments to be made to the schedule without repeating the whole process of giving notice. We therefore also proposed that at the couple's request, the registration service should issue an amended schedule with a substitute officiant.[113]

Consultation

3.177 There was substantial support for identifying the officiant on the schedule. Consultees noted that this requirement would encourage couples to identify an officiant in advance, which in turn would ensure that their authorisation could be checked when notice was given.

3.178 However, some consultees were concerned that the process of substitution could permit an unauthorised officiant, or be used to evade key safeguards against forced marriages.

3.179 Other consultees noted that it would not be practicable for the officiant to be named if notice was given up to 12 months in advance of the wedding. The Church of England suggested that many couples seeking a church wedding were "committed to the venue not a particular celebrant". It noted that commitments might need to change in

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112 Consultation Paper, para 4.99(1), Consultation Question 11.

113 Consultation Paper, para 4.99(2), Consultation Question 11.

the event of an emergency or a funeral. Some local authorities and registration officers similarly noted that it would not be possible to identify the registration officer who would be officiating at the wedding, commenting that staffing rotas were not published so far in advance.

3.180 By way of alternative, some consultees suggested that the schedule should instead (or in addition) note the organisation by which the officiant was authorised. For Anglican weddings, the Church in Wales suggested that the schedule should identify that "the wedding may be officiated by any Clerk in Holy Orders". For weddings officiated by a registration officer, local authorities suggested that that generic terms such as "deputy superintendent registrar" or "registration officer" should be used, with the specific local authority being named. The National Panel for Registration suggested that nominated officiants should be identified by reference to their nominating organisation. A similar proposal was advanced by Dr Augur Pearce (an academic), with the additional nuance that it should be possible to name two separate organisations where they shared the building in which the wedding was to take place.

3.181 Although few expressly considered the point, it appears that consultees envisaged that substitutions would not be necessary if the organisation was identified on the schedule. Religious groups pointed out that their current practice was to ensure that two authorised persons were available, in case one was unexpectedly unavailable on the day. Humanist and independent celebrants similarly noted that they themselves would be responsible for finding a substitute among their networks if they were unable to conduct a ceremony.

3.182 A few consultees commented that a substitution should only be permitted with the consent of the relevant organisation or should be required to be an officiant authorised by the same organisation. The Churches' Legislation Advisory Service noted that different organisations would have their own requirements. Other consultees raised the question of whether couples should have to consent to the substitute officiant.

3.183 A number of local authorities noted that amending schedules would be an additional administrative burden, with some adding that couples would need to pay a fee. Other consultees variously suggested that there should have to be specific reasons for changing the intended officiant, a limit on the number of substitutions that could be made, or a "cut-off" date after which a schedule could not be amended.

Discussion and conclusions

3.184 We think that it is important for the schedule to identify the officiant. A schedule, after all, only authorises a couple to marry according to the form laid down by law. It is therefore important that, as part of the process of giving notice, steps are taken to ascertain that the wedding will be officiated by a person who is authorised to do so. The alternative would be to allow a couple to give notice of their intended wedding without specifying how it is to be conducted. To do so would undermine the important role that the preliminaries play in directing a couple to a form of ceremony that is valid.

3.185 Most consultees agreed with our proposal that the officiant should be identified on the schedule. But they also raised some important practical considerations as to how it would work in practice and when and how substitutions should be made. The key

issue to resolve is therefore not whether officiants should be identified on the schedule, but how this should be done.

How officiants should be identified on the schedule

3.186 We think that registration officers and Anglican clergy could be dealt with by way of a generic descriptor. Both will be automatically recognised as officiants, so their authority will not need to be checked by a registration officer at the preliminaries stage. Adapting the formulation suggested by consultees, the schedule could refer to "a registration officer of [X registration district]". In the case of Anglican weddings preceded by civil preliminaries, the schedule could identify "any Clerk in Holy Orders authorised to exercise ordained ministry in the [parish of X]". This phrasing will be consistent with our recommendations in relation to Anglican clergy as officiants.[114] It will also have the added benefit of requiring the couple to identify a parish in advance (and ensure that they are eligible to be married there according to the church's own rules).

3.187 More difficult issues arise with the category of officiants nominated by a religious group or (if enabled by Government) non-religious belief organisation. In relation to the latter, it seems unlikely that Humanist celebrants could not be identified in advance, given the centrality of personalisation to a Humanist wedding. Nonetheless, in our view it would be preferable for the same rule to apply to all nominated officiants.

3.188 Our proposal that individual officiants would be identified on the schedule was intended to play a protective role. In communities where religious officials frequently conduct non-legally binding weddings, we considered that identifying the officiant on the schedule would provide an opportunity for both of the parties to ensure that their officiant was authorised. It is not clear whether this protective function would be served as well by naming the organisation. A nominating body might have some officials or celebrants who are authorised as officiants and some who are not. Naming the organisation rather than the individual would not ensure that couples were alerted to this fact and directed towards an authorised officiant.

3.189 A compromise solution is to name both the intended officiant and the nominating organisation. A suitable formulation would be "[name] or another officiant authorised pursuant to the Marriage Act on the nomination of [X organisation]". The language of authorisation, together with the reference to the specific nominating organisation, will make it clear that not all religious officials or celebrants associated with non-religious belief organisations can simply substitute for each other. At the same time, the formulation will be flexible enough for another officiant from the nominating organisation to act without the need for the schedule to be amended.

3.190 However, we do not think that it should be possible to name more than one nominating organisation. While we take the point that this may be convenient where two or more organisations share the same building, the schedule will not identify where the wedding will take place. However, there will be nothing to prevent an officiant from the other organisation being named on an amended schedule or acting as a substitute in the event of an emergency.

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114 See Recommendation 19 at para 4.105 below.

3.191 Other aspects of our scheme will address concerns about unauthorised officiants being substituted after the schedule had been issued. First, any person who is not authorised will potentially be committing an offence if they purport to be authorised.[115] Second, a marriage officiated at by a person who was not authorised to do so will still be valid provided that at least one of the parties believed them to be authorised.[116] Third, there will be an online list of nominated officiants that couples will be able to check to ensure that the substitute suggested by the nominating organisation is in fact authorised.[117] The guidance issued by the General Register Office to nominated officiants should make it clear that it should be the exception rather than the rule for an officiant to be substituted.

3.192 As we recommend in Chapter 10, in the case of weddings officiated at by a maritime officiant, it will be the ship rather than the individual officiant that will be identified on the schedule.[118]

3.193 By contrast, independent officiants (if enabled by Government to officiate at weddings) will need to be named on the schedule since there will be no organisation by reference to which they could be identified. Moreover, it is likely that there will continue to be independent celebrants who were not authorised as independent officiants. It also seems likely that couples giving notice will be able to identify their intended officiant when they are giving notice, since most independent celebrants work with couples well in advance of the ceremony.[119]

3.194 While our recommendation will require some changes to organisations' and couples' current practices, it is worth remembering how much planning already must be done before a couple can give notice under the current law. After all, specifying the location where the wedding is to take place presumes prior consultation with those responsible for that location. In addition, if a wedding is taking place in a registered place of worship the couple will need to ascertain whether an authorised person has been appointed or whether a registrar will need to attend the ceremony. The terms of the Marriage Act 1949 assume that this will have been done prior to notice being given.[120]

3.195 In any case, there are advantages to nominating organisations in determining who will officiate at a wedding ahead of time, since it offers an opportunity for the officiant to develop a more personal relationship with the couple if no such relationship already exists.

When a schedule can be amended

3.196 Because we have revised our recommendation on how officiants will be identified on the schedule, there are fewer circumstances in which an amended schedule naming a substitute will be necessary. An amendment will only be necessary if the substitute

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115 See Recommendation 42 at para 9.201 below.

116 See Recommendation 37 at para 9.50 below.

117 See Recommendation 21 at para 4.260 below.

118 See Recommendation 50 at para 10.191 below.

119 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final Report* (2022) p 103.

120 See eg Marriage Act 1949, s 27(5).

does not fall within the category specified in the schedule or if a different independent officiant needs to be substituted. However, couples may also wish the schedule to be amended to reassure themselves about the authorisation of the substitute officiant.

3.197 The remaining considerations are largely operational ones. There will need to be a prescribed fee for amending the schedule, to reflect the additional administrative burden on registration officers in checking the authorisation of the substitute officiant and issuing an amended schedule. Requiring a fee should also deter couples from amending their schedule frequently or unnecessarily. Because any fee only need recover the costs of a small administrative task, the fee should be significantly less than the original cost of giving notice.[121]

3.198 As we discuss in the next section, we are also recommending that in certain circumstances a substitute officiant should be able to officiate at a wedding without the schedule being amended.[122] This recommendation is intended to deal with problems that arise at the last minute. We think that it will be helpful to have a clear line between the two processes. If a couple applied for an amendment but did not receive the new schedule in time for their wedding, they might be left with more uncertainty about the impact on validity of their marriage than in cases where the need for a substitute arose at the last minute and they did not apply for an amended schedule. However, determining what the cut-off point should be is an operational matter for the General Register Office, since it depends on what would be a realistic turnaround time for registration officers, who may be juggling a range of other urgent demands. In our view, though, the check should be a quick process, and there is no reason why it cannot be done centrally. Certainty for couples should be prioritised.

Conclusion

3.199 While we think that it is necessary for the schedule to identify the officiant, we have amended our recommendation to take into account the practical considerations raised by consultees.

3.200 We consider how maritime officiants should be identified on the schedule in Chapter 10.

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121 See Ch 12.

122 See Recommendation 9 at para 3.227 below.

Recommendation 8.

3.201 We recommend that the schedule should identify the officiant or authorised/nominating organisation who will officiate at the wedding, in particular –

(1) for registration officers, it should identify "registration officer in [name of] registration district";

(2) for Anglican weddings, it should identify "Clerk in Holy Orders authorised to exercise ordained ministry in [name of] parish";

(3) for nominated officiants, it should identify "[the name of the chosen officiant] or another authorised officiant under the Marriage Act nominated by [name of nominating organisation]"; and

(4) for independent officiants (if authorised to officiate at weddings), it should identify "[the name of the chosen] independent officiant".

3.202 We recommend that the couple should be able to request an amended schedule with a substitute officiant and/or substitute authorised/nominating organisation, so long as the request is made within a specified period before the date of the ceremony, such period to be determined by the General Register Office.

Allowing for last-minute changes of officiant

3.203 Recommendation 8 is concerned with the information that is provided at the time of giving notice and recorded on the schedule. In envisaging changes being made to the schedule, we assumed that these changes would be planned in advance of the wedding, with sufficient time for the application for change to be made, considered, and implemented. However, as we discussed in the Consultation Paper, in some cases there may not be time for an amended schedule to be issued.[123] We provisionally proposed that a substitute officiant should be able to officiate at the wedding if the officiant named in the schedule is unexpectedly unable to act because of death, sudden illness or unavoidable delay. We also invited consultees' views as to whether a substitute officiant should be able to act in other circumstances.[124]

Consultation

3.204 A very substantial majority of consultees supported the proposal. Some noted that it would be unfair if the couple had to cancel their wedding on account of their officiant being unavailable. Humanists UK noted that "identical rules exist in Northern Ireland, and they have been very helpful in enabling weddings to still go ahead in such circumstances".

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123 Consultation Paper, para 4.89.

124 Consultation Paper, paras 4.100 to 4.101, Consultation Question 12.

3.205 Among consultees who disagreed, a few thought that “unavoidable delay” was too general, or asked how it would be defined.

3.206 Others had more specific concerns about the reliability of the substitute. The Marriage Foundation was concerned that an “undesirable” officiant might be substituted at the last minute to conduct a forced marriage. Other consultees, whether they agreed or not, commented that the substitute officiant must be authorised and there must be evidence of their authorisation. Some local authorities suggested that there should be a duty on the substitute officiant to inform the registration service of the substitution, while others suggested that the authorisation of the officiant should be checked when the marriage is registered. One independent celebrant noted that the practice in New Zealand was for the officiant to sign the document and add their celebrant number as well as writing the reason for the substitution on the form.

3.207 Consultees also raised questions about whether the couple would be able to choose (or at least veto) the proposed substitute. Some argued that the substitute should be chosen, or at least approved, by the organisation or by the intended officiant. Humanists UK further suggested that “the substitute officiant must be of the same type, ie from the same religion or belief body, or remain a civil registrar”.

3.208 Slightly fewer consultees addressed the question of whether a substitute officiant should be able to act in circumstances other than the officiant’s death, sudden illness or unavoidable delay. Of those who did, some consultees suggested that substitution should only be available in exceptional circumstances or as a last resort. Examples of issues that might arise at the last minute included the sudden death or illness of a member of the officiant’s family, the arrest of the officiant, or the officiant being incapacitated by alcohol or drugs.

3.209 Others thought that a substitute officiant should be able to act wherever there was a genuine need or in any circumstance in which the named officiant was not available. Examples included other pastoral responsibilities, such as leading a funeral or a wedding involving a person who is terminally ill, acting as an officiant at another wedding, and the wedding being rescheduled to a date on which they were not available.

3.210 Some consultees gave examples of non-availability that would be known well in advance of the wedding. These included periods of leave, a change in role or being de-authorised, or jury service. Other consultees also suggested that a substitute should be permitted when the officiant did not want to proceed with the wedding or the nominating body was not willing for the officiant to act.

3.211 A minority of consultees suggested that a substitution should be allowed in *any* circumstances, or where the couple requested or agreed to a substitution, including in cases where the couple had a change of heart about their officiant or the relationship between the officiant and the couple had broken down.

3.212 Of those who thought that last-minute substitutions should only be permitted in the case of death, sudden illness or unavoidable delay of the officiant, some consultees were concerned that substitutions permitted for other reasons would facilitate abuse, fraud or manipulation. Some also raised the possibility that the original officiant might have decided to withdraw because of concerns about the couple’s capacity or

suggested that the substitute officiant should take steps to confirm that each of the couple had capacity and were consenting.

Discussion and conclusions

3.213 At Recommendation 8, we recommend that registration officers, Anglican clergy and nominated officiants should be identified on the schedule in a way that will allow another officiant from their nominating or authorising body to officiate at the wedding. In most cases, a substitute officiant will fall within the category specified in the schedule. In such cases no additional provision will be needed to deal with the kinds of contingencies envisaged in the context of this question.

3.214 However, provision for these contingencies will still be necessary for any couple being married by an independent officiant (if they are enabled by Government to officiate at weddings). We do not think that couples choosing to have an independent officiant should uniquely run the risk that their wedding cannot go ahead on the day of the wedding.

3.215 Provision will also be necessary in situations where there is not a substitute available from the same nominating or authorising organisation. For example, if a religious organisation only has one nominated officiant, and that officiant becomes ill on the day of the wedding, the only way to avoid that wedding being postponed would be to allow another authorised officiant, from another organisation, to step in. It should be noted that registration officers will be precluded from officiating at belief weddings under our scheme and so will not be able to act as substitutes for nominated officiants or Anglican clergy.

3.216 Consultees supported the idea of a substitute being able to officiate at a wedding if the named officiant is unexpectedly unable to act because of death, sudden illness or unavoidable delay. Some consultees thought that there might be other, equally compelling, reasons why the intended officiant might not be able to act. Some of the examples given were not issues that would arise at the last minute, and so are more properly dealt with by amending the schedule in line with Recommendation 8. Others would only arise at the last minute; and in these cases, we agree that it would not be fair or appropriate for the wedding not to be able to go ahead, officiated at by another authorised officiant.

3.217 We therefore recommend that a last-minute substitution should be possible if the officiant is unexpectedly unable to act for reasons that include death, sudden illness or unavoidable delay. Leaving the reasons why the officiant is unable to act open confers flexibility while making it clear that this provision is intended to deal with emergencies, not contingencies that could be planned for.

Safeguards

3.218 Only a few consultees raised the issue of safeguards. However, it is such a key issue that it merits separate consideration.

3.219 The formulation that we are recommending – that the original officiant is “unexpectedly unable” to officiate – is designed to preclude the possibility of an officiant being substituted where they could act, but refuse to do so in compliance with their duties and responsibilities. The refusal of an officiant to go ahead with the

wedding where they had concerns about the capacity or willingness to get married of either of the couple will not be a justification for seeking a substitute.

3.220 Our recommended scheme includes other safeguards to guard against a substitute officiant conducting a wedding to which one or both of the parties was unable or unwilling to consent. First, as discussed above, the process of giving notice – in particular the in-person interview with a registration officer – is intended to identify any issues of forced marriage or capacity. Second, as we discuss in more detail in Chapter 4, all authorised officiants will be required to ensure that the couple are freely expressing their consent to be married. If the General Register Office found that an officiant was acting in cases of forced marriage, including those cases where a person lacked capacity to consent, it will have the power to de-authorise them. The risk that the substitute might not be authorised will be addressed by the criminal offences recommended in Chapter 9.

3.221 Moreover, there will be no advantage to either of the couple in deliberately engineering a last-minute substitution. Any substitute would be required to be authorised. If one of the parties was attempting to avoid having a valid marriage, and so substituted an unauthorised officiant for an authorised one, the marriage will be valid provided that the other party believed that the substitute was authorised.[125] Moreover, the unauthorised substitute will potentially be committing an offence.[126]

3.222 Separately, some consultees were concerned that a couple would choose a substitute officiant from a different organisation. Couples would, indeed, be able to do so. Their authorisation to marry under their schedule is not confined to a wedding officiated by an officiant from a particular organisation. That does not, however, mean that the ability of the couple to choose who conducts their wedding is unrestrained. If, for example, the wedding was taking place in a building of a religious or non-religious belief organisation, then the organisation will be able to determine who is permitted to officiate because it controls the building. The choice of substitute will therefore require the consent of the organisation. If the couple wish to use a substitute officiant who the organisation does not give its consent to, then the couple would be able to do so only by changing the location of their wedding.

Process

3.223 As noted above, some consultees suggested that a substitute's authority should be checked before they are able to act as an officiant. However, where there was no time to issue a new schedule, registration officers would also not have time to check an officiant's authorisation. The same reasoning applies to consultees' suggestions that the registration services should be informed or be asked to provide a letter authorising the substitute to officiate at the wedding.

3.224 However, in Chapter 4 we recommend that there will be publicly available lists online of all nominated and independent officiants who are authorised to officiate at weddings. As a result, the couple and the organisation involved in the wedding will be able to check whether the substitute is listed.

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125 See Recommendation 37 at para 9.50 below.

126 See Recommendation 42 at para 9.201 below.

3.225 It will then be a matter of the authority of the officiant being confirmed at the time the schedule was returned for registration of the marriage. If the substitute was not in fact authorised at the time of the wedding, the General Register Office would be expected to follow up with the couple and officiant. As noted in paragraph 3.221 above however, the marriage will still be valid as long as at least one of the couple believed that the officiant was authorised.

3.226 Some consultees suggested that, should a substitute officiant have acted, evidence should be provided showing the validity of the reason for the last-minute substitution. We think this would be complicated, expensive, and largely unnecessary. However, the General Register Office could monitor how often officiants are substituted, and engage with any nominating bodies who are regularly substituting officiants, to try to proactively prevent it from happening.

Recommendation 9.

3.227 We recommend that a substitute officiant should be able to officiate at the wedding if the officiant named in the schedule is unexpectedly unable to act, for reasons that include death, sudden illness or unavoidable delay, when the minimum period for amending the schedule in advance of the wedding has passed.

ANGLICAN PRELIMINARIES

3.228 As we explain above, in the light of the feedback from consultees we are not recommending universal civil preliminaries, even though we are still of the view that a system of universal civil preliminaries would have much to commend it. Under our scheme banns, common licences and special licences will therefore continue to be legal preliminaries to Anglican weddings, that is to say, weddings that are officiated by Anglican clergy.

3.229 In the remainder of this chapter we begin by noting the issues that were raised in response to our question as to whether Anglican preliminaries should continue to be recognised as legal preliminaries.[127] We then highlight how Anglican preliminaries are potentially less robust in dealing with sham, forced and predatory marriages, and set out our recommendations on the legal requirements for common licences and banns.

3.230 We should clarify that our focus here is not on the responsibilities of Anglican clergy as *officiants*. That is addressed in later chapters.[128] Since our focus is solely on the role of clergy in carrying out the legal preliminaries, nothing in this section should be taken as having any application to other officiants.

3.231 We did not consult on any amendments to the authority of the Archbishop of Canterbury to issue special licences. These licences are not regulated by the

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127 Consultation Paper para 4.173, Consultation Question 18.

128 See Ch 4 in particular.

Marriage Act 1949 but are acknowledged as an exception to it.[129] As long as Anglican preliminaries continue, the granting of a special licence will remain a process over which the Archbishop has complete control and discretion.

3.232 Following the introduction of the schedule system, Anglican clergy are responsible for issuing[130] a "marriage document" after banns have been published or a common or special licence has been granted.[131] However, it is the banns or licence, rather than the marriage document, that is the authority for the wedding to proceed.

3.233 That has implications for which of our recommendations relating to schedules can be carried over to marriage documents. We think that a marriage document, like a schedule authorising an Anglican wedding, should identify the "Clerk in Holy Orders authorised to exercise ordained ministry in [name of] parish" who will officiate at the wedding. However, the period for which Anglican preliminaries are valid will continue to run from the date of their completion, rather than the date when the marriage document was issued. Whether the period for which banns or a common licence are valid should remain at three months or be aligned with the period for which a schedule is valid will be a matter for Government to decide in consultation with the Church of England and the Church in Wales.

Reforming Anglican preliminaries

3.234 As discussed above, the majority of consultees favoured retaining Anglican preliminaries.[132] Nonetheless, some consultees identified problems with the current requirements. Some argued that banns were outdated and ineffective, noting the unlikelihood of anyone in the congregation knowing the couple. Leicester Diocesan Registry commented on the incompatibility between the current process of calling banns and many rural churches only being open for one Sunday service each month.

3.235 We should also note that consultees' responses highlighted many examples of good practice in how Anglican preliminaries operated. This gives us confidence that in many cases the additional legal safeguards that we are recommending will not require any change in practice. But the fact that diligent clergy do more than the law requires is not a reason to leave this vitally important area to individual discretion.

3.236 When comparing Anglican and civil preliminaries, few consultees engaged with the question of the greater gap that will exist if civil preliminaries are reformed as we have recommended and Anglican preliminaries are retained in their current form. In addition, some consultees who argued for the retention of Anglican preliminaries mistakenly assumed that our proposals to reform civil preliminaries would apply equally to Anglican preliminaries and that banns would be published online.

3.237 Other consultees thought that some of our proposals to reform civil preliminaries could or should apply to Anglican preliminaries. In particular, the Faculty Office of the

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129 The Ecclesiastical Licences Act 1533 conferred the power to grant such licences, a power that is preserved in the Marriage Act 1949, s 79(6).

130 Or ensuring that one is issued and provided to them.

131 Marriage Act 1949, s 21A.

132 See para 3.12 above.

Archbishop of Canterbury thought that the online publication of banns could improve their reach, and suggested that further training might be beneficial to avoid mistakes being made in the calling of the banns.

3.238 Given the changes that we are recommending to the system of civil preliminaries, we do not think that the current rules relating to banns and common licences can be left as they are. Reforming Anglican preliminaries to align them more closely with civil preliminaries would go some way towards achieving the benefits of uniformity, consistency and fairness that proponents of universal civil preliminaries identified. To reform one set of preliminaries but not the other would raise the risk that anyone seeking to evade scrutiny will gravitate to the system with the fewest checks.

3.239 Moreover, the open questions that we asked in the Consultation Paper elicited considerable support for such basic safeguards as separate in-person meetings with each of the parties and explicit powers for clergy to call for documentary evidence. Consultees' responses also suggested a way in which the calling of banns could be simplified. We set out our recommendations on these issues below.

3.240 We note that there was a recurring argument that the requirements for Anglican preliminaries should be a matter for the Anglican churches alone to decide. In our view, it is important to distinguish between the religious and legal roles of Anglican preliminaries. Our focus is purely on what the law should require in order to ensure that Anglican preliminaries fulfil the legal functions that the preliminaries are designed to serve. This is a matter that has been governed by statute since 1753.

3.241 We also note that reforming Anglican preliminaries is not an end in itself, but a means of making them more robust and consistent with civil preliminaries. As a result, we think that whether they do so should be kept under review. If our recommended reforms do not have the effect of making Anglican preliminaries consistent with or as robust as civil preliminaries, the option of introducing universal civil preliminaries should be reconsidered.

3.242 In our view, the system of Anglican preliminaries also needs to operate in a way that acknowledges the availability of civil preliminaries. One reason why the creation of contingency provisions for the calling of banns was necessary was because the alternative of obtaining a common or special licence would have been beyond the means of much of the population. But civil preliminaries provide a more affordable alternative, and we suggest below how they could be used to help simplify the law.

Protecting against forced, sham and predatory marriages

3.243 Under the current law, civil preliminaries must be used instead of banns or a common licence if one of the couple is not a relevant national.[133] However, clergy have only a power, rather than a duty, to ask for evidence of nationality. While in practice they may do so as a matter of course, we think that it would be preferable for couples to be required to provide documentary evidence of nationality, as they are as part of the civil preliminaries.

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133 See Consultation Paper, para 4.10.

3.244 Similarly, under the current law, there is no legal obligation for each of the couple to meet with the person to whom the information about the intended wedding is given. It is possible for just one of the couple to instigate the publication of banns or obtain a common licence. In our view there should be some opportunity for each of the couple to be seen separately before the marriage document is issued, as an essential safeguard against forced or predatory marriages.

3.245 Such safeguards are particularly important where the marriage is by common licence, given that such licences involve no prior publicity and so do not allow any scope for objections to be made. However, we also think that such safeguards should also be in place where the marriage is by banns. While banns are intended to publicise the intended wedding and enable objections to be made, their efficacy will largely depend on whether the couple are known to those attending the church in which banns are published.

3.246 Even with the reforms that we recommend, we are not convinced that Anglican preliminaries can be as robust as civil preliminaries in protecting against forced and predatory marriages. In particular, we regard the lack of any publicity or waiting period for common licences as a serious weakness, especially given consultees' responses about the importance of these elements in the context of civil preliminaries. But we think our reforms will go some way to reduce the differences between Anglican and civil preliminaries.

Requiring documentary evidence

3.247 The Marriage Act 1949 stipulates that a common licence will not be granted unless the couple provides specified evidence that both are relevant nationals.[134] As we noted in the Consultation Paper, that evidence will also give details of the person's name and age, but not of their marital status. Moreover, the equivalent provision relating to banns simply states that clergy are not "obliged" to publish banns without such evidence.[135] This phrasing falls short of imposing an obligation on the clergy to ask for such information or on the couple to provide it.[136] By contrast, the civil preliminaries require couples to provide specified evidence of their name, date of birth, place of residence, nationality,[137] and any former marriage or civil partnership.[138]

3.248 Given the ambiguity (and in some cases the absence) of the clergy's legal duties and powers to call for evidence, we invited consultees' views as to whether clergy should

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134 Marriage Act 1949, s 16(1C).

135 Marriage Act 1949, s 8. While s 5 states that banns cannot be used where one party is not a relevant national it is not clear what the status of the marriage would be if banns were used in such a case.

136 The Faculty Office of the Archbishop of Canterbury, *Anglican Marriage in England and Wales: A Guide to the Law for Clergy (3rd edition*) (Second Supplement, April 2015) para 7.6, merely states that it is "strongly recommended" that ministers see evidence of the couple's nationality.

137 Which includes prescribed evidence that they meet the criteria of a relevant national under the EU Settlement Scheme. See the Glossary for the meaning of "relevant national".

138 Marriage Act 1949, s 28B. They must also provide the same details about their intended spouse.

have the power to call for documentary evidence and be required to check such evidence.[139]

Consultation

3.249 A very substantial majority of consultees supported the idea that clergy should have the power to call for documentary evidence and be required to check such evidence. Consultees variously saw documentary evidence as a means of ensuring the legality of the wedding, checking the identity of the parties, and preventing sham or forced marriages. A few noted that it would be reasonable for such checks to be part of the role of the clergy. Others, primarily local authorities and registration officers, focussed on the need to ensure that Anglican preliminaries were as rigorous as civil preliminaries.

3.250 Some Anglican consultees commented on the current requirements. The Church of England noted the division of views among clergy and the resistance to the requirement to check documentary evidence of nationality. It suggested that a balance needed to be struck "between requiring the clergy to seek documentary evidence for the things for which, as celebrants, they are responsible, and acting in proxy to other interests". The Church in Wales noted that it advised clergy to check evidence of nationality. The Faculty Office of the Archbishop of Canterbury was confident that clergy would be "justified in demanding further particulars" if they had concerns that one of the couple was already married. Leicester Diocesan Registry commented that guidance would need to be provided on what evidence would be required, noting that at present practices varied.

3.251 Among those who disagreed that clergy should have a power to call for documentary evidence, a few argued that clergy would not have the ability to verify the documents provided. Others were opposed to additional administrative burdens being placed on Anglican clergy or thought that the existing requirements were adequate.

Discussion and conclusions

3.252 The Church of England's comment that its clergy "were not of one mind" on this issue was reinforced by consultees' responses. Consultees had different views both on whether clergy should have these powers and responsibilities and on whether they already had them. We think this indicates a need for greater clarity.

3.253 Checking evidence of name, age and marital status appear to us to be core to ensuring that Anglican weddings are conducted in accordance with the law. The state has an interest in ensuring that only those who have legal capacity to marry do marry, and to prevent forced and sham marriages. That interest applies to all weddings. And since the state has no role in the operation of Anglican preliminaries, clergy must act to protect the interests of the state. The fact that some clergy may need advice and guidance in assessing documentation does not seem to be a good reason for not requiring such documentation in the first place.

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[139] Consultation Paper, para 4.152, Consultation Question 16(1).

3.254 That said, we think it is preferable to place the obligation on the couple to provide information, rather than on the clergy to ask for it. Such an obligation is consistent with what is required in the context of civil preliminaries.

3.255 Placing the obligation on the couple also allows for flexibility in terms of who is responsible for checking that documentation. Under the current law, applications for common licences are made to the diocesan registry or to other persons appointed to grant such licences. These persons need not be members of the clergy. Similarly, in practice arrangements for the calling of banns are often made with parish administrators. In our view, while clergy will remain responsible for the publication of banns, they could authorise another person to undertake the administrative side of doing so.

3.256 Overall, there was strong support among consultees for clergy having the power to call for documentary evidence and being required to check such evidence. However, we think that an obligation on couples to supply certain documentary evidence will serve the same purpose. This phrasing will also give some flexibility in terms of who was required to check such documentation.

Recommendation 10.

3.257 We recommend that each of the couple should be required to provide specified evidence of their name, age, marital status (including of any previous marriage or civil partnership) and nationality (or EU settlement status) in order for banns to be called or a common licence obtained.

No longer recognising banns published outside England or Wales

3.258 The Marriage Act 1949 permits banns published in Scotland, Northern Ireland or Ireland "according to the law or custom there prevailing" to authorise an Anglican wedding in England or Wales.[140] However, Scotland, Northern Ireland and Ireland have now all adopted universal civil preliminaries and banns are no longer a legal preliminary to weddings in those jurisdictions. In practice, couples now obtain a common licence to authorise a wedding taking place in England or Wales where either of them is resident in Scotland, Northern Ireland or Ireland. We therefore provisionally proposed that banns published in Scotland, Northern Ireland or Ireland should no longer authorise an Anglican wedding in England and Wales.[141]

Consultation

3.259 Only a minority of consultees agreed with our proposal. Among them, however, was the Faculty Office of the Archbishop of Canterbury, which confirmed that its advice to couples resident in Scotland, Northern Ireland or Ireland is to obtain a common licence if they wished to be married in England and Wales. Similar evidence was provided by the Church in Wales. The Churches' Legislation Advisory Service further highlighted the issue that Anglican clergy in Scotland, Northern Ireland or Ireland are

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140 Marriage Act 1949, s 13.

141 Consultation Paper, para 4.149, Consultation Question 13.

not legally obliged to call banns even if they might be willing to do so as a matter of courtesy. Other consultees supported the proposal on the basis that it would simplify the law or remove provisions that were redundant, outdated or no longer appropriate.

3.260 Against our proposal, consultees argued that it would make it more difficult or complicated for couples to marry. Many saw no need for change. A number thought that having banns called in the parish(es) of residence of each of the couple was more important than the fact of that parish being in a different jurisdiction. In addition, the Church of England referred to the unity of the Anglican church, noting that "the Anglican churches in England, Wales, Scotland and Ireland all recognise each other's orders etc".

Discussion and conclusions

3.261 We do not think that our proposal will make it more difficult or more complex to get married in an Anglican church. Under our scheme, couples resident in Scotland, Northern Ireland or Ireland will still be able obtain a common licence and will also have the option of civil preliminaries, as there will no longer be a need to establish residence and the process could begin online.

3.262 We disagree that this issue concerns the unity of the Anglican church. The issue is not whether the churches recognise each other as competent to call banns, but whether banns called in those jurisdictions should be a recognised as a legal preliminary to a wedding. However, given the number of consultees who argued that the calling of banns was a matter for the Anglican churches, we have rephrased our recommendation to clarify that we are only proposing that banns published in Scotland, Northern Ireland or Ireland should no longer be *legal* authority for an Anglican wedding in England and Wales.

Recommendation 11.

3.263 We recommend that banns published in Scotland, Northern Ireland or Ireland should no longer be legal authority for an Anglican wedding in England and Wales.

Churches injured by war damage

3.264 The Marriage Act 1949 sets out where banns are to be called if a church is "injured by war damage".[142] However, the operation of this provision depends on an order being made by the Church Commissioners under the Diocesan Reorganisation Committees Measure 1941. Since the 1941 Measure has been repealed, there is no scope for any further order to be made under it. We therefore provisionally proposed that the specific rules about where banns can be published to authorise an Anglican wedding if a church is injured by war damage should be repealed.[143]

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142 Marriage Act 1949, s 19.

143 Consultation Paper, para 4.150, Consultation Question 14.

Consultation

3.265 The majority of consultees agreed with this proposal, with many simply noting that the provision was outdated or redundant or that its removal would simplify the law. By contrast, consultees who disagreed suggested that the provision was not redundant, referring to the possibility of another war, terrorism or other forms of violence. Some suggested that rather than being repealed the rule should be extended to cover contingencies such as fire, flood, or lockdown. The Church of England, Church in Wales and Faculty Office of the Archbishop of Canterbury all noted the advisability of provision being made for such contingencies even if this particular provision was outdated.

Discussion and conclusions

3.266 The consultation responses usefully highlighted the range of situations in which a church might be unavailable for the purpose of calling banns. It is clearly necessary to have provision for such contingencies. However, as we highlighted in the Consultation Paper, the problem is not that the 1949 Act does not make alternative provision for the banns to be called; rather, it is that different sections of the Act provide *different* alternatives, and that it is not always clear which is the correct alternative. More fundamentally, as we explain in paragraphs 3.278 to 3.280 below we question whether the law needs to provide these alternatives now that most weddings are preceded by civil preliminaries.

3.267 The provision as currently phrased is entirely redundant as it depends on the making of an order under a Measure that has itself been repealed. Accordingly, our view is that it should be repealed. We address the question of where banns must be published, including the issues of contingencies, in the next section.

Recommendation 12.

3.268 We recommend that the rules governing where banns can be published to authorise an Anglican wedding if a church is injured by war damage should be repealed as redundant.

Where banns must be published

3.269 As we explained in the Consultation Paper, banns may need to be called in up to three parishes: the parish of residence of each of the parties and the parish where the wedding is taking place.[144] If banns cannot be called in any one of these parishes – for example because there is no parish church, or the church is being repaired or rebuilt, or there is no regular Sunday service – then alternative provisions come into play. It is these alternative provisions that are responsible for much of the complexity of the current law: exactly where the banns should be called will depend in part on the

[144] Marriage Act 1949, s 6.

reason why the church where they would ordinarily be called is not available and in part on the local arrangements that have been put in place.[145]

3.270 In the Consultation Paper we suggested that one way of rationalising the law would be to require banns only to be called in the church where the wedding is to take place, rather than the parish(es) of residence. This suggestion, we noted, would have the effect of avoiding the duplication of work by up to three members of the clergy. We also thought that it would largely remove the need for alternative provision to be made where banns cannot be called in a particular church: after all, a couple is unlikely to be marrying in a church that is closed for repairs or being rebuilt. We therefore invited consultees' views as to whether banns to authorise an Anglican wedding should be required to be published only in the church where the wedding is to take place.[146]

Consultation

3.271 A few consultees supported only calling banns in the church where the wedding was to take place as a means of simplifying the law. Other consultees commented that the couple would be known in the church where they were planning to marry or because they saw it as important to let the local congregation know who would be getting married in their church.

3.272 However, most consultees disagreed with only requiring banns to be called in the church where the wedding is to take place. Their main argument was that it was important for banns to be published in the couple's parish(es) of residence. The Church of England saw the publication of banns in the parish(es) of residence as maintaining the "principle that the wedding is a public commitment", referring to the communities to which the couple belong "witnessing to the marriage". The Church in Wales thought that there would be a greater likelihood of an impediment being discovered if banns were published in the couple's parish(es) of residence.

3.273 Other consultees argued that only calling banns in the church where the wedding was to take place would not achieve sufficient publicity. Some noted that the couple might be marrying in a parish where they were unknown or emphasised the importance of banns being called in churches attended by the couple or those who might know of a reason to object to the marriage. Relatedly, Dr Augur Pearce (an academic) suggested that if either of the couple was under the age of 18, banns should be called in the parish(es) where their parents resided, so that their parents can forbid the banns at the time of publication. Other consultees suggested that banns should be published in more than one parish, in any church with which the couple had a connection, at all churches within a certain area, in local newspapers or online.

3.274 A couple of Anglican consultees also noted that it might not be possible for the banns to be called in the church where the wedding was due to take place, with one member of the clergy commenting that "too many rural churches do not have regular services to allow banns to be read at the correct intervals". They argued that it should be possible for banns to be called anywhere within the same benefice.

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145 For the details see the Consultation Paper, paras 2.74 to 2.75.

146 Consultation Paper, para 4.151, Consultation Question 15.

Discussion and conclusions

3.275 To achieve maximum publicity, the more parishes in which banns are published the better. Yet each additional parish in which banns have to be published imposes an additional burden on clergy, increasing the likelihood of mistakes being made or of banns not being called in time for the wedding to go ahead. For these reasons, we do not agree with the suggestion that banns for each marriage should be called in every church within the diocese.

3.276 To promote clarity and simplicity, minimising the number of parishes in which banns have to be called as a matter of law has much to commend it. But given consultees' responses, we do not recommend that the law require banns to be called only in the parish where the wedding is to take place. Instead, we have adapted the suggestion made by the Church in Wales and recommend that the only legal requirement should be that banns should be published in the parties' parish(es) of residence. This will not preclude banns also being called in the church where the wedding is to take place, but that will be a matter for the Church of England and the Church in Wales and will not concern the legal validity of the banns.

3.277 By itself, requiring banns only to be called in the couple's parish(es) of residence might have only a limited impact. It will remove the need for one set of banns to be called where the couple are getting married in a different parish, but the couple will still need to liaise with the church where they plan to marry and provide evidence that banns have been called in their parish(es) of residence.

3.278 However, we think that the importance that consultees attached to having the banns called in the couple's parish(es) of residence justifies the further step of abolishing the contingency provisions as to where banns are to be called if the parish church is not available for the purpose.

3.279 In making this recommendation we are influenced not only by the principles of certainty and simplicity but also by the fact that banns called under the existing contingency provisions are likely to be less effective in achieving their intended purpose. For example, under section 23 of the Marriage Act 1949 and the Mission and Pastoral Measure 2011 it is possible for banns for a couple resident in one parish to be called in any other parish within the same benefice. As a result, even if a couple planning to marry in an Anglican church are regular worshippers at, and known in, their local church, that does not mean that they will be known at, or have ever attended, the church where the banns are called.

3.280 When these contingency provisions were first devised there was no alternative to having banns called, save for a more expensive common or special licence.[147] The most that was envisaged was having the banns called in the next parish, rather than the more complex (and potentially more remote) alternatives that exist today. There is not the same need to make provision for contingencies today, and less reason to do so in the light of the improvements that our scheme envisages being made to the civil preliminaries. If the choice is between having banns called in a parish to which the parties have no connection save that of being in the same benefice and having a

[147] The original contingency provisions can be found in the Clandestine Marriages Act 1753 and the Marriage Act 1823 and predated the introduction of civil preliminaries by the Marriage Act 1836.

notice of marriage displayed online, the latter better achieves the publicity and potential for discovering impediments to which consultees attached such importance.

3.281 Our conclusion is that the law should require only that banns be called in the couple's parish(es) of residence. It will be for the Anglican churches to decide whether banns should also be called in the parish where the wedding was to take place. If banns cannot be called in the parish(es) of residence, then the couple must either obtain a common or special licence or use the civil process.

Recommendation 13.

3.282 We recommend that banns should only be required to be called in the parties' parish(es) of residence, and if that is not an option the parties should use the civil preliminaries process or obtain a common or special licence.

Meeting with each of the couple separately before banns are published

3.283 Under the current law, there is no requirement for either of the couple to meet with a member of the clergy before their banns are published,[148] although in practice most will do so. The member of the clergy conducting the wedding does have a duty – as a matter of canon law – to meet with the couple in advance of the wedding to explain the Church's conception of marriage.

3.284 In the Consultation Paper we noted that the absence of such a requirement could be an issue, given the concerns that had been expressed about forced and predatory marriages. We invited consultees' views as to whether there should be a requirement to meet with each of the couple – separately – before banns were published.[149]

Consultation

3.285 Among consultees, there was a high level of support for the idea that clergy should be required to meet with each of the couple separately before banns are published. Many consultees described it as a sensible or necessary requirement. Others noted the importance of parity between Anglican and civil preliminaries or identified the role that separate meetings could play in reducing the risk of forced marriages. Dr Rachael Clawson (an academic responding on behalf of her research project team) drew on her research into forced marriage to argue that those meeting with the couple should "be required to undergo the same training as marriage registrars in relation to forced and predatory marriage and capacity to consent".

3.286 However, a number of consultees were opposed to clergy being under a legal obligation to have separate meetings. Among them, the Church of England thought that it should be for individual clergy to decide whether separate meetings were necessary. In its view

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148 Marriage Act 1949, s 8 envisages that the information necessary for the banns to be called may be delivered indirectly.

149 Consultation Paper, para 4.152, Consultation Question 16(2).

the tiny number of problems that might arise by leaving this to the cleric's discretion seem disproportionate to the time involved and (more importantly) the implication of lack of trust in the couple.

3.287 The Church in Wales thought that there should be a meeting with the officiating minister as part of the couple's marriage preparation but saw no need "for this to be duplicated at the banns stage". The Faculty Office of the Archbishop of Canterbury also took the view that it might not be practicable for clergy to meet with each of the couple in advance of the banns being called and thought that a general requirement to meet would be "disproportionate".

Discussion and conclusions

3.288 In our view, if banns are to continue as a legal preliminary, their operation should be regulated by the law rather than being left to the discretion of individual clergy.

3.289 Whether or not forced marriages are a rarity within Anglican churches, we think measures should still be in place to identify and prevent such marriages. After all, very few weddings preceded by civil preliminaries are forced either. We do not think that the law should send the message that those marrying after civil preliminaries cannot be trusted to the same extent as those marrying by banns. There is also the risk that those seeking to evade scrutiny will opt for the least demanding process.

3.290 Leaving it to the discretion of clergy to arrange separate meetings would put the onus on them to detect potentially forced or sham marriages. We were not told of any training being provided to clergy to assist them in making such judgments. Moreover, if a separate meeting is not required as a matter of course, requiring one would signal that the cleric had concerns and may create difficulties for the pastoral relationship with the couple.

3.291 However, in the light of consultees' responses and our other recommendations on the publication of banns, we have reflected further on when the meeting should take place, and with whom. Each of the couple will have their meeting with the incumbent (or another member of the clergy) of their own parish.[150] The meeting could take place before the banns are published and could be combined with providing the required documentation directly to a member of the clergy. Alternatively, if the couple had provided the documentation to a parish administrator,[151] their meeting with a member of the clergy could take place at any time up to five days before the marriage document was issued. These two options will mirror the way in which the civil preliminaries will work under our scheme.

3.292 We note that there would be some duplication of work where the wedding is taking place in a different parish from where the couple live(s). The canon law directs the cleric officiating at the wedding to meet with the couple in advance to prepare them for marriage and inquire into whether there are any impediments. However, the role of

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150 This is in line with our recommendation that banns be called in each person's parish of residence. See further Recommendation 13 at para 3.282 above.

151 See para 3.255 and Recommendation 10 at para 3.257 above.

conducting the wedding is distinct from the role of Anglican clergy in overseeing the legal preliminaries to the wedding.

3.293 While we are aware that there may be parishes in which there is no incumbent, we think that this is a matter for the Anglican churches to address. During a vacancy, services may be taken by other members of the clergy, and it would be for the church to decide whether such persons could also be tasked with these meetings. If the church is unable to make provision for this, then alternative routes (common licence or civil preliminaries) should be used.

3.294 We also note that it is the cleric who officiates at the wedding who issues the marriage document. However, they will be unable to do so until they have received confirmation that the banns have been called in the couple's parish(es). Where the wedding is taking place in a different parish from where the couple live(s), it would therefore be advisable for clergy to ensure that the meeting takes place a minimum of five days before they issue their certificate that the banns have been called, since they will not necessarily know when the marriage document is to be issued.

3.295 In conclusion, given the strong support among consultees for separate meetings, we think that there is value in making this a legal requirement rather than being left to the discretion of individual clergy. To ensure consistency with our recommendations for the civil preliminaries process, the meeting need not take place before banns are called, as long as it takes place a minimum of five days before the marriage document is produced.

Recommendation 14.

3.296 We recommend that where banns are called, a separate in-person meeting should take place between each of the couple and the incumbent of their parish(es) a minimum of five days before the marriage document is produced.

Separate declarations in order for a common licence to be granted

3.297 In order for a common licence to be granted, the law currently requires just one of the couple to swear that there is no impediment to the marriage, and that other conditions necessary for the licence to be granted have been fulfilled.[152] There is no requirement that the other person be present or make any equivalent declaration.

3.298 Given the lack of publicity or any waiting period, there is a strong case for requiring some additional safeguards. In the Consultation Paper we noted concerns about forced and predatory marriages, and invited consultees' views as to whether there should be a requirement for each of the couple to make a separate declaration in order for a common licence to be granted.[153]

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[152] Marriage Act 1949, s 16.

[153] Consultation Paper, para 4.153, Consultation Question 17.

Consultation

3.299 There was a very high level of support for requiring both of the couple to attend and make separate declarations that there is no impediment to their marriage in order for a common licence to be granted. Some consultees highlighted the importance of seeing both parties separately to ensure that neither was being forced into the marriage or otherwise subject to any pressure or intimidation. Others saw these requirements as emphasising the seriousness of marriage or as ensuring parity with civil preliminaries.

3.300 Some consultees disagreed on the basis that it was unnecessary for both parties to be required to attend and make separate declarations. The Faculty Office of the Archbishop of Canterbury commented that it was not aware of incidences of deception arising where individuals had avoided making a declaration. It also emphasised the importance of making an oath rather than a declaration. The Church in Wales thought that a separate declaration was unnecessary on the basis that the liturgy already "requires both parties to make a declaration of no impediment as part of the marriage liturgy itself".

3.301 A few consultees also commented on the inconvenience of both parties having to make a declaration. Some focussed on the implications for the couple in terms of time, travel and cost or noted that common licences were used where one of the parties was overseas, for example in the armed forces.

Discussion and conclusions

3.302 If the possibility of obtaining a common licence – without any waiting period, and therefore without any public notice – is to be retained, then the process should have at least some of the same safeguards as apply to civil preliminaries. Requiring both parties to make a declaration that there is no impediment to their marriage ensures that both parties are seen prior to the wedding, and provides an opportunity to identify any potential issues with lack of capacity or consent. In our view the need for these safeguards is just as compelling when applying for a common licence as when getting married by banns, or after civil preliminaries.

3.303 Making a formal declaration that there is no impediment to the intended marriage is different from what is currently required as part of the marriage service. The liturgy only asks the couple to declare if there is an impediment; the couple need say nothing at all.

3.304 The importance of making separate declarations also outweighs any potential inconvenience in terms of time, travel and cost. There are, after all, few circumstances in which a couple can only get married if they obtain a common licence. Under our recommended scheme the need to obtain a common licence where one of the parties is resident outside the jurisdiction will disappear as individuals will be able to start the process remotely using the civil preliminaries.

3.305 We make no recommendation as to the form of words by which the parties should make the declaration of no impediment. If those responsible for granting the licence take the view that an oath is preferable for this purpose, this would seem to be a matter for them to decide.

Conclusion

3.306 We think safeguards should be central to all the legal preliminaries processes. We therefore think that it is important for both of the couple to attend and make separate declarations that there is no impediment to their marriage in order to obtain a common licence.

Recommendation 15.

3.307 We recommend that both of the couple should be required to attend and make separate declarations that there is no impediment to their marriage in order for a common licence to be granted to authorise an Anglican wedding.

Chapter 4: Officiants

INTRODUCTION

4.1 Our scheme is based on the regulation of the person officiating at the wedding rather than on the building in which the wedding takes place. In this chapter we explain the concept of an officiant and how different types of officiants will be regulated under our recommendations for reform.

4.2 As we proposed in the Consultation Paper, the role of an officiant will be to ensure that the legal requirements of the ceremony are met.[1] An officiant might also be the person leading the ceremony, but there will be no requirement for the two roles to be combined. It will therefore be possible for another person to lead the ceremony, and that person will not need to be separately authorised. This flexibility is crucial to our aim of seeking to create a single concept of an officiant that would be applicable to all types of weddings.

4.3 The concept of an officiant in our scheme builds on the fact that the current law largely does not regulate who conducts a wedding but rather who is tasked with ensuring that the resulting marriage is registered. At present, different categories of person are tasked with ensuring that different types of marriages are registered: registration officers, Anglican clergy, Jewish secretaries of synagogues, Quaker officers, and authorised persons appointed for places of worship of other faiths and denominations.[2]

4.4 Our scheme also recognises that different religious groups have different views as to who should conduct a wedding or be tasked with its registration. Anglican clergy perform both a legal and a religious role. Similarly, some authorised persons are also imams, ministers, or priests; others, however, play a purely administrative legal role alongside a separate (unauthorised) person who performs a religious role and conducts the ceremony. The same is true for Jewish secretaries: some are rabbis, but others are not. And the Religious Society of Friends takes the view that no third party is needed to conduct a wedding.

4.5 We think that our concept of an officiant is flexible enough to accommodate all those who are currently tasked with ensuring that a marriage is registered. However, that does not mean that their role under our recommended scheme would be identical to that under the current law. One of the problems with the current law is that different rules apply to different categories of person responsible for ensuring that the marriage is registered. Having a single concept of an officiant with a common set of duties and responsibilities reflects our principles of certainty and simplicity, and fairness and

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1 Consultation Paper, paras 5.2 to 5.3.

2 Following the Registration of Marriages Regulations 2021 (SI 2021 No 411), Anglican clergy, Jewish secretaries of synagogues, Quaker officers and authorised persons are no longer responsible for registering a marriage. Instead, they are responsible for ensuring that the marriage document or schedule is completed and returned to the register office to be registered. For convenience we refer to this as ensuring that the marriage is registered.

equality. It also ensures that the state's interest in marriage is protected, as every wedding will be attended by an officiant who has specific legal duties to ensure that the legal requirements are met, along with a responsibility to uphold the dignity and significance of marriage.

4.6 We also think that the concept of an officiant will accommodate others who do not currently have the option of conducting legal weddings, reflecting the importance of respecting individuals' wishes and beliefs. Under the current law, religious groups that do not worship in specific buildings or do not wish to register those buildings for weddings cannot appoint authorised persons,[3] even though they are "religions" which would otherwise meet the criteria to conduct marriages.[4] By removing the need for a building, our scheme will enable a wider range of religious organisations to nominate officiants.

4.7 Our Terms of Reference also require us to consider how a revised weddings law could include weddings conducted by non-religious belief organisations and independent celebrants, should Government decide to enable them to conduct legal weddings.[5] The concept of an officiant would be capable of accommodating them.

4.8 Another corollary of moving from a buildings-based system to an officiant-based scheme would be to enable weddings to take place in a wider range of venues, including outdoor locations. This change will allow people more flexibility to marry in a way and in a place that is meaningful for them.

4.9 Although we are recommending that there should be a single concept of an officiant, we also recognise that different types of officiants will be appropriate for different types of wedding. Under our scheme there will be civil officiants and belief officiants. Civil officiants will be registration officers, maritime officiants or (if enabled by Government) independent officiants. They will officiate only at civil weddings. Belief officiants will be Anglican clergy or nominated officiants; the latter category will consist of officiants nominated by religious organisations or (if enabled by Government) non-religious belief organisations.

4.10 While a move to an officiant-based scheme from the current building-based model would be a fundamental change in the way the law regulates weddings, it would not be a unique or untested change of approach. Even within England and Wales there is the precedent of Anglican weddings authorised by special licence, which do not have to take place in a specific location. Among neighbouring jurisdictions, Scotland, Northern Ireland, Ireland, Jersey and Guernsey all now operate systems that primarily focus on the person conducting the wedding rather than its location.[6] The same is true

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3 See R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final Report* (2022) ch 5, for discussion of the range of groups and individuals affected by this restriction.

4 As described in *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 160.

5 The full Terms of Reference for the project are included in Appendix 1.

6 See respectively Marriage (Scotland) Act 1977; Marriage (Northern Ireland) Order 2003 (SI 2003 No 413); Civil Registration Act 2004; Marriage and Civil Status (Jersey) Law 2001; The Marriage (Bailiwick of Guernsey) Law 2020.

across the common law world, with Australia, Canada, New Zealand and many US states also regulating the celebrant rather than the location.[7]

4.11 In this chapter we begin by setting out the rules that would be applicable to all officiants, including their key duties and responsibilities. We then go on to consider the different types of officiants: registration officers, Anglican clergy, officiants nominated by other religious organisations and (if enabled to conduct legally binding weddings) non-religious belief organisations, independent officiants and maritime officiants. Since we envisage relatively little change in how registration officers and Anglican clergy will operate, our primary focus will be on nominated officiants, independent officiants, and maritime officiants, and the rules that are needed to determine how they should be appointed, trained, regulated, monitored and (if necessary) de-authorised.

RULES APPLICABLE TO ALL OFFICIANTS

4.12 In this section we set out the rules that we recommend should apply to all officiants: the requirement that all weddings would be attended by an officiant, their duty to ensure that the legal requirements of the ceremony are met and their responsibility to uphold the dignity and significance of marriage. We also explain our recommendations that the General Register Office should provide guidance to all officiants on their role and that there should be no time limit on the authorisation of officiants.

The role of an officiant

4.13 Under the current law, different rules apply to registration officers, Anglican clergy, authorised persons, Jewish secretaries and Quaker officers. For Anglican clergy, the primary responsibility is to solemnize the marriage and the duty to ensure that it is registered is a secondary one.[8] For others, the only legal duty is to ensure that the marriage is registered;[9] registration officers and authorised persons are required to be present at the ceremony, but no such requirement applies to Jewish secretaries or Quaker officers.

4.14 As we proposed in the Consultation Paper, under our scheme the role of an officiant would be to ensure that the legal requirements of the ceremony are met.[10] Distilling the requirements of the current law, we provisionally proposed that all weddings should be attended by an officiant who should have a legal duty to:

(1) ensure that the parties freely express consent to marry each other;

(2) ensure that the other requirements of the ceremony are met; and

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7 See respectively Marriage Act 1955 (New Zealand); Marriage Act 1961 (Australia); and eg Marriage Act 1996 (British Columbia) and Marriage Act 1990 (Ontario).

8 Marriage Act 1949, s 53D(2), places the responsibility to return the marriage document on the member of the clergy who solemnized the marriage.

9 Marriage Act 1949, s 53C and 53D(3)(b).

10 Consultation Paper, para 5.44.

(3) ensure that the schedule or marriage document is signed.[11]

Consultation

4.15 The overwhelming majority of consultees supported this proposal. Many focussed on the proposed duties of an officiant, noting that the state has an interest in the proper conduct of a wedding. Others welcomed the proposal as key to moving away from the regulation of the location to the regulation of the officiant. The National Secular Society commented that

> this reform, perhaps more than any other in the proposals, will significantly increase freedom and fairness for all couples to marry how they want, and where they want – including outdoors.

4.16 Various consultees also commented that the proposal would work for Anglican weddings as well as for Muslim, Humanist, Pagan and interfaith weddings. However, a few consultees queried why the proposal was necessary or expressed concern about "outsourcing" the role of officiant to religious groups. A couple of consultees also questioned the proposed terminology of "officiant".

The requirement that all weddings be attended by an officiant

4.17 Many consultees commented that the requirement that an officiant be present at the wedding reflects the state's interest in the proper conduct of a wedding, promotes certainty and a sense of the seriousness of the occasion, and acts as a safeguard against sham and forced marriages. Of those most directly affected by the change (because the person responsible for ensuring the marriage is registered is not currently required to attend Jewish or Quaker weddings), both the Board of Deputies of British Jews and the Religious Society of Friends indicated that they would have no problem with requiring an officiant to be present. Only a few consultees suggested that more than one officiant should be required to attend.

The duties of an officiant

4.18 Although no consultees disagreed with the duties we had proposed, a number raised questions about their scope or expressed concern as to how they would operate in practice.

4.19 Some queried the meaning of "freely expressed consent", asking whether and how officiants would ensure parties have mental capacity to marry and were not being coerced. The Justice for Joan campaign argued for a "safeguarding requirement", while Dr Rachael Clawson (an academic responding on behalf of her research project team) suggested that officiants should be under an explicit duty to ensure that each of the couple had capacity to consent to the marriage.

4.20 Consultees also asked what was meant by the duty to ensure that the other requirements of the ceremony are met, with some advocating additional formal requirements and others advocating a flexible approach.

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[11] Consultation Paper, para 5.65, Consultation Question 19.

4.21 The duty to ensure that the schedule or marriage document was signed attracted less discussion. One consultee asked what an officiant should do if a couple did not have a schedule.

4.22 Some consultees also suggested that officiants should have additional duties to explain the legal consequences of marriage, or alternatively its social, cultural or religious meaning; to uphold the dignity of the ceremony; or to report sham marriages.

Discussion and conclusions

The requirement that all weddings be attended by an officiant

4.23 Our recommendation is that every wedding should be attended by an officiant. As we explained in the Consultation Paper, we chose the term "officiant" both to convey that their role is to ensure compliance with the legal requirements and to accommodate a range of different religious traditions.[12] As discussed above, an officiant may also hold a religious office and be responsible for solemnizing the marriage. Equally, an officiant may have only an administrative legal role and not take any active part in conducting the ceremony.

4.24 Whatever additional roles an officiant might have, we think it important that there should be a requirement for them to be physically present at the ceremony. We have modified our recommendation to clarify that an officiant must attend in person, as a few consultees did not appreciate that this was implicit in our proposal. Such a requirement already applies to all weddings except those conducted according to Jewish or Quaker usages.

The duties of an officiant

4.25 By requiring an officiant to ensure that the parties freely express consent to marry each other, our proposals foregrounded the importance of capacity and consent. We should emphasise that this duty encompasses duties to ensure that both have capacity to marry and are freely agreeing to be married. Although these issues should have been identified at the preliminaries phase, it is still possible that a person could lose capacity, or be subject to coercion, during the period between giving notice and the wedding itself. The Government's guidance makes it clear that

> a marriage or civil partnership must be stopped or deferred if there are concerns that one or both of the parties are not entering into the marriage of their free will or if there are any concerns that they do not have the capacity to consent.[13]

We discuss below how the guidance that we recommend should be provided to all officiants should include guidance on how to identify and deal with forced marriages.

4.26 We note that some consultees expressed concern that religious officiants might be complicit in forced marriages and suggested that such officiants should not be solely responsible for ensuring consent is given on the day of the ceremony. However, that

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12 Consultation Paper, paras 5.2 to 5.4.

13 Foreign, Commonwealth and Development Office and Home Office, *Guidance: Multi-agency statutory guidance for dealing with forced marriage and Multi-agency practice guidelines: Handling cases of forced marriage* (13 June 2022) s 11.4.

would be a radical change, given the long-standing ability of Anglican clergy, authorised persons, Jewish secretaries and Quaker officers to take responsibility for registering marriages with no state official present. The role of Anglican clergy in conducting weddings long predated that of registrars, while Jewish secretaries and Quaker officers have been entrusted with registration since 1837, and registered places of worship have been able to appoint their own authorised persons since 1899.[14] Further, any officiant who was complicit in a forced marriage would be committing a criminal offence as well as risking de-authorisation.

4.27 Following our consultation on the content of the ceremony, we can now clarify the other requirements of the ceremony that an officiant will be under a legal duty to ensure are met. An officiant will be under a duty to ensure that the wedding is attended by the couple and two witnesses, and that both of the couple express their consent to be married in person in the presence of those witnesses and the officiant. They will be under a duty to ensure that consent is expressed before the couple signs the schedule or marriage document. A civil officiant will be under additional duties to ensure that the couple express their consent in the required words of contract or words to similar effect and that the ceremony is recognisably a civil ceremony.[15]

4.28 An officiant will be under a duty to ensure that the schedule or marriage document is signed by the couple and the two witnesses; the officiant will also be required to sign it. Our recommendation that officiants should have a duty to ensure that the schedule or marriage document is signed assumes that an officiant is under a duty to ensure that the couple have a schedule or marriage document. The absence of the relevant documentation would be an indication that the couple had not complied with the required preliminaries. As we explain in Chapter 9, under our scheme officiants will not be precluded from conducting non-legally binding ceremonies but will be under a duty to explain the legal status of the ceremony in such cases (and will be guilty of an offence if they do not).[16]

4.29 The officiant's duty to ensure that the schedule or marriage document is signed also encompasses a duty to ensure that it is valid. There are two elements to this duty: ensuring that the couple named in the schedule are the couple getting married, and ensuring that the schedule or marriage document has not expired.[17] As regards the first, officiants may take such steps as they deem necessary to verify the identity of the parties, in accordance with guidance issued by the General Register Office, including holding a pre-ceremony interview where necessary.

4.30 We do not think that officiants should be required to explain the legal consequences of marriage to couples. It is difficult to see how any meaningful explanation could be included within the wedding ceremony or what use such an explanation would be to the couple at this stage in the process. Given that most officiants will not be qualified lawyers, we do not think that they would be equipped to provide an explanation of the law; we also note that a couple's rights and responsibilities may well change over the

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14 R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (2021) chs 2, 3 and 5.

15 See Recommendation 29 at para 5.78 below and Recommendation 32 at paras 5.183 and 5.184 below.

16 See para 9.176 below.

17 See Recommendation 7 at para 3.174 above.

course of their marriage as the law itself changes. We discuss in Chapter 3 how couples giving notice could be signposted to further sources of information about the rights and responsibilities that marriage brings.

4.31 Nor do we think that officiants should have a legal duty to explain the social, cultural or religious meaning of marriage. As we discuss elsewhere, different groups may legitimately hold different views as to the meaning of marriage and we do not think that it is for the state to prescribe what officiants should say about marriage. It would be difficult to devise a form of words that was both legally accurate (for example, in acknowledging the possibility that a marriage may be conducted between same-sex couples or that it may be terminated by divorce) and accorded with the views held by different religious groups. The suggestion that officiants should be under a duty to uphold the dignity and solemnity of the ceremony is considered further below.

4.32 We note that at present only registration officers are under a duty to report suspicions of sham marriages.[18] We did not consult on whether other officiants should be under the same duty and therefore make no recommendation in respect of it, but it is something that Government may wish to consider.

4.33 As we explain further below, we recommend that any nominated or independent officiant who fails to comply with their legal duties will run the risk of being de-authorised. And as we explain in Chapter 9, any officiant may be guilty of a criminal offence if they dishonestly mislead either of the couple about the effect of the ceremony. We should however emphasise that the failure of an officiant to comply with their duties would not affect the validity of the marriage if the resulting ceremony would otherwise amount to a valid marriage under our scheme. As we explain in Chapter 9, we think that only certain failures should result in either a void marriage or non-qualifying ceremony.

A responsibility to uphold the dignity and significance of marriage

4.34 Under the current law, the only rules about dignity apply exclusively to civil weddings on approved premises, and relate to the premises themselves, rather than to the ceremony or role of any official. In the Consultation Paper we provisionally proposed that all officiants should have a responsibility to uphold the dignity and solemnity of marriage.[19] We made this proposal not because of any concerns that officiants would do anything to detract from the importance of marriage as an institution but because we thought that there was value in emphasising that marriage is a serious matter. We suggested that officiants would need to reflect this responsibility in how they described their role, including in any advertisements, and how they comported themselves. We also suggested that this responsibility would apply to that part of the ceremony in which the couple express their consent to be married.[20]

Consultation

4.35 A very substantial majority of consultees agreed with our proposal. Many emphasised the importance of marriage as an institution, while some specifically endorsed placing

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18 Immigration and Asylum Act 1999, s 24.

19 Consultation Paper, para 5.200, Consultation Question 35.

20 Consultation Paper, paras 5.194 to 5.195.

the proposed duty on the officiant. Humanists UK also noted that a similar rule had worked well in Northern Ireland in the context of approving venues for civil marriages.

4.36 A few consultees disagreed on the basis that couples should be able to choose what happens at their wedding. Others questioned the term "solemnity", with some considering that it had religious connotations or suggesting that the term implied that weddings should not also be joyful occasions.

4.37 However, many consultees also argued that "dignity and solemnity" needed to be clearly defined or said that their support for the proposal was conditional upon how these terms were defined. Many responses echoed a briefing from the Coalition For Marriage encouraging those responding to say that the proposed duty did not go far enough. Several consultees suggested that the responsibility of the officiant should extend to the content of the ceremony or the behaviour of those present. Many responses included comments about how and where couples should be able to get married. Some also raised questions about food and drink, clothing, or decorations, or suggested that there should be nothing that would be offensive to others.

4.38 A number of consultees also commented on the subjective nature of dignity and solemnity. For some, such subjectivity was a reason for having more specific definitions. Others, by contrast, noted the importance of recognising cultural variations: as the Evangelical Alliance put it, "one church's dignity might appear to lack solemnity to someone else". It also commented that the subsequent commitment of the parties was more important than the wedding in preserving the dignity and solemnity of marriage.

4.39 A few consultees questioned how the duty should be enforced. Some envisaged inspections being carried out and penalties being imposed in the event of a breach. Others suggested that officiants should be able to pause or stop a ceremony to protect the dignity and solemnity of the occasion, with one giving the example of a couple who were drunk and not taking the occasion seriously.

Discussion and conclusions

4.40 We have reviewed the language of our proposal in the light of consultees' responses about the connotations of "solemnity". We think that "significance" captures the importance of marriage without implying that a wedding should not be a joyful event, and have phrased our recommendation accordingly.

4.41 When we considered the responsibilities of an officiant in the Consultation Paper, our focus was on the officiant's own conduct and on the part of the ceremony in which the couple express their consent to be married. As noted above, many consultees argued that officiants should have a broader responsibility for the content of the ceremony. We think that this is addressed by our other recommendations. As we recommend in Chapter 6, officiants will be responsible for considering the safety and dignity of the location where the wedding is to take place. Further, although the officiant will not necessarily be the person conducting the ceremony, under our scheme the officiant will be the person responsible for the ceremony. As we recommend in Chapter 5, all weddings should take place according to the form and ceremony agreed between the parties and the officiant.

4.42 We note that officiants will have a responsibility to uphold the dignity and significance of marriage, including in agreeing to a particular form or ceremony, and that those who fail to do so may be risking de-authorisation. We recommend that the responsibility of the officiant should apply to that part of the ceremony at which they are present; it will not extend to other celebrations or ceremonies that may precede or follow it unless they impinge on the ceremony itself. This focus on the part of the ceremony for which the officiant is present is slightly wider than our Consultation Paper. There, we envisaged that the duty would apply only to the part of ceremony in which the couple express consent, even if the officiant was actually present for more of the ceremony. A couple could choose only to invite the officiant to be present for their expression of consent; equally, an officiant could decline to be present for any other celebratory elements. In such cases the temporal extent of the officiant's responsibility would be limited to the time during which they are physically present. But for so long as the officiant is present, the duty applies to them.

4.43 We also think that officiants should, if necessary, be able to pause or stop a ceremony to protect the dignity and significance of the occasion. For example, if a couple were not taking the occasion seriously, an officiant could pause the ceremony to emphasise the dignity and significance of marriage. Further, to take one consultee's example, if either of the couple was so drunk that they were unable to give a valid consent to the marriage, the officiant would be obliged to call proceedings to a halt. More generally, in declining to proceed, an officiant would have to balance any concerns about dignity against the significance of the ceremony to the couple, and the fact that not going ahead might result in embarrassment, delay and cost or even discourage the couple from being legally married. The significance of the wedding to the couple suggests that officiants should exercise caution before pausing or stopping a ceremony.

4.44 However, we do not think that it is our role to make a value judgement as to what would constitute a "dignified" wedding. We agree with the Evangelical Alliance that perceptions of what is dignified differ between different religious traditions. Moreover, given that a substantial majority of weddings are civil weddings, we do not think that there should be a requirement for weddings generally to adhere to particular religious conceptions of dignity (not least because these differ considerably between and within religions). We note that some consultees wanted the officiant's responsibility to extend to the behaviour of other guests at the wedding, including what people wore, and choices about dancing and music. These are matters that are not currently addressed by weddings law, and we have heard of no reasons why they need to be regulated. We think it should be for the General Register Office to provide guidance to officiants on how to exercise their responsibility to uphold the dignity and significance of marriage, rather than defining these terms in legislation.

Guidance for officiants

4.45 At present, the General Register Office produces a Handbook for registration officers as well as guidance for clergy, authorised persons, and Jewish secretaries of synagogues. These separate sources of guidance reflect the different roles performed by these people under the current law. Under our scheme, officiants will have common duties and responsibilities and so it will be practicable to have a common set of guidance aimed at helping officiants to fulfil those duties and responsibilities.

4.46 We therefore provisionally proposed that the General Register Office should issue guidance to all officiants on how weddings should be conducted.[21] In the Consultation Paper we suggested areas where we thought that guidance would be helpful. These areas included guidance on how to ensure that weddings only take place in locations that are safe and dignified, how to detect and deal with forced and sham marriages, and how to complete the schedule.

Consultation

4.47 A substantial majority of consultees agreed with our proposal. Consultees welcomed guidance as helpful in ensuring consistency, maintaining standards and reflecting the importance of the officiant's role. Drawing on her research into Muslim communities, Dr Rajnaara Akhtar (an academic) also suggested that imams would be more likely to engage in a process "where they feel they have clarity about the role and its boundaries". Humanists UK also suggested that guidance should be issued to nominating bodies both to guide them in their role in nominating officiants and as a means of disseminating guidance to their officiants.

4.48 However, some consultees were concerned that guidance would interfere with religious freedom or favoured guidance being issued by religious organisations. A few also opposed guidance that would limit independent celebrants' ability to offer personalised ceremonies. Some consultees argued that guidance should be limited to the legal aspects of the ceremony or that it should not be mandatory to follow the guidance. Other consultees, by contrast, favoured having rules rather than guidance.

4.49 A few consultees specifically commented that the General Register Office would be the correct organisation to issue the proposed guidance. Other consultees suggested that the General Register Office should consult with faith groups in devising guidance.

Discussion and conclusions

4.50 Guidance is not an alternative to rules; rather, it explains what the rules are and how to comply with them. Equally, guidance should not impose additional rules and requirements without statutory authority. In the light of consultees' responses, we should emphasise that guidance will be confined to an officiant's legal duties and responsibilities. It will not impinge on the content of the ceremony or prevent personalisation.

4.51 We acknowledge that there will be many individuals with extensive experience of conducting weddings under the current law who might not see guidance as necessary. But the role of an officiant is a new one, and nobody will have experience of officiating under the new legal scheme. In our view the guidance should apply to all officiants.

4.52 As noted above, in the Consultation Paper we gave some specific examples of how guidance might assist officiants in the exercise of their duties and responsibilities. Our suggestion that there should be guidance on how to deal with forced marriages was echoed by consultees such as the Law Society and Welsh Women's Aid. Ensuring that each of the couple is freely consenting to the marriage will be one of the core

[21] Consultation Paper, para 5.212, Consultation Question 36.

legal duties of an officiant and so it will be essential for officiants to have guidance as to what to do if concerns arise about capacity or consent.[22]

4.53 Most consultees shared our view that the General Register Office is the appropriate body to issue guidance on an officiant's legal duties and responsibilities. Those consultees who suggested that the General Register Office should consult with other organisations may have assumed from the wording of the consultation question – which referred to "how weddings should be conducted" – that the guidance would also instruct officiants about the ceremonial aspects of weddings. That was not what we had intended[23] and we have rephrased our recommendation to make it clear that the guidance will be about officiants' legal duties and responsibilities. Organisations may of course issue their own guidance to their officiants on how or where the ceremony should be conducted. The General Register Office may also wish to give guidance to nominating bodies on how to comply with their responsibilities under our scheme.

4.54 We do however note the evidence that some individuals have been put off applying to be authorised by the current guidance.[24] We would therefore encourage the General Register Office to seek feedback from different organisations as to the accessibility of its guidance.

An open-ended authorisation

4.55 In the Consultation Paper we explained why we did not think it necessary for an officiant's authorisation to be time limited[25] and provisionally proposed that there should be no time limit on the authorisation of officiants.[26] Our focus here was on nominated and independent officiants; we specifically noted that our discussion of monitoring and de-authorisation did not apply to registration officers or Anglican clergy. Nonetheless, we think it is helpful to consider the issue of time limits here to emphasise the commitment involved in taking on the duties and responsibilities of an officiant. Our scheme does not envisage individuals becoming authorised to officiate at the wedding of a friend or family member on a one-off basis.

Consultation

4.56 A significant majority of consultees supported the proposal, with many commenting that time limits were unnecessary or would be impractical. However, many consultees noted that checks would need to be in place to ensure that officiants were still able to perform the duties required of them, or made their support conditional upon our proposals for the de-authorisation of officiants. A few consultees suggested that officiants should only remain authorised if they were still active in their role.

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22 For the current guidance for registration officers, see Foreign, Commonwealth and Development Office and Home Office, *Guidance: Multi-agency statutory guidance for dealing with forced marriage and Multi-agency practice guidelines: Handling cases of forced marriage* (13 June 2022) ch 11.

23 See Consultation Paper, paras 5.198 to 5.199 for discussion of what we envisaged guidance would cover.

24 R Probert, RC Akhtar, S Blake, V Vora and T Barton, "The Importance of Being Authorised: The Genesis, Limitations and Legacy of the Marriage Act 1898" (2021) 10(3) *Oxford Journal of Law and Religion* 394.

25 Consultation Paper, paras 5.204 to 5.205.

26 Consultation Paper, para 5.215, Consultation Question 40.

4.57 Those who favoured time limits raised concerns about officiants' ability to perform their functions declining over time, the need to maintain standards, and officiants being unaware of changes to the law. Local authorities felt that having a time limit would help to keep any official lists of officiants up to date, while Humanists UK suggested that there should "at the very least" be a process whereby the General Register Office "periodically checks with religion or belief organisations that they wish to maintain the nominations of the officiants they have nominated".

4.58 Those consultees who thought that officiants would need to re-apply, retrain or be reviewed after a specified time suggested periods ranging from one year to 10 years. Some consultees suggested different approaches for different officiants, with time limits being favoured for independent officiants, non-religious officiants, or officiants nominated by smaller groups. A few consultees suggested that there should be an upper age limit, with suggested ages ranging from 65 to 80, or that reaching a particular age should be a trigger for having authorisation reviewed.

Discussion and conclusions

4.59 Consultees' responses indicated that there was a broad consensus that time limits were not necessary in themselves but that there would have to be some monitoring to ensure that officiants remain able to discharge their duties and responsibilities. We acknowledge the concerns that were expressed about the officiants' abilities declining over time. However, in our view time limits would not only be burdensome but also might potentially fail to identify problems soon enough. Similarly, imposing an age limit would require a clear justification, both as a matter of principle and in terms of discrimination law.

4.60 We note that there are no time limits on the authorisation of authorised persons under the current law (nor, indeed, on Anglican clergy, although they did not fall within the scope of our provisional proposal). No consultees identified the absence of time limits on their authorisation as problematic.

4.61 In our view the absence of time limits serves to emphasise that becoming an officiant is a serious matter. For many belief officiants, officiating at weddings will be part of their broader vocation to serve their community of fellow-believers and will be a life-long role.

4.62 We also think that other elements of our scheme relating to training, monitoring and de-authorisation will ensure that those authorised remain able to discharge their legal duties and responsibilities. As we explain below, nominating organisations will be responsible for monitoring their officiants and, where appropriate, requesting their de-authorisation. It will be their responsibility to de-authorise individuals who no longer understand what is required of them and to inform the General Register Office when a person ceases to be nominated by them to officiate. And if independent officiants are able to officiate at weddings, they will be directly monitored by the General Register Office and subject to an express requirement to undertake ongoing training.

Recommendations

Recommendation 16.

4.63 We recommend that all weddings should be attended in person by an officiant who should have a legal duty to:

(1) ensure that the parties freely express consent to marry each other;

(2) ensure that the other requirements of the ceremony are met; and

(3) ensure that the schedule or marriage document is signed by each of the couple, two people who have witnessed the parties' expression of consent, and themselves.

4.64 We recommend that all officiants should have a responsibility to uphold the dignity and significance of marriage in their role as officiants and in officiating at weddings.

4.65 We recommend that the General Register Office should issue guidance to all officiants on how to fulfil their legal duties and responsibilities.

Recommendation 17.

4.66 We recommend that there should be no time limit on the authorisation of officiants.

REGISTRATION OFFICERS

4.67 In the Consultation Paper we explained that local authorities would continue to be responsible for appointing registration officers under our scheme.[27] Local authorities would also continue to be responsible for training registration officers and maintaining oversight of their role (and, where necessary, removing their authorisation to officiate at weddings). In these respects, our scheme envisages no change from the current law.[28] This section focuses on two aspects of their role that we are, however, recommending should change: first, that as civil officiants their role should be limited to officiating at civil weddings and, second, that only one registration officer should need to officiate at a civil wedding.

Role to be limited to officiating at civil weddings

4.68 Under the current law, a wedding in a registered place of worship may be attended by either by an authorised person appointed for that place of worship or by a civil registrar. No equivalent provision exists for a civil registrar to attend Anglican, Jewish or Quaker weddings. This special provision for weddings in registered places of

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27 Consultation Paper, paras 5.68.

28 See Registration Services Act 1953, ss 5, 6, and 8.

worship means that such weddings are often (wrongly) described as "civil" or are seen by the couple as involving a separate civil wedding.[29]

4.69 In the Consultation Paper we noted the confusion that arises as to the nature of weddings in registered places of worship and how it would be important to have a means of distinguishing between religious and civil weddings once the nature of the wedding was no longer determined by its location. We also noted that it would be easier for religious groups to nominate their own officiants, thereby removing the need for a registration officer to be present. We therefore provisionally proposed that registration officers should only be able to officiate at civil weddings.[30]

Consultation

4.70 Consultees in favour of our proposal suggested that limiting registration officers to civil weddings would avoid conflicts of belief or that it was more appropriate for religious leaders to officiate at religious weddings. Other consultees agreed that our proposal would clarify the distinction between civil and religious weddings.

4.71 However, while slightly more consultees agreed than disagreed with our proposal, there was not an overall majority in favour of reform, with a number of consultees expressing other views. Many consultees were concerned that our proposal would prevent couples from getting married in their place of worship, suggesting that many religious groups might not wish or be able to nominate officiants. They cited reasons such as groups being unfamiliar with the law, the administrative burden of nominating an officiant, the rarity of weddings, small and aging congregations, and a lack of resources. Some consultees further noted that the group might not have a minister or that the minister might not wish to be an officiant. One religious group did however note that the proposal would not be a problem if weddings in one church could be officiated at by an officiant from another church.

4.72 Some consultees thought that registration officers should be present at all weddings or that it should be possible for them to officiate at any wedding.

Discussion and conclusions

4.73 Most consultees who disagreed with our proposal did so out of concerns about its implications rather than because they wanted registration officers to be able to officiate at weddings other than civil ones. For many consultees, the concern was that our proposal would reduce the options for legal weddings in places of worship. We therefore wish to reassure consultees that we do not think that this would be its effect.

4.74 First, we note that registration officers in Scotland only conduct civil weddings, and we have not heard that this limitation has created any problems for religious groups there. A key reason why that limitation is not an issue in Scotland is because of the more

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[29] See R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final Report* (2022) chs 3 and 5. A registration officer is currently also required to attend, and is responsible for ensuring registration of, weddings that take place according to religious rites (other than Anglican, Jewish or Quaker ones) that involve people who are terminally ill, housebound or detained: see Ch 10 below.

[30] Consultation Paper, para 5.66, Consultation Question 20.

flexible provisions governing the appointment of religious celebrants there; our scheme seeks to create a similarly flexible scheme for England and Wales.

4.75 One of the reasons why registration officers attend weddings in registered places of worship under the current law is because the constraints on the role of an authorised person do not fit with the way in which many religious groups operate across registration districts.[31] However, under the scheme we recommend, officiants will be nominated by religious organisations and will not be limited to officiating at weddings in their district of residence. In our view, this will enable more religious organisations to nominate their own officiants and ensure more flexibility in how such officiants operate.

4.76 For example, there will be some religious organisations that have a large number of members that are dispersed across England and Wales. Under our scheme, such an organisation would be able to appoint officiants to officiate at weddings in different parts of England and Wales rather than, as at present, authorised persons being authorised only for a single registration district.

4.77 Further, under our scheme nominated officiants will not be limited to officiating at weddings in their own religious tradition or denomination. A religious organisation that does not have its own officiant may therefore have an officiant from another organisation, if that is acceptable to it and to the organisation that nominated the officiant. As we have emphasised above, the officiant need not take an active role in conducting the service, and we are aware of the co-operation that already exists between many smaller religious groups.[32] In this respect our scheme retains one of the more flexible elements of the current law.[33]

4.78 Following our consultation, we heard from representatives of the Churches' Legislation Advisory Service and the Free Churches Group, both of which represent a range of different denominations, to discuss how our scheme would work. They confirmed that it would be helpful for small churches to be able to work together either to nominate officiants[34] or to share officiants.

4.79 The only types of religious groups that might still want a registration officer to attend their weddings are very small independent churches that either do not meet the criteria to nominate their own officiants or do not want to nominate their own officiants, are not part of a larger organisation, and do not wish to have an officiant from another denomination.

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31 R Probert, R Akhtar, S Blake, V Vora and T Barton, "The Importance of Being Authorised: The Genesis, Limitations and Legacy of the Marriage Act 1898" (2021) 10(3) *Oxford Journal of Law and Religion* 394.

32 R Probert, R Akhtar and S Blake, When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission (2021) paras 3.6 and 3.10.

33 Under the current law, an authorised person appointed for one registered place of worship can attend and be responsible for ensuring the registration of weddings in another registered place of worship, regardless of denomination.

34 Under our scheme such collaboration would be possible if those churches formed an organisation with a single governing authority.

4.80 For the sake of such groups, we should therefore clarify that we are not proposing that registration officers should not be able to officiate at weddings in places of worship. As we explain in Chapter 6, there will be no legal limitations on registration officers' attending religious (or non-religious belief) buildings for any type of wedding, though such use will of course depend on the permission of the religious organisation controlling that building. But under our scheme the nature of the wedding will depend on the officiant not the location. A wedding officiated by a registration officer in a place of worship will therefore be a civil wedding. Although there will be some specific rules applying to civil weddings, they will not mean that such a ceremony cannot include religious content. As we recommend in Chapter 5, a civil wedding will be able to include some religious content as long as the ceremony remains identifiable as a civil ceremony rather than a religious service.[35] And if the couple so wished and the religious organisation controlling the building allowed, a full religious service could either precede or follow the civil wedding.

4.81 Nonetheless, it needs to be clear what type of wedding it is. In addition to the different rules about the content of ceremonies between civil and belief weddings, our Terms of Reference require us to maintain existing protections for religious groups in respect of same-sex marriage.[36] Those protections cannot be maintained without defining which weddings will be classed as religious weddings. Under the scheme we recommend, a religious wedding would be defined as one at which either a Clerk in Holy Orders or an officiant nominated by a religious group officiates. That definition would not work if registration officers could also officiate at religious weddings.

4.82 We acknowledge that there will therefore be a small number of independent churches who will continue to rely on civil registration officers to officiate at their weddings and for whom our scheme will not work as well as the existing law. We have considered their position very carefully. We have concluded, however, that the benefits of our scheme for the majority of religious organisations outweigh the impact that they will have on these independent churches, particularly in light of the courses of action that are available to those churches.

4.83 Although the above reasoning does not apply to non-religious belief weddings, we think that parity of treatment points towards registration officers not being able to officiate at such weddings either (assuming that non-religious belief organisations are able to nominate their own officiants). We note that Humanists UK supported the proposal to restrict registration officers to civil weddings.

4.84 In conclusion, in our view there are compelling reasons for clarifying that registration officers should only be able to officiate at civil weddings. There are also sufficient protections in place to ensure that legal weddings can continue to be celebrated in places of worship, whether as religious weddings officiated by a nominated officiant or as civil weddings officiated by a registration officer.

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35 See Recommendation 32 at paras 5.183 and 5.184 below.

36 The full Terms of Reference for the project are included in Appendix 1.

Removing the necessity for two registration officers to attend every civil wedding

4.85 The law currently requires all civil weddings to be attended by both a superintendent registrar and a registrar.[37] This requirement applies whether the wedding is a statutory ceremony in a register office with two witnesses or a large wedding on approved premises with hundreds of guests. It affects both the cost of civil weddings and the capacity of local authorities to provide them.

4.86 In the Consultation Paper we noted how the move to a schedule system would mean that much of the paperwork would be completed in advance of the ceremony rather than on the day. We also noted that only one registration officer is required to attend civil weddings in Scotland, Northern Ireland, and Ireland. We therefore provisionally proposed that only one registration officer should need to officiate at a civil wedding.[38]

Consultation

4.87 A very substantial majority of consultees supported our proposal. Many noted that only one officiant is required for religious weddings or civil partnership registrations. Some local authorities and registration officers agreed that the new schedule system removed the need for a second registration officer to attend and that having a single officiant would reduce costs and increase capacity.

4.88 Some consultees disagreed, arguing that a second registration officer should always be required. Some saw the role of the second officer as being to check the conduct of the other registration officer and guard against misconduct or mistakes. Others saw their role as being to support the other registration officer, for example in dealing with emergencies, or calling a halt to proceedings if they had concerns about forced marriages.

4.89 Others thought that the need for a second registration officer to attend would depend on the circumstances. Local authorities identified various situations as calling for a second registration officer, including unusual venues, remote venues, ceremonies in the evening, big weddings, and situations where the parties had given notice to a different local authority.

Discussion and conclusions

4.90 Those consultees who argued that a second person should be present did not explain why such a requirement was necessary for registration officers as compared to Anglican clergy or authorised persons operating alone. No evidence was given to show why a second person needed to be present as a check.

4.91 Removing the requirement for a superintendent registrar to attend would not preclude a second person accompanying the registration officer if that was deemed necessary to deal with the logistics of larger weddings, for training purposes, or for the safety of the registration officer.[39] In our view, the decision whether a second person is needed

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37 Marriage Act 1949, ss 45(1) and 46B(1)(b).

38 Consultation Paper, para 5.67, Consultation Question 21.

39 See Moray Council, *Births, Marriages, Deaths: Fees*, http://www.moray.gov.uk/moray_standard/page_39803.html (last visited 1 July 2022) for an example of a Scottish local authority that advertises that they require two registration officers for "isolated" locations.

in any given case is an operational matter, not a matter for weddings law. If, for example, the location of a wedding required that an additional person accompany the registration officer as a matter of the local authority's obligations to its employees under health and safety law, the local authority could require that two people attend the wedding. We note that since the second person is not there to discharge legal obligations related to weddings, they need not be a registration officer, which should allow for greater flexibility in terms of staffing. As currently, local authorities will be able to offer a range of packages to couples.[40]

4.92 If a registration officer officiating alone has concerns on the day – for example about forced marriages – it should be possible for them to consult a colleague by telephone, and for their concerns to be referred to the casework team at the General Register Office.[41] We think that such cases will be rare, given that issues of capacity and consent should have been addressed at the preliminaries stage.

4.93 In summary, we see no reason for the law to require two registration officers to be present at all civil weddings, or even at specific types of civil weddings. Requiring only one officiant will bring cost savings and increase capacity.

Recommendation

Recommendation 18.

4.94 We recommend that:

(1) registration officers should be able to officiate only at civil weddings; and

(2) as a matter of weddings law, only one registration officer should be required to officiate at a civil wedding.

ANGLICAN CLERGY

The automatic authorisation of Anglican clergy

4.95 Under the current law, Anglican clergy – referred to in the legislation as Clerks in Holy Orders – are automatically authorised to conduct weddings in England and Wales. As we explained in the Consultation Paper, Anglican clergy have generally accepted legal duties to conduct the weddings of those resident in their parish and other couples who qualify to be married in the parish when called upon to do so.[42] This duty applies to clergy within the disestablished Church in Wales as well as to clergy within the

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40 If the attendance of two registration officers was purely an operational matter, for example, to allow one registration officer to manage guests or provide any other services which are not the responsibility of an officiant, sending two registration officers would be a discretionary service that would require the couple to agree to it being provided, under the general powers of local authorities to offer (and charge for) discretionary services. It would not be a requirement under weddings law, and so not a mandatory service. See Ch 12 for more detail.

41 The General Register Office already advises registration officers to consult them in certain situations (for example if the person's appearance does not match their photo).

42 Consultation Paper, para 5.77. For convenience we refer to these as "any eligible couple".

established Church of England, and it is outside our Terms of Reference to reconsider it. No such duty applies to other religious leaders.

4.96 Given this continuing duty, we took the view that Anglican clergy should automatically qualify as officiants. We therefore provisionally proposed that Clerks in Holy Orders within the Church of England and the Church in Wales should be recognised as officiants by virtue of their office.[43]

Consultation

4.97 A substantial majority of consultees agreed with the proposal. Consultees noted the special status of the Anglican churches and their obligations to conduct weddings for any eligible couple. The Church of England specifically welcomed the retention of the status quo, noting that

> all Anglican clergy, by virtue of their orders and regardless of whether or not they are incumbents, parochial clergy, chaplains, retired or in secular employment, are currently authorised to officiate at weddings.

4.98 Those who disagreed mainly argued that the law should not give the Anglican churches special treatment and that Anglican clergy should be subject to the same training and qualifications as other types of officiant. A few consultees raised questions about the nature and extent of the clergy's duty to conduct weddings. Among them, Dr Augur Pearce (an academic) noted that doubts have been expressed in the legal literature about that duty[44] and suggested that it should be "stated clearly in statute for the avoidance of doubt".

4.99 Some consultees questioned whether all clergy should be able to officiate at weddings or only those with "permission to officiate". The Church in Wales noted that its Constitution defined a "Clerk in Holy Orders" as "a person in deacons', priests' or bishops' orders holding an ecclesiastical office in the Church in Wales", "an ecclesiastical licence granted by a bishop", or "permission to officiate granted by a bishop". The Faculty Office of the Archbishop of Canterbury similarly suggested that

> recognition should be limited to those holding a current office or licence or permission to officiate issued by the bishop of the diocese in which they normally serve.

A few consultees also suggested that all Clerks in Holy Orders should be listed on a database accessible to registration officers for completion of schedules.

4.100 Many consultees also noted the importance of clergy being trained in the role of officiant. Some assumed that relevant training would be provided as part of the process of ordination. Others suggested that the Registrar General should determine what training is necessary or that local registration officers should provide any necessary training.

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43 Consultation Paper, para 5.144, Consultation Question 22.

44 For discussion of the debate see M Hill, *Ecclesiastical Law* (4th ed 2018) para 5.29.

Discussion and conclusions

4.101 We acknowledge that it would be simpler to have a single set of rules that applied in the same way to all religious groups. However, the generally accepted duty of Anglican clergy to conduct the wedding of any eligible couple does provide a justification for special treatment. As noted above, it is outside our Terms of Reference to consider this duty. Recognising Anglican clergy as officiants by virtue of their office ensures that they have the power to fulfil it.

4.102 Reflecting on consultees' responses, particularly those from the Church in Wales and the Faculty Office of the Archbishop of Canterbury, we have given further thought to whether some additional definition or qualification is needed. We think that it would be helpful to make it clear that being a Clerk in Holy Orders does not confer a free-standing right to conduct weddings wherever and however that person might wish. At the same time, we think it should be left to the Church of England and the Church in Wales to specify their own internal requirements as to who has permission to officiate. Stipulating that Anglican officiants must be authorised to exercise ordained ministry by the Church of England or Church in Wales would achieve both ends. It would be up to the churches whether such authorisation followed automatically as a result of ordination or required some further permission to officiate.

4.103 Given our recommendation that clergy should be identified on the marriage document or schedule by reference to their parish rather than individually,[45] there is no legal need to have a specific list of clergy authorised to solemnize weddings. Such a list would nonetheless be helpful for couples. We also note that the Church of England has recently indicated that it will have a publicly available list of its active clergy who have a licence or permission to officiate.[46]

4.104 As Anglican clergy are to be authorised by the Church of England or the Church in Wales, then the provision of training should also be a matter for the Church of England and the Church in Wales. So too should the monitoring of clergy and, where necessary, their de-authorisation.

Recommendation 19.

4.105 We recommend that Clerks in Holy Orders authorised to exercise ordained ministry within the Church of England and Church in Wales should automatically be recognised as officiants.

NOMINATED OFFICIANTS

4.106 In regulating non-Anglican religious weddings, the current law largely adopts a buildings-based model: every registered place of worship may appoint its own

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45 See Recommendation 8 at para 3.201, and para 3.233 above.

46 The Church of England, *National Register of Clergy to be created* (14 January 2021), https://www.churchofengland.org/safeguarding/safeguarding-news-and-releases/national-register-clergy (last visited 1 July 2022).

authorised person to attend weddings there in place of a registration officer.[47] However, in the case of the Religious Society of Friends and certain prescribed Jewish organisations the law adopts an organisation-based model.

4.107 Both of these models have advantages and disadvantages. The buildings-based model does not work well for those religious groups that do not worship in buildings, do not regard their place of worship as the appropriate place to marry, or do not have access to a registered place of worship. The organisation-based model depends on there being a body that speaks for a religious organisation; over time the list of prescribed Jewish organisations has been extended from the Board of Deputies of British Jews (representing Orthodox Judaism) to the West London Synagogue (representing Reformed Judaism) and the St John's Wood Synagogue (representing Liberal Judaism). In the case of the latter around half a century elapsed between the emergence of Liberal Judaism and the amendment of the relevant legislation to recognise them.[48]

4.108 The scheme that we recommend builds on the current law by taking elements of both these options and fusing them into a new set of rules that would apply equally to all non-Anglican religious officiants. In essence, we recommend that all religious organisations will be able to nominate officiants in the same way that Jewish and Quaker organisations have been able to do since 1836. However, rather than specific organisations being prescribed in legislation, an organisation will have to satisfy certain criteria. These criteria are modelled in part on those that religious groups have previously had to satisfy in order for their place of worship to be registered for weddings, but without the need for them to have a building.

4.109 But although our scheme continues to entrust religious groups with important responsibilities, it also provides a clear framework of rules about training, monitoring and de-authorisation that is absent from the current law. In this section we explain which organisations would be able to nominate officiants; who within the organisation would be responsible for making the nomination; how the nomination would be made; and what criteria those nominated would have to fulfil. We also explain how nominated officiants would be prevented from subordinating their religious beliefs t0 commercial interests, and how they would be monitored and de-authorised. We emphasise that these recommendations are intended to work as a whole, and so should be read together rather than independently.

4.110 We also think that the scheme we recommend for religious organisations to nominate officiants is capable of being extended to non-religious belief organisations, should Government decide to enable them to conduct weddings.

4.111 We note that a few consultees suggested that there should be an option for religious and non-religious belief officiants to operate independently of any organisation. We think that such an option would be a far more radical departure from current practice. Although our Terms of Reference requires that our scheme is able to extend to non-religious belief organisations, beyond that we have not been asked to expand the

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47 Marriage Act 1949, ss 43 and 43B. The only precondition is that the building must have been registered for one year.

48 R Probert, *Tying the Knot: The Formation of Marriage, 1836-2020* (2021) chs 6 and 8.

groups who can conduct weddings.[49] Our recommendations seek to ensure that religious groups do not face unnecessary or unjustifiable barriers to conducting weddings, such as the requirement for a place of worship, but does not otherwise change the religious groups able to conduct weddings.[50] Nor do we think that it is necessary to enable officiants to operate independently to enable couples to be married in accordance with their wishes and beliefs, or that individuals have a right to manifest their beliefs by being authorised to conduct weddings howsoever they wish.

Which organisations would be able to nominate officiants?

4.112 In considering which organisations should be able to nominate officiants, three issues fall to be considered: what kinds of organisations should be able to nominate officiants; what criteria those organisations should be required to fulfil; and whether any types of organisations should be specifically precluded from nominating officiants. We have grouped these issues together to emphasise how they operate cumulatively to determine which organisations will be able to nominate officiants.

4.113 In relation to the first issue, our Terms of Reference presume that religious groups will be able to solemnize marriages and that for these purposes "religion" has the meaning accorded to it by the Supreme Court in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*.[51] In that case, which confirmed that Scientology would be recognised as a religion for the purpose of its places of worship being certified as such and so eligible to be registered for weddings, Lord Toulson described a religion as:

> A spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system… . Such a belief system may or may not involve belief in a supreme being, but it does involve a belief that there is more to be understood about mankind's nature and relationship to the universe than can be gained from the senses or from science.[52]

4.114 Our Terms of Reference also require us to consider how weddings conducted by Humanist and other non-religious belief organisations could be incorporated into a new scheme. In the Consultation Paper we reviewed various definitions of non-religious belief organisations.[53] We favoured opting for a positive definition that minimised the differences between religious and non-religious belief organisations for these purposes. We therefore provisionally proposed that for the purposes of our scheme such an organisation should be defined as one

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49 We have also been asked to make recommendations that could make provision for independent celebrants, which we discuss at para 4.263 and following below.

50 See para 4.113 below.

51 [2013] UKSC 77, [2014] AC 160.

52 *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 160 at [57].

53 Consultation Paper, paras 5.122 to 5.127.

that professes a secular belief system that claims to explain humanity's nature and relationship to the universe, and to teach its adherents how they are to live their lives in conformity with the understanding associated with the belief system.[54]

We also discussed how the Irish legislation defines a "secular body" in broad terms but specifically excludes political parties, bodies which promote political parties, candidate or causes; sporting organisations; and trade unions; representative bodies of employers; and chambers of commerce.[55] We therefore asked an open question as to whether there should be a list of types of organisations that should not amount to a non-religious belief organisation for the purpose of officiating at weddings, and, if so, what types of organisations should be listed.[56]

4.115 In relation to the question of what criteria organisations – whether religious or (if enabled by Government) non-religious belief – should have to fulfil in order to nominate officiants, we provisionally proposed that an organisation should have to have:

(1) at least 20 members who meet regularly for worship or in furtherance of their beliefs, and

(2) a wedding service or a sincerely held belief about marriage.[57]

The proposed minimum of 20 was based on the current law, this being the number of householders required to certify that a particular building is their usual place of worship in order for it to be registered for weddings.[58] The requirement to have either a wedding service or a belief about marriage was intended to help to limit the power to nominate officiants to those groups that would genuinely intend to officiate at weddings.[59]

4.116 In the Consultation Paper we noted that holding particular beliefs (whether religious or non-religious) should not justify actions that are illegal or contrary to public policy.[60] Drawing on the Irish legislation, we explained that we were interested in consultees' views as to whether organisations should be prevented from nominating officiants if they promote purposes that are: unlawful; contrary to public morality; contrary to public policy; in support of terrorism or terrorist activities; or for the benefit of an organisation membership of which is unlawful. We therefore asked an open question as to whether the law should expressly exclude organisations that promoted purposes that were unlawful or contrary to public policy or morality from nominating officiants.[61]

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54 Consultation Paper, para 5.146, Consultation Question 24.

55 It also excludes bodies pursuing purposes that are illegal or contrary to public policy: on this see Consultation Question 26.

56 Consultation Paper, para 5.147, Consultation Question 24.

57 Consultation Paper, para 5.148, Consultation Question 25.

58 Marriage Act 1949, ss 41 and 43A.

59 Consultation Paper, para 5.99.

60 Consultation Paper, paras 5.100 to 5.102.

61 Consultation Paper, para 5.149, Consultation Question 26.

Consultation

Non-religious belief organisations

4.117 Some consultees endorsed our definition of a non-religious belief organisation on the basis that it aligned with the definition of a religion. However, while more consultees agreed than disagreed with our proposal, there was not an overall majority in support, as a number of consultees expressed other views.

4.118 In particular, consultees representing Humanist groups largely disagreed with the proposal. Humanists UK (supported by Humanist Society Scotland) thought the definition was too broad and that the term "secular" was ambiguous. It advocated a definition that referred to beliefs protected under article 9 of the European Convention on Human Rights and made it clear that advancing such beliefs was the "sole or principal purpose" of the organisation. It also commended the approach taken by the Welsh Government in its Curriculum and Assessment (Wales) Bill. Similar points were made by Humanist celebrants. Humanist and Secularist Liberal Democrats further noted that Humanists UK "does not tell Humanists how to live their lives" and proposed that we adopt the definition in the Marriage (Same Sex Couples) Act 2013.

4.119 Other consultees took the view that the law should not allow non-religious belief organisations to conduct weddings or at least not treat them as equivalent to religious organisations. Some consultees also expressed concern that the proposed definition could permit groups to conduct weddings whose beliefs about marriage are different from those of most religious groups or the law.

4.120 Conversely, some consultees saw the definition as being too narrow. A number thought that it would only apply to Humanism and so would exclude other non-religious belief groups. Others questioned how interfaith weddings, or Pagan or spiritual beliefs would be accommodated within our scheme, or why it was necessary to distinguish between religious and non-religious beliefs. Several also rejected the idea that a nominating organisation should be required to demonstrate any beliefs.

4.121 Fewer consultees commented on whether the definition should also specify which types of organisation should not amount to a non-religious belief organisation for the purpose of officiating at weddings. Among those consultees who endorsed having a list of exclusions, some endorsed some or all of the exclusions set out in the Irish legislation. Others suggested excluding hobby or cultural organisations, fan clubs, or commercial entities, or organisations whose beliefs are extreme, subversive, or "fictional". Some consultees named specific groups that they thought should be excluded, although the examples given were religious organisations. Consultees also supported excluding discriminatory, intolerant, racist or sexist organisations.

4.122 Other consultees disagreed with having a list on the basis that it would be preferable to focus on the primary definition. Among them, Humanists UK took the view that a sufficiently restrictive definition of non-religious belief organisations would include only those groups whose beliefs: (1) had a sufficient level of "cogency, seriousness, cohesion and importance"; (2) are "worthy of respect in a democratic society, compatible with human dignity"; and (3) "do not conflict with the fundamental rights of others". It also expressed disagreement with the Irish approach of excluding groups that promote political causes, on the basis that it would be discriminatory to restrict

Humanist groups from promoting political causes when religious groups were able to do so.

Criteria for nominating organisations

4.123 While more consultees agreed than disagreed with our proposal about the criteria that a nominating organisation would have to fulfil, there was not an overall majority in support of it. In addition, some consultees differentiated between religious organisations and non-religious belief organisations in their responses.

4.124 Some consultees, including most religious organisations that responded, supported the requirement for 20 members as reflecting the current law and/or because it would enable smaller religious groups to conduct weddings. Among those who thought 20 was too low a minimum, concerns centred on the types of groups (often referred to as "cults") that might qualify or the risk of a single family or other closely connected group purporting to be a religious organisation. A couple of consultees argued that small groups would lack the ability to monitor their officiants and respond to complaints.

4.125 Some consultees suggested alternative minima, ranging from 50 to one million worldwide. Humanists UK advocated having a "local" and a "national" route to authorisation. It envisaged the local route as essentially replicating the current law for places of worship (with officiants being limited to officiating at weddings in a place of worship) and the national route as involving more demanding criteria:

> Such higher requirements should most importantly include to be principally engaged in activity other than the provision of legally recognised marriages and/or the training and accreditation of celebrants for conducting such marriages. Other desirable requirements, some or all of which should also be included, would be to be a registered religion or belief charity for a minimum period of time; to have been in continuous existence for a minimum period of time; to have been performing weddings for a set period of time; to have in place procedures for the selection, initial and continuing training, accreditation, discipline, and de-accreditation of fit and proper persons to conduct solemnisation of marriage; to have a higher minimum number of members – we suggest 2,000; to have regular meetings of its members; and to have a building.

4.126 Conversely, some consultees thought that the requirement to have 20 members would exclude some religious organisations from being able to conduct marriages. The Churches' Legislation Advisory Service noted that there were "small independent, non-denominational congregations, mostly in rural areas, that are not affiliated to a larger religious community and will not have 20 members". Other consultees referred to Pagan groups that meet in small numbers. One consultee suggested a minimum of 10 members, while others thought that there should be no minimum.

4.127 Other consultees questioned whether "members" would had to have a formal legal relationship with the organisation, have paid a fee, or demonstrated a minimum level of commitment. A couple of consultees also asked what would happen if the organisation's membership fell below 20.

4.128 A few consultees thought that the requirement for members to meet could be problematic for organisations that did not gather communally or that met secretly

because of prejudice against them. Others queried the term “worship” or thought that organisations should be able to meet in furtherance of their “aims” as well as beliefs. Some consultees queried how regular or frequent meetings would have to be, whether meetings could take place remotely, and whether an organisation with 20 members that met separately would satisfy this criterion.

4.129 Many consultees were critical of the criterion that a nominating organisation must have either a wedding service or a sincerely held belief about marriage. The Evangelical Alliance was concerned that such a test would privilege groups with “a fixed wedding service or liturgy”. However, many other consultees were concerned that the “belief about marriage” criterion would broaden the range of groups that would be able to nominate officiants, with some viewing it as an independent rather than an additional criterion. Both Humanists UK and the Wedding Celebrancy Commission emphasised that nominating organisations should have beliefs that are about more than just marriage and should be involved in activities other than conducting weddings. Various consultees also queried whether organisations whose beliefs about marriage were incompatible with the law’s concept of marriage would be able to nominate officiants.

4.130 A number of consultees suggested alternative criteria that they thought an organisation should have to meet before it could nominate officiants. Some suggested that an organisation should have been established for a minimum period, with proposed minima ranging from two to 25 years. A few consultees said that nominating organisations should be registered charities. Humanists UK further suggested that the organisation must have been performing non-legally binding wedding ceremonies for a minimum period.

The exclusion of organisations that promote certain purposes

4.131 Consultees were divided as to whether organisations that promoted purposes that are unlawful or contrary to public policy or morality should be excluded from nominating officiants. Although more thought that there should be an exclusion than thought there should not be an exclusion, there was not an overall majority in favour, with a number of consultees giving other answers.

4.132 Most consultees thought that organisations that promoted purposes or activities that were illegal should be excluded. However, some consultees suggested that only criminal conduct in relation to marriages – forced and sham marriages or under age marriages – should result in a group’s exclusion. Many also pointed to religious groups acting in defiance of the law in relation to matters on which there is a diversity of opinion across society. The Religious Society of Friends gave the example of churches defying the law by holding services during lockdown. Christian Concern raised concerns that biblical readings might be held to constitute hate speech or that a prayer might be interpreted as conversion therapy. Others noted that organisations might be involved in campaigning to change the law.

4.133 Many consultees also raised concerns about constraining freedom of belief or expression, noting the risk of unpopular views being held to be “contrary to public policy or morality”. In particular, many religious groups feared that opposition to same-sex marriage would be held to be contrary to public policy. Other consultees more generally commented that public policy and morality were liable to change over time.

One legal professional asked about the application of the policy to imams who had conducted weddings in overseas jurisdictions where polygamous marriages and/or marriages involving children under 16 were permitted.

4.134 A small minority of consultees thought that the exclusions should be expressed more broadly, favouring the exclusion of organisations involved in promoting any discrimination or inequality or that did not hold particular views about marriage.

Discussion and conclusions

4.135 We should first address the issue raised by some consultees as to whether our scheme should distinguish between religious and non-religious belief organisations.

4.136 Our Terms of Reference assume that there is a difference between a religious organisation and a non-religious belief organisation. This distinction is important for two reasons. First, we are not considering whether religious groups should be obliged to solemnize the marriages of same-sex couples. Under our scheme, as under the current law, religious organisations will be free to determine whether or not to conduct same-sex weddings. By contrast, it is a policy assumption underpinning our review that any non-religious belief organisation given the right to conduct weddings will not be able to discriminate between opposite- and same-sex couples.[62] Second, it is not our role to recommend whether non-religious belief organisations should be able to conduct weddings: given that our recommended scheme could apply if only religious organisations are able to conduct legal weddings, or if both religious and non-religious belief organisations are able to conduct weddings, depending on what Government decides, it must be possible to distinguish between the two.

4.137 As explained above, we did not ask a specific consultation question as to what would constitute a religious organisation, on the basis that the definition of religion was outside our Terms of Reference. We did however note in the Consultation Paper that the description set out in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*[63] was sufficiently broad to encompass organisations such as OneSpirit Interfaith Foundation. It clearly also already encompasses Pagan religions, as evidenced by the Glastonbury Goddess Temple being a registered place of worship for weddings. In our view the challenges faced by interfaith ministers and Pagan priests, priestesses or other officials under the current law are a consequence of the requirement for a place of worship, not the definition of religion.

4.138 We acknowledge that some individuals within an organisation that is classified as religious may not personally define themselves as religious. Whether any individual wedding can encompass religious and non-religious elements is a separate matter that we consider further in Chapter 5 where we consider wedding ceremonies. But at an organisational level we think that it will be possible to distinguish between organisations that profess a belief in the spiritual and those that do not.

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62 See Ch 8.

63 [2013] UKSC 77, [2014] AC 610 at [57].

Non-religious belief organisations

4.139 In the light of consultees' responses, we should emphasise that our original definition of non-religious belief organisations was intended to convey the types of groups under consideration rather than being an attempt to draft a definition that could be included in a statute. In the discussion that follows we refer to our *description* of non-religious belief organisations as that better reflects our intentions.[64]

4.140 We have also reflected on and revised that description to take consultees' concerns into account. Our revised description is less closely aligned with the description of religions in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*. We appreciate that the result is to sharpen the difference between religious and non-religious belief organisations. However, responses from non-religious belief organisations illustrated that the two operate in different ways, in particular in terms of whether the organisation seeks to "teach its adherents how they are to live their lives" in conformity with its beliefs. In addition, given that "secular" attracted both criticism and varying interpretations among consultees, we now take the view that the term "non-religious" is preferable.

4.141 We have considered whether any further qualification such as "philosophical" or "ethical" is needed. However, we think that consultees' concerns would be better addressed by limiting the types of non-religious belief organisations able to nominate officiants to ones that advance beliefs whose level of cogency, seriousness, cohesion and importance brings them within article 9 of the European Convention on Human Rights. We think this approach will help to convey that these are recognised belief systems that have been adjudged worthy of respect in a democratic society within the case law on protected beliefs under the Equality Act 2010.[65]

4.142 We also see the value in making it explicit that the organisation should have the advancement of non-religious beliefs as its sole or principal object, reflecting the approach taken in both Scotland and Ireland. Doing so should provide further reassurance that organisations that exist for commercial purposes or solely for the purpose of conducting weddings would not qualify as a non-religious belief organisation.

4.143 We think that such limitations, will, when combined with our other recommendations as to which organisations will be able to nominate officiants, exclude the groups about which consultees expressed concerns.

4.144 For the avoidance of doubt, we can see the value in explicitly excluding sports clubs, trade unions and chambers of commerce, together with political parties or organisations that have as their primary purpose the promotion of political parties, causes or candidates. That said, we do not think that a non-religious belief organisation should be barred from encouraging its members to vote for a particular candidate at an election (for example because they were aligned to its views or agreed to support a particular cause that aligns with their beliefs) or from campaigning

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64 See also *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 160 at [57], in which Lord Toulson emphasised that he was providing a description rather than a definition of religion.

65 Based on the criteria outlined in *Grainger Plc v Nicholson* [2010] 2 All ER 253, [2010] 1CR 360.

on political matters. We agree with Humanists UK that it would be wrong to preclude non-religious belief organisations from championing political causes if no equivalent restriction applies to religious organisations. However, because we do not think it is necessary expressly to make these exclusions, we do not make a recommendation along these lines. Nonetheless, it may be something that Government would wish to consider if it implements our recommendations.

Establishing criteria for nominating organisations

Membership and meetings

4.145 We do not favour Humanists UK's suggestion of different criteria for local and national organisations. We think such an approach would undermine the certainty and simplicity of our scheme. It would likely lead to confusion amongst different religious groups about where weddings can take place and there would be complicated implications for validity. The suggested approach would not help those religious groups that do not have places of worship or do not wish to marry in a place of worship unless they were able to satisfy the criteria for the suggested "national route", which many would be unable to do.

4.146 We think that an organisation should be required to have a minimum number of members in order to be able to nominate officiants. As we explained in the Consultation Paper, such a requirement underlines the importance of community within weddings law; ever since 1837, 20 has been the threshold for a place of worship to be registered for marriages. We also think that it is preferable to have transparency about the minimum number, and that the minimum should be the same for all organisations. Taking into account the feedback from consultees and the evidence submitted as to the range of religious and non-religious belief organisations, we think that 20 is the appropriate minimum for a nominating organisation.

4.147 We note consultees' concerns that abolishing the requirement for a registered building means that the 20 people could be located anywhere in England and Wales. But our recommendation would require those 20 people not only to be members of the organisation but also to meet for worship or in furtherance of or to practise their beliefs. We acknowledge that the balance between individual and communal worship may differ between religions, and between adherents of the same religion, but a communal element is a key feature of all major faith groups. We have also added a reference to members practising their beliefs to reflect the fact that "worship" may not capture all aspects of religious practice. Moreover, while some Humanist celebrants argued that Humanists do not meet in furtherance of their beliefs, Humanists UK explicitly endorsed the inclusion of a requirement to meet.

4.148 Our recommendation also requires that such meetings be held regularly, and in person. That latter requirement would not preclude some meetings from being held online, but it would preclude organisations that exist entirely virtually from being able to nominate officiants. Equally, we do not think that the legislation needs to specify what is meant by "regular". This will vary between different organisations. In particular, some organisations may have a sizeable number of members but only meet in person every few months.

4.149 We should emphasise, however, that the criterion of 20 members applies to the organisation as a whole. A large national-level organisation may have numerous

congregations or branches across England and Wales and there is no expectation that each of these should have to have 20 people meeting together. As long as the organisation meets the criterion, it will be able to nominate officiants. Whether these officiants operate at a national level or are attached to a specific local congregation or branch will be a matter for the nominating organisation to determine.

4.150 In our view, the fact that the criterion applies to the organisation as a whole will go some way to meet the concerns expressed by consultees that 20 would be too high for many groups. However, we are aware that there are many independent congregations that are not affiliated to any larger organisation and that some of these congregations may not meet the criterion to be a nominating organisation. We therefore recommend that transitional provisions be put in place to enable any registered place of worship whose membership has dropped below 20 since it was initially registered to nominate an officiant under our scheme. We envisage that there will be relatively few registered places of worship that would both need and wish to nominate an officiant by this means. We therefore think that it would be sufficient for such provisions to be in place for a year, rather than allowing any place of worship that was once registered for weddings to be able to nominate officiants in perpetuity regardless of its current membership.

4.151 We think that concerns about the type of organisation that might be permitted to nominate officiants should be addressed by other criteria rather than by using the minimum number as a proxy for other concerns. We do however agree that the criteria should preclude a single family or small group of households from constituting themselves as a nominating organisation. We therefore recommend that the 20 members should be drawn from different households, to reinforce the fact that nominating organisations are representing or serving a section of the community. Such a requirement is also clearer than the current reference to "householders", a term whose meaning is unclear.

4.152 We do not think that the concept of "members" needs to be defined further for the purposes of our scheme. We note that many organisations may have their own definitions of members or require a fee to be paid, but we regard that as a matter for them. It will be for the General Register Office to decide what evidence of membership is required when an organisation seeks to nominate officiants.[66]

4.153 To prevent new organisations which are not legitimate belief groups being set up purely to conduct weddings, we also recommend that nominating organisations should have had 20 people meeting regularly in person for worship or in furtherance of or to practice their beliefs for a minimum period.

4.154 We are not making a recommendation as to what the minimum period should be, however, as it is not a matter on which we consulted, or in relation to which consultation responses give a definitive steer. By way of analogy, we note that the current rule permits an authorised person to be appointed for a place of worship once it has been registered for a year.[67] In Australia, where ministers of religion are

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66 For example, members could be required to provide written and signed support, with proof of their addresses.

67 Marriage Act 1949, s 43 and 43B.

registered by state and territory governments to solemnize marriages within a recognised denomination, the guidelines include a number of factors against which an organisation is assessed. One is that the organisation has been established for at least three years and is expected to continue.[68] In Ireland a "secular body" has to have been in existence for a continuous period of not less than five years in order to apply for a member to be registered to solemnize weddings.[69] Other jurisdictions either do not specify a minimum period or simply require "continuity of existence".[70]

4.155 We note that many nominating organisations will have a formal constitution or governing document or documents. Such documents will be evidence of it having been established for the minimum period. However, we recognise that many smaller organisations may have existed for a considerable period of time without any formal underpinning and would not wish to preclude them from nominating officiants if they can establish their existence by other means.

4.156 As we recommend below, the nomination of officiants will be made by the organisation's governing authority.[71] However, we do not think that there should be a requirement that the governing authority should itself have existed for any minimum period. We recognise that many existing religious communities may wish to constitute themselves into a more formal organisation for the purpose of nominating officiants. Nor do we think that there should be any requirement that an organisation has been conducting non-legally binding weddings for a minimum period before it is able to nominate officiants. Some groups may quite legitimately regard it as a point of principle not to conduct weddings without legal sanction.

4.157 We note that some consultees were concerned about fluctuating numbers. The authorisation of an officiant would not be revoked simply because the number of members within the organisation had fallen below 20. However, in our view a group whose numbers had so dwindled should not be able to appoint a replacement officiant. The ability to nominate an officiant is intended to reflect that there is a community for that officiant to serve.

Having processes in place to nominate and monitor officiants

4.158 We think that it would be a further safeguard to require that an organisation should have processes in place for nominating and monitoring their officiants. As we explain below, nominating organisations will be responsible for ensuring that the people they nominate are "fit and proper" persons to take on the role of officiant. They therefore need to show that they have processes in place to ensure that standard is met. Nominating organisations will also be responsible for monitoring their officiants and

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68 Australian Government, Attorney-General's Department, "Information Sheet – Recognised Denominations", available at Australian Government, Attorney-General's Department, *Recognised religious denominations* (13 January 2020), https://www.ag.gov.au/families-and-marriage/publications/information-sheet-recognised-denominations (last visited 1 July 2022).

69 Civil Registration Act 2004, s 45A(1)(f).

70 See eg Marriage Act 1996 (British Columbia), s 2; Marriage Act 1990 (Ontario), s 20(3); The Marriage Act 1995 (Saskatchewan), s 5.

71 See Recommendation 20 at para 4.256 below.

ensuring that they continue to comply with the fit and proper person standard; again, they need to be able to show how they will do so.

4.159 We note that in smaller organisations that are nominating a single officiant, these processes may be very simple ones, particularly where the training is provided by the General Register Office. It is nonetheless important for all nominating organisations to be accountable to the state by demonstrating how they will fulfil the functions with which they have been entrusted.

The wedding as a manifestation of an individual's beliefs

4.160 We have also revised our initial proposal that nominating organisations should be required to have a wedding service or a belief about marriage. We now recommend that, in order for a religious or non-religious belief organisation to nominate an officiant, it should be a manifestation of an individual's religion or belief for them to have a wedding officiated at by an officiant nominated by that organisation.

4.161 We should emphasise that this requirement is for the organisation to satisfy rather than a precondition for every individual seeking to be married by them. We do not think that it is for the law to insist that individuals must share the beliefs of the organisation under whose auspices they are getting married. Nonetheless, we think that the requirement provides a further important filter against joke or bogus organisations and aligns our scheme with the requirements of human rights law. The case law on article 9 of the European Convention on Human Rights establishes that not every act inspired or motivated by a person's religion or beliefs constitutes a "manifestation" of those beliefs; there must be a sufficiently close and direct link between the act and the underlying belief.[72] By way of illustration, in *R (on the application of Harrison) v Secretary of State for Justice*,[73] in which the lack of an option for Humanist weddings was challenged, Mrs Justice Eady DBE held that

> the evidence shows that, for many who hold those beliefs, the ceremonies that mark significant life events, such as marriage, provide a close and direct link to the beliefs of the participants such as to amount to a manifestation of those beliefs.[74]

4.162 We think that this requirement is preferable to requiring an organisation to have a specific marriage service. We acknowledge that having a marriage service may be evidence that a group has a belief about marriage, but that as a free-standing requirement it may serve little purpose. We are reinforced in this conclusion by our recommendations relating to the ceremony, as set out in Chapter 5; we are not recommending that officiants would be legally required to use any set form of service.

4.163 We also take the view that an organisation should not be able to nominate officiants if its only or primary activity is conducting wedding ceremonies. A belief in weddings is not the same as a belief about marriage.

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72 *Eweida v United Kingdom* (2013) 57 EHRR 8, [2013] 57 EHRR 8 at [82].

73 [2020] EWHC 2096 (Admin), [2021] PTSR 322.

74 *R (on the application of Harrison) v Secretary of State for Justice* [2020] EWHC 2096 (Admin), [2021] PTSR 322 at [68].

4.164 We note that some consultees favoured including a rule that would require organisations to hold certain types of belief. We do not think that it is for the law to state that a religious organisation cannot believe in polygamy, any more than it should state that a religious organisation must believe in the legitimacy of same-sex marriage. However, we think that restrictions could be justified where beliefs translate into promoting weddings that would constitute a criminal offence, as we explain below.

Organisations that promote illegal purposes

4.165 On reflection, we should have repeated the full list of possible exclusions within the consultation question and explicitly referred to organisations promoting purposes in support of terrorism or terrorist activities or for the benefit of an organisation membership of which is unlawful. Had we done so, we think that consultees would have been less concerned about the risk of organisations being excluded simply because they held views that were unpopular. We wish to reassure consultees on this point by noting the protection that is afforded under articles 9 and 10 of the European Convention on Human Rights to freedom of belief and expression. We also wish to highlight the legislative provisions that allow religious organisations to refuse to conduct same-sex weddings; it is as much "public policy" that religious organisations are entitled to refuse to conduct same-sex weddings as it is that same-sex couples are entitled to marry.[75]

4.166 Deciding which organisations, other than those that have been proscribed by law, should be prohibited from being able to nominate officiants, is a matter of policy rather than law. In the absence of a clear response from consultees to the open question that we asked, we do not feel in a position to make a recommendation on this point but leave it for Government to determine.

4.167 We do however think that there could be a case for excluding an organisation from nominating officiants if it encourages the conduct of weddings which involve the commission of a criminal offence in England and Wales, as a number of consultees suggested. By this we have in mind organisations that explicitly endorse its officiants, celebrants or other officials conducting wedding ceremonies for those under the age of 16,[76] bigamous marriages, or forced or sham marriages.[77] The beliefs of the organisation about the validity of such marriages could not override their status under the law of England and Wales. Explicit prohibitions could also provide further reassurance to those concerned about the potential widening of the pool of the people who can officiate at weddings.

4.168 However, we do not think that campaigning to legalise marriages that are currently illegal should in itself disqualify an organisation from nominating officiants. We note, for example, that in the past such a provision would have prevented groups that campaigned to legalise same-sex marriage from being able to conduct weddings.

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75 See Ch 8.

76 Under 18 years once the Marriage and Civil Partnership (Minimum Age) Act 2022 has come into force.

77 See respectively Anti-social Behaviour, Crime and Policing Act 2014, s 121; Offences against the Person Act 1861, s 57; Immigration Act 1971, s 25.

4.169 We should also note that the crime of bigamy is only committed where a person who is legally married goes through a ceremony that would, but for the earlier marriage, give rise to a legal marriage. It does not encompass religious-only polygamous marriages; while the latter are not legally recognised, they do not involve the commission of an offence.

4.170 Further, we recognise that the laws governing marriage differ between jurisdictions. We note that a person may commit a criminal offence under the law of England and Wales if they facilitate a forced or sham marriage or a marriage of a person under 18 in another jurisdiction.[78] Such offences apart, the fact that an organisation conducts weddings in other jurisdictions of a kind that would not be recognised under the law of England and Wales should not disqualify it from nominating officiants.

Who within the organisation would be responsible for nominating officiants?

4.171 Under the current law, the trustees or governing body of a registered place of worship are responsible for appointing an authorised person for that place of worship.[79] In relation to same-sex weddings, it is the "relevant governing authority" that must give consent to a place of worship opting in to conduct same-sex weddings. The definition of "relevant governing authority" is simply "the person or persons recognised by the members of the relevant religious organisation" as competent to give such consent.[80] By contrast, in the case of Jewish and Quaker weddings the definition of "relevant governing authority" specifies particular offices or refers to the people recognised by particular groups.[81]

4.172 As we recognised in the Consultation Paper,[82] religious organisations take different forms and are organised in different ways. We took the view that it is not for the state to prescribe who within a religious organisation should have the authority to nominate officiants. Instead, we thought that the existing concept of the "relevant governing authority" would be sufficiently flexible to accommodate the variety of arrangements that might exist, from national-level, highly centralised organisations to smaller local organisations that consist of a single congregation. We also took the view that this concept would be equally applicable to non-religious belief organisations, if enabled by Government to officiate at weddings.[83] We provisionally proposed that the relevant governing authority within the nominating organisation should be responsible for nominating officiants.[84]

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78 Anti-social Behaviour, Crime and Policing Act 2014, s 121(3); Immigration Act 1971, s 25(4).

79 Marriage Act 1949, ss 43 and 43B.

80 Marriage Act 1949, s 26A(4).

81 Marriage Act 1949, s 26B.

82 Consultation Paper, paras 5.103 to 5.107.

83 Consultation Paper, para 5.134.

84 Consultation Paper, para 5.145, Consultation Question 23.

Consultation

4.173 A significant majority of consultees supported this proposal. Consultees commented on the importance of officiants, especially religious officiants, having a connection with a nominating organisation, in terms being accountable to it or sharing its beliefs.

4.174 Some consultees, including the Churches' Legislation Advisory Service and the Church Growth Trust, specifically endorsed the concept of "relevant governing authority" as sufficiently flexible to accommodate different types of religious and non-religious belief organisations. The Baptist Union of Great Britain noted that Baptist churches would operate on a congregational model, while Throssel Hole Buddhist Abbey similarly confirmed that the proposal would fit with its governance by the Order of Buddhist Contemplatives. The Religious Society of Friends also confirmed that the proposed model would work for Quakers.

4.175 However, among those consultees who disagreed, some were concerned that the concept of a "relevant governing authority" would be problematic for certain religious groups. Some consultees seem to have assumed that the relevant governing authority would have to be a national-level one. They noted that faiths such as Islam, Hinduism, Sikhism, Judaism or Paganism have no single governing authority, or expressed concerns about the implications for churches that operate on a congregational model. Other consultees were concerned that some groups might find it difficult to identify their governing authority.

4.176 A few consultees were concerned that the proposal would result in authority being concentrated in a few hierarchical organisations, with implications for who would be nominated. By contrast, the Board of Deputies of British Jews was concerned about the potential decentralising effect of the proposal, noting that under the current system the Registrar General can rely on the Office of the Chief Rabbi, the West London Synagogue and the Liberal Jewish Synagogue to be "the pivot between civil marriages and religious marriages". The Evangelical Alliance also noted that it would oppose a system in which individual churches within denominations were "their own governing authorities, able to change their individual view of marriage without the denomination having a means of redress". Its concern was primarily with churches being able to make decisions about same-sex marriage.

4.177 Consultees who considered the position of non-religious belief organisations largely focussed on whether such organisations should be able to nominate officiants, with some supporting and some opposing such an option. None suggested that the model we had proposed would not work for non-religious belief organisations, although one noted that not all non-religious belief officiants belonged to an organisation.

Discussion and conclusions

4.178 As explained above, our proposal that nominations of officiants should be made by an organisation's "relevant governing authority" was intended to respect the different ways in which different religions and denominations are governed.[85] It accommodates organisations that operate on a centralised, national-level basis and those that

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[85] On which see F Cranmer, "Ecclesiastical regulation and secular law: A comparative exploration" in F Cranmer, M Hill QC, C Kenny and R Sandberg (eds), *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (2016).

operate on a local level, providing they meet the requirements to be a nominating organisation. In our view, it preserves the options that are available to religious groups under the current law while removing many of the limitations that prevent other religious groups from conducting weddings as they would wish. It is equally applicable to non-religious belief organisations, should Government decide to enable them to officiate at weddings.

4.179 As a result, we do not anticipate that our recommendation will lead to either inflexible hierarchies or to decentralisation. Our recommendation assumes that each nominating organisation will have its own governing authority; it does not require each religion to have a single governing authority. Nor would our recommendation enable individual churches to flout their governing authority's decisions on issues such as same-sex marriage; just as under the current law, no nominated officiant would be able to opt in if the relevant governing authority had not given its consent. However, freedom of religion means that groups may separate from organisations with which they no longer agree and establish themselves as a new organisation. Their ability to do so is not a consequence of our recommendations in respect of weddings law and nor does our scheme incentivise them to do so. It is possible, under the current law, for any registered place of worship to nominate its own authorised person to conduct weddings according to its beliefs; whether the religious group in question is affiliated to a larger organisation is a matter for it to determine.

4.180 Our recommendation should not result in any change for Jewish and Quaker organisations, save that they will no longer be specifically named in the legislation. We do not think that this change will undermine their authority within their own religious communities; after all, few Jewish or Quaker groups have chosen to opt for the alternative of registering their places of worship for weddings. Equally, we do not see any reason why the law should place unique constraints on the ability of Jewish or Quaker groups to dissent from the existing governance structures.

4.181 As explained in Parliament during the passage of the Marriage (Same Sex Couples) Act 2013 when the concept of a "relevant governing authority" was introduced:

> The Government do not think it desirable to specify in legislation the governing authority for any particular religious organisation. That is properly a matter for the members of the religious organisation themselves. For the Government to seek to prescribe this would be an inappropriate interference in the internal governance and autonomy of religious organisations, which should be free to decide, and indeed change, their decision-making arrangements for themselves.[86]

4.182 Given our recommendation as to the requirements that nominating organisations will have to fulfil,[87] we do not think that organisations will have difficulty in identifying their governing authority. A definition such as "the person or persons recognised by the members of the nominating organisation" as competent to make that decision is

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86 *Hansard* (HL), 19 June 2013, vol 746, col 330 to 331 (The Advocate-General for Scotland, Lord Wallace of Tankerness).

87 See Recommendation 20 at para 4.256 below.

flexible enough for authority to be vested in a single office-holder, an elected board, or such other arrangement as the organisation sees fit.

How would the nomination be made?

4.183 In the Consultation Paper we noted how applications for places of worship to be registered for weddings are currently made to the Registrar General.[88] The process may involve similar decisions to those that would need to be made under our scheme, for example whether any given group meets the criteria to make a nomination. We therefore provisionally proposed that nominations of officiants would be made to the Registrar General. We also proposed that it would be helpful for the General Register Office to maintain a public list of all nominated officiants.[89]

4.184 We acknowledged that there might be benefits in allowing organisations also to nominate officiants by reference to a specific office – for example that of minister – that they held within the organisation.[90] We wished to obtain consultees' views as to whether such an option would be useful. We therefore asked an open question as to whether nominating organisations should be able to nominate officiants by office as well as nominating named individuals.[91]

Consultation

Nominations to be made to the General Register Office and a public list to be maintained

4.185 A very substantial majority of consultees favoured our proposal that nominations should be made to the General Register Office, which would keep a public list of all nominated officiants. Many consultees noted how the proposal would enable a person's authorisation to be checked in advance of the wedding and their name recorded on the schedule. Others commented on the benefits of transparency and of officiants (and their nominating organisation) being known and accountable. Some consultees specifically expressed agreement that the General Register Office was the appropriate body to which nominations should be made or a list should be held. Some consultees questioned what information would be recorded on the public list, with many assuming that the contact details of officiants (or perhaps nominating organisations) would be included.

4.186 A few local authorities suggested that nominations should be made, and any list held, at a local level. The Evangelical Alliance disagreed with the list being made public, noting that "the religious leaders of certain Christian convert communities may wish to remain anonymous, given the hostility and attacks they may face for their conversion". The Religious Society of Friends also noted that "consideration might need to be given to appropriate data protection for protected characteristics (such as religion!)".

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88 Consultation Paper, para 5.108.

89 Consultation Paper, para 5.151, Consultation Question 28.

90 Consultation Paper, para 5.111.

91 Consultation Paper, para 5.150, Consultation Question 27.

4.187 A few consultees thought that religious organisations should be able to determine for themselves who should conduct legal weddings, without any state oversight, while others suggested there should be a single list of all authorised officiants.

The possibility of nomination by office

4.188 While more consultees agreed with the option of nomination by office than disagreed, there was no overall majority in favour of this option, with a number of consultees expressing other views.

4.189 Consultees in favour of nomination by office suggested that it would reduce the administrative burden on nominating organisations and increase engagement. A few noted that allowing nomination by office would provide parity between nominated officiants and either Anglican clergy or registration officers.

4.190 Among those who disagreed with the idea of nomination by office, some consultees argued that holding a particular office did not necessarily mean that a person would be suitable to officiate at weddings. Other consultees commented that it would be difficult to define which office-holders should officiate at weddings or that not all organisations have identifiable offices. Some consultees highlighted the need to be able to identify individual officiants, in order to check the authorisation of any given person or to make it easier to hold them to account.

4.191 Some consultees suggested that nomination by office should only be available to certain established or large organisations, or that organisations should only be able to nominate certain types of office-holders as officiants. Other consultees thought that nomination by office should only be allowed if there was appropriate training for office-holders.

Discussion and conclusions

Nominations to be made to the General Register Office and a public list to be maintained

4.192 Consultees supported our view that nominations should be made to the General Register Office. The alternative suggestion that nominations should be made to local authorities, which would hold their own “local lists”, would not be workable within our scheme. There is no intention that nominated officiants (unlike authorised persons under the current law) would be limited to conducting weddings in a single registration district. The removal of this limitation is a key part of ensuring that the law works for smaller religious groups that are not represented in all registration districts. Further, if approval of nominations were to be carried out by local authorities rather than by the General Register Office there would undoubtedly be differences of approach between local authorities about which groups were accepted as nominating organisations.

4.193 For similar reasons, we think that the list of officiants should be a centralised one. We note that local authorities are already accustomed to consulting national-level lists if a couple giving notice plan to marry in a different registration district.

4.194 The purpose of having a public list is to enable the authority of an officiant to be ascertained. We do not envisage the list held by the General Register Office providing information about the availability, contact details, and prices of different officiants; such matters should be for the nominating organisation. However, we think that an

officiant's name alone would not necessarily be sufficient to identify them. For this reason, we think that the town or district in which they reside should be included for the purposes of identification. Further, while an officiant would not be limited to officiating at weddings within a particular area, it would be helpful for couples using the list to find an officiant to be able to see where different officiants were located.

4.195 We also think that an officiant's nominating organisation should be recorded alongside their name to enable a couple to choose an officiant who shared their beliefs or to check that their intended officiant belonged to a particular nominating organisation. Identifying the nominating organisation will also enable any complaints about officiants to be made directly to it rather than via the General Register Office. Further, as we discuss below, nominated officiants will be prevented from subordinating their beliefs to commercial interests; such a rule would have little purpose if the wider public was not permitted to know what beliefs the officiant was meant to be expressing. We also note that information about celebrants' affiliation is publicly available in Australia and New Zealand.[92]

4.196 We do however acknowledge the concerns that were expressed by a few religious organisations. We think that these concerns can be met by allowing officiants to opt out from having their nominating organisation or area of residence included on the public list where the inclusion of such information would expose them to a risk of a specific and identifiable harm. In our view this should cover threats either to an identified officiant or to those connected with a specific place of worship or organisation.[93]

4.197 We also note that some consultees raised the risk of the list of officiants becoming out of date in discussing our proposal that there should be no time limit on the authorisation of officiants.[94] We note that there are existing problems with the lists of certified and registered places of worship being out of date,[95] and some local authorities implied that this is also a problem with the records of authorised persons. The General Register Office might wish to consider ways of encouraging nominating organisations to ensure that the public list is accurate, perhaps through regular emails or a reminder on the nomination form for new officiants.

Nomination by name rather than by office

4.198 Consultees' responses illustrated the difficulties in allowing for nomination by office. Fundamentally, not all organisations have defined office-holders such as ordained

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92 See Australian Government, Attorney-General's Department, "List of Commonwealth Registered Celebrants", https://marriage.ag.gov.au/ (last visited 1 July 2022) and The Department of Internal Affairs (Te Tari Taiwhenua), "Locating a Celebrant", https://celebrants.dia.govt.nz/ (last visited 1 July 2022).

93 The officiant would need to provide evidence of such threats but given that such threats need not have been directed against them personally it would not be practicable to require them to provide the same kinds of evidence required of couples opting out of having their details displayed online when their notices of marriage are published: see para 3.129 and following above.

94 See para 4.57 above.

95 See R Probert, "A Uniform Marriage Law for England and Wales?" [2018] 30(3) *Child and Family Law Quarterly* 259.

ministers or accredited celebrants. Even within those organisations that do have defined office-holders, not all of those holding that office may wish to be officiants.

4.199 While we acknowledge that nomination by office would work for some religious groups, we think that the disadvantages outweigh the advantages.

4.200 First, allowing for nomination by office would require another set of rules as to which types of offices could be nominated or at least some criteria by which nominations by office could be made. In the absence of such rules or criteria, a nominating organisation could for example nominate "all office-holders", resulting in considerable uncertainty as to who this encompassed. Any such rules or criteria would need to be sensitive to the range of potential nominating organisations, especially given the different conceptions of religious authority within different religious traditions.[96] For example, a requirement that office-holders should have gone through a formal process of ordination would work for some religious groups but not for others. We think that any such criterion would introduce new and unnecessary distinctions into weddings law. For the same reason we do not favour allowing only certain types of organisations to nominate by office.

4.201 Second, we note that relatively few consultees cited administrative convenience and cost as reasons for nominating by office. The convenience of nomination by office might well be lessened if a nominating organisation had to satisfy additional criteria in order to do so. Equally, the inconvenience and cost of nominating by name might be lessened if an organisation were able to nominate a number of individuals at once.

4.202 Third, we think that the potential convenience to nominating organisations in nominating by office would be more than offset by the greater uncertainty as to whether any given person is an authorised officiant. As we noted above, having a public list of named individuals will make it easy for couples to check that their intended officiant is authorised, and for registration officers to double-check at the notice stage. Further, if nomination by office were allowed it would be necessary to maintain a list of any office-holders who had been de-authorised and who, even if they continued to hold office, would no longer be authorised by virtue of their office.

4.203 Fourth, we think that having to nominate a specific named person avoids the risk of a person being eligible to officiate by virtue of their office despite not fulfilling the criteria that nominated officiants will be expected to satisfy. As we explain below, these criteria are more specific than those we provisionally proposed in the Consultation Paper, and more difficult to reconcile with the option of nomination by office.

4.204 We are therefore recommending that officiants need to be nominated individually by name rather than collectively by reference to the office they hold.

What criteria would those nominated have to fulfil?

4.205 In the Consultation Paper we explained our view that those nominated to be officiants must be "fit and proper" persons to carry out this important role. We defined "fit and

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96 N Doe, *Comparative Religious Law: Judaism, Christianity, Islam* (2018) ch 3, explains that ordination is a key element within Catholicism, Methodism, and Presbyterianism but is not always regarded as essential within the Baptist tradition and that there is no process of ordination within Islam.

proper" as meaning that the individual in question should understand what was required of them and was able to fulfil the legal requirements of the role. As part of this, we envisaged that those nominated would have undergone training in what being an officiant entailed and would undertake continuing professional development to ensure that they were apprised of any legal changes relevant to their role.[97]

4.206 As we emphasised, our proposal related to the criteria for being an officiant rather than for holding religious office. However, we also recognised that training to be a priest, minister, imam or other religious leader would often encompass training in conducting legal weddings. We also noted that individual places of worship had been able to appoint their own "authorised persons" since 1899 and that our scheme is premised on minimising differences between religious and non-religious belief organisations. We therefore provisionally proposed that it would be the nominating organisation itself that should be responsible for ensuring that the people they nominate as officiants are "fit and proper" persons.[98]

Consultation

4.207 In endorsing our proposal, several organisations emphasised the processes that they already have in place to oversee those involved in weddings. Consultees also noted that nominating organisations would be best placed to know the individuals involved.

4.208 A few consultees further argued that there should be no external criteria imposed on, or state oversight of, officiants nominated by religious organisations. However, while overall a substantial majority of consultees supported our proposal, many did so conditional on there being Government oversight of the process. Some consultees also expressed concern about delegating too much responsibility to nominating organisations, citing the risk of bias and varying standards. In relation to religious organisations, concerns were also expressed about safeguarding failings, religious leaders not carrying out proper checks on capacity and consent, and discriminatory beliefs and practices towards women and others.

4.209 Many consultees suggested that the General Register Office would need to scrutinise nominations or assess them against standardised requirements. Some argued that it should be able to refuse nominations that did not meet the criteria (with some also suggesting that there should be a means of appealing against such refusals). Others suggested that the General Register Office should directly assess officiants or proposed that specific evidence should accompany any nomination.

4.210 Linked to this, many consultees, whether they agreed and disagreed, identified the need for a more specific definition of "fit and proper" or suggested other criteria that they thought nominated officiants should have to meet. Some consultees favoured imposing Disclosure and Barring Service ("DBS") checks or otherwise preventing those with criminal records from being authorised. Several suggested criteria regarding an officiant's residence or nationality. Others suggested the criteria should be the same as for independent officiants, or otherwise proposed minimum age

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97 Consultation Paper, paras 5.153 to 5.163.

98 Consultation Paper, para 5.187, Consultation Question 30.

requirements, evidence that the nominee had understood the legal requirements of the role and/or had undergone specific training.

4.211 Among those supporting a more express requirement for training, some thought that such training should be delivered by the General Register Office and/or lead to an accredited qualification. Several also specifically advocated that such training should deal with issues such as capacity and consent, safeguarding, equality and diversity. The Board of Deputies of British Jews proposed that officiants should be trained on the differences between religious and legally recognised weddings and the consequences of marriage in law, so that they could in turn advise the couples at whose weddings they officiate. Several consultees also suggested that there should be a requirement for ongoing training or that processes should be in place to deal with organisations that nominated officiants who did not meet the "fit and proper" standard.

Discussion and conclusions

4.212 In the light of consultees' responses, we have reviewed and revised our provisional proposals to make explicit what will be expected of nominating organisations and what role the General Register Office will play in assessing nominations. In doing so we have been guided by our five principles.[99] A certain degree of regulation is needed to ensure that officiants understand their legal duties and responsibilities. At the same time, a complex scheme with onerous conditions may simply deter organisations from engaging with it. We have also sought guidance from the way in which "fit and proper person" is defined in other areas of the law and in the marriage law of other local jurisdictions.

4.213 No consultees argued against the central requirement that nominated officiants should be "fit and proper". Reviewing the content of other legislative definitions of "fit and proper", we have identified three core elements: character, competence, and the absence of criminal convictions.

Character

4.214 We think it would be helpful to include a specific requirement that the person being nominated is of good character. Requirements to this effect are included in other definitions of "fit and proper".[100] In Scotland the Registrar General takes account of "personal integrity in relation to character, behaviour and standards of conduct" in determining whether a potential celebrant or nominee is a "fit and proper person to solemnize a marriage".[101] Similarly, in Jersey, the Superintendent Registrar will take into account whether a person seeking to be a celebrant is of good standing in the

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99 The full Terms of Reference for the project are included in Appendix 1.

100 Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, reg 5(3)(a) ("of good character"); Financial Conduct Authority, *Fit and Proper test for Employees and Senior Personnel sourcebook* (February 2022) para 1.3.1 B ("honesty, integrity and reputation"), https://www.handbook.fca.org.uk/handbook/FIT.pdf (last visited 1 July 2022).

101 The "fit and proper" test applies both to those seeking temporary authorisation and those seeking to be nominated as celebrants on a permanent basis: Marriage (Scotland) Act 1977, ss 9(2) and 12. The policy of National Records of Scotland on the factors to be taken into account in making the assessment of whether a person is fit and proper is available at https://www.nrscotland.gov.uk/files//registration/nrs-marriage-authorisation-policy.pdf (last visited 1 July 2022).

community.[102] Further, a number of consultees suggested including a requirement of this kind and we agree that it will underline the importance of the officiant's role.

Competence

4.215 The competence element of the "fit and proper person" test would be met by requiring those nominated to have attained the age of 18, to have undergone training in the legal requirements for being an officiant, and to understand the legal requirements for being an officiant and performing the role.

4.216 We think that it would be helpful to have a minimum age of 18. We think that it would be odd for someone who has not attained the minimum age of marriage – 18 years old without consent – to be able to confer the status of marriage on others.[103] Moreover, no consultees suggested that nominating organisations might want to nominate people under 18. While some proposed higher minimum ages, these generally reflected the minimum age for ordination within a specific religious tradition. As a matter of equalities law, good reason would have to be demonstrated for imposing a minimum age above 18 years. If a nominating organisation wished to limit nominations to those who hold a particular office and limit such offices to those who have reached a certain age, that would be a matter for it to decide.

4.217 Requiring training is intended to ensure that officiants understand how to fulfil their legal duties and responsibilities. At present, there is no statutory requirement for authorised persons to undertake any training and research indicates that training provided by local authorities largely focuses on the completion of the documentation.[104]

4.218 As we note above, training for religious office may involve training in how to conduct legal weddings. Where organisations do provide such training, we see no need for that to be duplicated. We do however take the view that organisations would have to satisfy the Registrar General that they provide their nominees with training in the legal duties and responsibilities of being an officiant. Subject to the approval of the Registrar General, that training could be delivered by the nominating organisation itself or by another organisation. If an organisation did not wish to provide training for its officiants, or if the Registrar General was not satisfied with the processes it had in place, then nominees would need to undertake training provided by the General Register Office.

4.219 Consultees' responses emphasised that the state has a role in ensuring that people fulfilling a legal function are suitable to perform it. We think that our recommendation strikes an appropriate balance between recognising the important role that many nominating organisations will play in training their officiants and assuaging consultees'

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102 Superintendent Registrar of Jersey, "Authorised Civil Celebrants: Code of Practice", p 11, https://www.gov.je/SiteCollectionDocuments/Life%20events/Code%20of%20Practice%20for%20Celebrants.pdf (last visited 1 July 2022).

103 Once the Marriage and Civil Partnership (Minimum Age) Act 2022 is in force, the current provisions permitting 16- and 17-year olds to marry with the consent of specified persons will be abolished, and so the minimum age to marry will be 18 years.

104 R Probert, R Akhtar, S Blake, V Vora and T Barton, "The Importance of Being Authorised: The Genesis, Limitations and Legacy of the Marriage Act 1898" (2021) 10(3) *Oxford Journal of Law and Religion* 394.

concerns about delegating responsibility for training to such groups without any oversight by the state.

4.220 We also note that many consultees expressed support for training to be provided by the General Register Office. As was evident during our consultation events, some religious groups would prefer not to have the responsibility for delivering training. Smaller groups, or those with less experience in conducting legal weddings, may well lack confidence in delivering the necessary training.

4.221 It will be for the General Register Office to determine the specific content of the required training. In the light of consultees' responses and concerns we note that training in issues relating to capacity and consent will be central, since officiants are under a duty to ensure that the parties freely express consent to marry each other. We also think that officiants should be aware of their legal obligations under the Equality Act 2010. We think such training would reassure religious officiants that they will not face any adverse consequences for refusing to officiate at a same-sex wedding. At the same time, we think officiants should also be aware of their obligations not to discriminate on the basis of the other protected characteristics in the Equality Act 2010, including disability, sex, and race.[105]

The absence of criminal convictions

4.222 We do not think that those being nominated should be required to show that they have undertaken DBS checks. Only a basic DBS check could be required for the role of officiant.[106] We also note that obtaining even a basic DBS check costs £23 and that requiring it for all those being nominated could be expensive for larger organisations. If an organisation wants its nominees to have basic DBS checks (or if these checks, or more stringent DBS checks, are required by virtue of the other roles an officiant is performing) it can still require this as part of its own internal processes.

4.223 Instead, we recommend an approach similar to that which operates in Scotland. Under the Scottish scheme, a person applying for temporary authorisation as a celebrant must disclose any criminal convictions that occurred within four years of the application, and celebrants regulated by National Records of Scotland must notify it within 21 days if they are convicted of an offence. Applying this to our scheme, a nominating organisation will be required to disclose if their nominee has any unspent

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105 We note that some consultees suggested that officiants should scrutinise any additional agreement between the parties as to their rights and responsibilities within the marriage or upon its end. However, in our view it is not the role of an officiant to scrutinise such agreements. We also note that in a legal marriage any such agreement will not be binding; in the event of divorce, a court will consider whether it is unfair to hold the couple to their pre-nuptial agreement. See further Law Commission, Matrimonial Property, Needs and Agreement (2014) Law Com No 343.

106 DBS checks have four levels: basic, standard, enhanced and enhanced with barred list check. A basic DBS check contains details of convictions and conditional cautions considered to be 'unspent' under the terms of the Rehabilitation of Offenders Act 1974, and can be obtained by an individual or their employer. A standard DBS check will also reveal spent convictions, cautions, reprimands and warnings held on the Police National Computer which are not subject to filtering. A standard DBS check can only be requested by an employer, and only if the position is one for which that level of level of enquiry is permitted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975 No 1023); the role of officiant is not such a position. A useful guide to the levels of DBS checks is available on the Disclosure and Barring Service's webpage at https://www.gov.uk/government/organisations/disclosure-and-barring-service/about (last visited 1 July 2022).

convictions. We think that the offences that should preclude a person from being authorised as an officiant should be a matter for the General Register Office to determine but should probably include any offences related to marriage or serious fraud, or that result in a person being subject to a requirement to notify the police of certain personal information (commonly known as "being on the sex offenders register").

Preventing beliefs being subordinated to commercial interests

4.224 In the Consultation Paper we acknowledged that expanding the range of people who can officiate at weddings might raise concerns about the commercialisation of marriage. Although we took the view that it would be unlikely that any organisation that satisfied the conditions to nominate officiants would be operating on a commercial basis, we thought it would be helpful to preclude the possibility of beliefs being used as a cover for commercial activity. We therefore provisionally proposed that officiants nominated by religious and (if enabled by Government to officiate at weddings) non-religious belief organisations should be prohibited from making a business of officiating at weddings, by elevating the making of profits above the expression of their beliefs.[107]

4.225 This provisional proposal was adapted from the existing provision in Scottish law whereby a celebrant's authorisation can be removed if he or she "has, for the purpose of profit or gain, been carrying on a business of solemnising marriages".[108] Our formulation incorporated the guidance issued by National Records of Scotland that a person would be deemed to be carrying on a business for profit or gain when "the interests of enacting, celebrating and promoting the celebrant's religious or philosophical beliefs are subordinated to commercial interests".[109] We understand that this rule has enabled National Records of Scotland to take action against groups that have strayed "into commercial activity".[110]

Consultation

4.226 A very substantial majority of consultees agreed with our proposal. Many commented that weddings are not about business or profit, or that nominated officiants should be conducting wedding to reflect their beliefs, not for profit. Only a few thought that there should be no rules on what nominated officiants could charge.

4.227 There was, however, a range of views among consultees, whether they agreed or disagreed, as to what nominated officiants should be able to charge. A few indicated that that they did not charge any fee to conduct a wedding. Some suggested that nominated officiants should only be able to recover the direct costs involved in officiating, or at most receive a nominal sum. Others referred to the need for fees to be "reasonable" and to reflect the costs involved in training to be an officiant as well as those incurred in relation to any individual wedding. Humanists UK, which agreed with

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107 Consultation Paper, para 5.189, Consultation Question 32.

108 Marriage (Scotland) Act 1977, s 10.

109 National Records of Scotland, "Marriage Celebrants – NRS Policy on Authorisation", p 9 https://www.nrscotland.gov.uk/files/registration/nrs-marriage-authorisation-policy.pdf (last visited 1 July 2022).

110 Consultation Paper, para 5.174.

the proposal, noted the need to charge a fee that reflected the time spent creating personalised Humanist ceremonies, suggesting that Humanist celebrants would "typically spend about 30-50 hours per ceremony". Many consultees also supported nominated officiants being able to make a living from officiating at weddings or the organisation making a profit that would be used to further its beliefs, for example a church whose main income was from weddings.

4.228 A few consultees argued that the fees should be paid to the nominating organisation. Some also suggested there should be different rules depending on how officiants were remunerated by their organisation, suggesting that those who do not receive a salary from their nominating organisation should be able to charge fees to earn a living.

4.229 Some consultees argued that this rule (or the same rule) should apply to all officiants, including registration officers, Anglican clergy, and independent officiants. Several consultees expressed support for fees to be prescribed, with some suggesting a set fee and others proposing that there should be a minimum or maximum fee.

4.230 A few consultees also questioned whether the proposed rule was sufficiently precise or asked how it would be monitored and enforced. Some Humanist organisations or celebrants proposed that the General Register Office should produce guidance providing more detail and clarity about what was allowed and what was not.

Discussion and conclusions

4.231 In the light of consultees' responses, we should emphasise that we think that it is perfectly legitimate for nominated officiants to charge for officiating at weddings. We also take the view that it is perfectly legitimate for that charge to reflect not only the time involved in officiating at a wedding but also any preparation time and the costs involved in being an officiant, such as training, advertising, and suitable clothing.

4.232 We do not favour prescribing a set fee, since it would be difficult to identify a fee that would be fair to all officiants. Although fixed fees apply to Anglican weddings, there is unlikely to be as much variation between such weddings as between those at which nominated officiants might officiate. Similarly, although it would be possible to prescribe a set fee for officiating at a wedding, many nominated officiants will be doing much more than just fulfilling the legal duties and responsibilities of an officiant. Consultees emphasised how Humanist celebrants will spend time getting to know the couple and crafting an entirely bespoke ceremony, as well as travelling to the location of the couple's choice. Religious groups, by contrast, may already know the couples who are marrying under their auspices and will not need to spend the same amount of time preparing for the ceremony. Some will also have a set marriage service, although this is not necessarily the case.[111] In addition, what it is reasonable for an individual to charge will depend on whether they are being paid a salary by their nominating organisation; indeed, in some cases the individual will not receive any remuneration for conducting a wedding and any fee will be paid to the organisation.

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[111] See R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) paras 4.65 to 4.66 for examples of adaptations.

4.233 Nor do we favour having either a maximum or minimum fee. A maximum set at a sufficient level to encompass an entirely bespoke ceremony might well be considerably higher than what would usually be charged for a religious ceremony. Having a maximum would also raise the risk that the maximum might quickly become the norm. And if a nominated officiant wishes to officiate at a wedding without charging a fee – as some religious groups indicated they would – we think they should be free to do so.

4.234 Reflecting on consultees' responses, we think that the core concern is that those who have been entrusted with officiating at weddings on behalf of a belief organisation should act in a way that reflects those beliefs. In other words, making a profit as a consequence of conducting belief weddings is entirely legitimate; conducting weddings in the name of a belief system with the primary aim of making a profit is not. The key point is that beliefs should be the primary motivation and should not be subordinated to commercial interests. Examples of beliefs being subordinated to commercial interests could include a nominated officiant:

(1) charging a fee entirely disproportionate to the time spent in preparing for, and officiating at, a wedding;

(2) charging a low fee with the sole aim of conducting as many weddings as possible for commercial rather than belief purposes; or

(3) seeking to maximise the number of weddings they conducted, regardless of the beliefs of those concerned, by advertising their role as officiant without explaining their connection with their nominating organisation, conducting ceremonies outside the parameters set by their nominating organisation,[112] or denigrating other officiants in order to persuade couples to employ them in preference to other officiants.

4.235 We did not make a specific proposal about conflicts of interest in the Consultation Paper as we saw our proposal about not putting profit before beliefs as precluding the kinds of conduct that we thought would create a conflict of interest. We think that a nominated officiant who made it a condition of officiating that the couple buy goods or services from them or from a company that they run, or accepted a payment to recommend a specific provider of goods or services, would equally be subordinating their beliefs to commercial interests.

4.236 We do not envisage that our recommendation will lead to any change in practice by those currently involved in conducting either weddings or non-legally binding ceremonies. Nonetheless, we think our recommendation further demonstrates how the rules governing nominated officiants reflect the importance of belief.

4.237 The question of enforcement was raised by a number of consultees. That raises broader questions as to how nominated officiants will be monitored and, if necessary, de-authorised, which we consider below.

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[112] For example, conducting ceremonies in accordance with different beliefs, if the nominating organisation made it clear that its officiants should only conduct ceremonies in accordance with a single set of beliefs.

Monitoring and de-authorisation

4.238 As set out above, nominating organisations will be responsible for deciding who to nominate and for ensuring that their officiants receive appropriate training. Consistently with this approach, we provisionally proposed that the primary responsibility for monitoring officiants should lie with the organisation that had nominated them. As we explain above, the role of an officiant is an open-ended one, rather than being subject to a specific time-limit. It would be the responsibility of the nominating organisation to request the withdrawal of an officiant's authorisation if they failed to comply with the fit and proper standard or with their duties and responsibilities as an officiant.[113]

4.239 However, we also took the view that the General Register Office should have a default power to de-authorise nominated officiants who failed to comply with the fit and proper standard or with their duties and responsibilities as an officiant if the nominating organisation failed to do so.[114] Since these two questions essentially formed a single proposal rather than alternatives, we consider them together below.

Consultation

4.240 Overall, there was a broad consensus that nominating organisations should have the primary responsibility to monitor and de-authorise their officiants but that this should be subject to oversight by the General Register Office. Relatively few consultees argued that nominating organisations should either have no role to play or the exclusive right to monitor and de-authorise their officiants. Similarly, only a few consultees advocated that the proposed functions should be exercised by a body other than the General Register Office.

4.241 In relation to the first proposal that the primary responsibility for monitoring and de-authorisation should lie with the nominating organisation, consultees noted that the nominating organisation would be best placed to supervise its officiants and identify any problems. Some religious groups commented that the proposal reflected current practice, while other organisations that might wish to nominate officiants (should our scheme be enacted) confirmed that they already had monitoring processes in place. A few consultees also noted that a nominating organisation should be able to de-authorise officiants who had ceased to share its beliefs, subject to any general requirements of employment law.

4.242 Many consultees also commented on the importance of organisations understanding their own responsibilities and those of their officiants and having appropriate internal mechanisms to monitor their officiants. Other consultees agreed on condition that the General Register Office would have oversight of nominating organisations and their officiants, with some suggesting ways by which issues could be reported and a few advocating a more interventionist role with "spot checks" on officiants.

4.243 Consultees who disagreed with nominating organisations having the primary responsibility for monitoring and de-authorising their officiants cited concerns about bias, abuse of power, differing standards and existing evidence of safeguarding

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113 Consultation Paper, para 5.212, Consultation Question 37.

114 Consultation Paper, para 5.213, Consultation Question 38.

failings. Conversely, consultees discussing the proposed power for the General Register Office to be able to de-authorise officiants highlighted the importance of religious freedom and the importance of limiting the scope for de-authorisation so as not to impinge on that freedom. The Evangelical Alliance, for example, argued that state authorities should only be able to withdraw an officiant's authorisation in cases such as "complicity or negligence in connection with criminal offences being committed" and favoured having a stricter definition of "fit and proper". A number of consultees also emphasised that a refusal to conduct same-sex weddings should not be grounds for de-authorisation.

4.244 Whether the General Register Office was to have a primary or supporting role, some consultees suggested that it should consult the nominating organisation before taking any action to de-authorise an officiant or that complaints should in the first instance be made to the nominating organisation. Other consultees suggested that procedural safeguards, including an appeal or review mechanism, should be in place before the General Register Office could withdraw a nominated officiant's authorisation.

4.245 Some consultees suggested that suspension might be more appropriate than de-authorisation in certain circumstances. Others questioned whether an officiant who had been de-authorised could be re-authorised, noting that the concerns that had led to their de-authorisation would have had to been addressed.

4.246 Several consultees focussed on the consequences for nominating organisations who failed to act or who have a pattern of nominated officiants being de-authorised. Some, including Humanists UK, suggested that in such cases the nominating organisation itself should be barred or prevented from nominating any further officiants.

Discussion and conclusions

4.247 The support from consultees has confirmed us in our provisional view that nominating organisations should have the primary responsibility to monitor and de-authorise their officiants but that this should be subject to oversight by the General Register Office.

4.248 In considering what level of oversight is necessary, we note that there are currently no statutory provisions covering the monitoring or de-authorisation of authorised persons, save that specifying that those convicted of an offence under the Marriage Act 1949 shall cease to be authorised.[115] Nor are there any statutory provisions on the monitoring or de-authorisation of Jewish secretaries or Quaker officers. No consultees who opposed entrusting nominating organisations with the responsibility to monitor and de-authorise their officiants identified the lack of existing mechanisms as having created problems. At the same time, we are aware of a degree of informal monitoring in practice and are conscious that our scheme would enable a wider range of religious (and potentially non-religious belief) organisations to nominate officiants. We therefore take the view that our scheme should make it clear how oversight will be provided.

4.249 Conferring the primary responsibility on nominating organisations to monitor their officiants is also consistent with our other recommendations about the appointment and training of nominated officiants and the ongoing responsibility of nominating organisations to ensure that their officiants remain "fit and proper" persons. As we

[115] Marriage Act 1949, s 77.

explain above, this criterion requires officiants to have undertaken training in the legal aspects of being an officiant and to understand what is required of them. It follows that a person whose conduct indicates that they do not (or no longer) understand what is required of them should have their authorisation withdrawn.

4.250 We think this approach provides an appropriate means of distinguishing between occasional and/or accidental failures and ones that are attributable to a failure to meet the fit and proper standard. So, for example, a single failure to ensure that the schedule was signed would not in itself be a basis for de-authorisation, but a persistent failure would be. A willingness to conduct sham or forced marriages, by contrast, would clearly demonstrate that the officiant did not meet the fit and proper person standard and would justify de-authorisation. Failing to act with dignity and solemnity, or subordinating beliefs to commercial interests, could also be a basis for de-authorisation, but organisations would need to exercise their judgment as to whether this would be justified in the circumstances. In cases of minor failures, nominating organisations could provide additional support for the officiant whose understanding of the legal requirements has been called into question, for example by having another person attend their ceremonies.

4.251 We also take the view that a nominating body should explain the reason for requesting de-authorisation to the General Register Office. We note that there may be a whole range of reasons why an organisation would wish to withdraw an officiant's authorisation, and this recommendation is not intended to constrain their existing powers to do so. For that reason it would be helpful for the General Register Office to know whether de-authorisation was requested simply because the officiant had left the organisation (in which case it would be entirely appropriate for them to be nominated by a different organisation) or because there were specific concerns about the officiant being able to fulfil their duties and responsibilities as an officiant (in which case any new nomination of that person would need to be carefully scrutinised).

4.252 As noted above, giving the General Register Office the power to de-authorise officiants who failed to comply with the fit and proper standard or their duties and responsibilities as an officiant was supported by a very substantial majority of consultees. We set out below our recommendation for a complaints procedure to enable it to be alerted to any problems.

4.253 We note the suggestion that an officiant should be suspended while issues are being investigated. How this would operate would depend on whether the investigation was being conducted by the nominating organisation or by the General Register Office. In either case we think the process should be decided by the nominating organisation or General Register Office respectively.

4.254 We also note the various suggestions that were made about the consequences for nominating organisations that persistently fail to discharge their responsibility to monitor their officiants. In such cases we envisage that the General Register Office would scrutinise any existing nominations by this organisation more closely, and would not authorise any further officiants until it was satisfied that the nominating organisation would be able to discharge its responsibility. We do not think that there is any need for a rule that the organisation should be barred from nominating any further officiants.

4.255 Once a nominated officiant has been de-authorised, it would be an offence for them to purport to be an officiant and dishonestly mislead either of the couple about their status or the effect of the ceremony. Their lack of authorisation would not, however, affect the status of the marriage unless both parties were aware of it.[116]

Recommendation 20.

4.256 We recommend that the relevant governing authority of a religious organisation or (if enabled by Government to officiate at weddings) non-religious belief organisation should be able to nominate officiants if:

(1) the organisation has been established for a minimum period, during which period it has had members from at least 20 households who meet regularly in person for worship or in furtherance of or to practise their beliefs (but the relevant governing authority need not have existed for any minimum period);

(2) it has a policy about nominating and monitoring officiants; and

(3) it would be a manifestation of an individual's religion or beliefs to have a wedding officiated at by an officiant nominated by that organisation.

The evidence required to demonstrate the existence of the organisation could be (but is not limited to) a constitution or governing document or documents.

4.257 We recommend that the non-religious belief organisations able to nominate officiants should be limited to those whose sole or principal purpose is the advancement of a system of non-religious beliefs which have a level of cogency, seriousness, cohesion and importance that brings them within the meaning of article 9 of the European Convention on Human Rights.

4.258 We recommend that there should be a transitional provision, that would apply to all existing registered places of worship, which would deem them to meet the requirement for 20 individuals from separate households. It would allow such places to nominate officiants. It should expire one year after commencement of the new legislation.

[116] See para 9.39 and following and Recommendation 42 at para 9.201 below.

Recommendation 21.

4.259 We recommend that nominating organisations should be required to ensure that the people they nominate as officiants are "fit and proper" persons, by providing evidence that they:

(1) are of good character;

(2) have not been convicted of any offence which the General Register Office has determined would preclude a person from being fit and proper, by disclosing to the General Register Office any unspent convictions;

(3) have attained the age of 18;

(4) have undertaken training in the legal aspects of being an officiant, which is

(a) provided by the nominating organisation and approved by the Registrar General, or

(b) provided by the General Register Office; and

(5) understand the legal requirements for being an officiant and performing the role.

4.260 We recommend that for each named officiant, a nomination should be made to the General Register Office, which will be responsible for keeping a public list of all nominated officiants. The list should include officiants' names, the town or district in which they reside, and the organisation by which they were nominated, but individuals should be able to opt out from having their nominating organisation or area of residence included on the public list where the inclusion of such information would expose them to a risk of specific and identifiable harm.

4.261 We recommend that:

(1) the primary responsibility for monitoring nominated officiants and requesting withdrawal of their authorisation if they fail to comply with the fit and proper person standard or their duties or responsibilities should lie with the organisation that nominated them; but

(2) the General Register Office should have the power to de-authorise nominated officiants if they fail to comply with the fit and proper person standard or their duties or responsibilities, and if the body who nominated them fails to act.

Recommendation 22.

4.262 We recommend that nominated officiants should be entitled to charge for officiating at a wedding but should be precluded from subordinating the expression of their beliefs to commercial interests.

INDEPENDENT OFFICIANTS

4.263 Independent celebrants already conduct a significant number of non-legally binding ceremonies.[117] Our role in this project is not to regulate such ceremonies. Nor is it to recommend whether independent celebrants should be able to officiate at legal weddings. Rather, it is to consider how a revised weddings law might make provision for independent celebrants to take on the role of officiant if Government so decides.[118]

4.264 As we explained in the Consultation Paper, a number of jurisdictions already allow independent celebrants to conduct legal weddings. The model for authorisation is that independent celebrants apply to a specific state official. We are not aware of any jurisdiction in which celebrants can be nominated by a professional organisation, as compared to a religious organisation or non-religious belief organisation.[119] We therefore took the view that if independent celebrants were to have the option of being authorised as officiants, they should be regulated by the General Register Office. It would be the General Register Office that would consider applications, prescribe what training (initial and ongoing) would be required, and be responsible for monitoring and, if necessary, de-authorising independent officiants.

4.265 We also took the provisional view that independent officiants should be limited to officiating at civil weddings. This limitation would be consistent with them being appointed and regulated by the General Register Office. It would also ensure a clear distinction between independent officiants and belief officiants, as well as between civil and belief weddings.

4.266 Unlike registration officers, independent officiants would not be employed by the state. Moreover, unlike nominated officiants and Anglican clergy, they would not be acting on behalf of a belief organisation. Research indicates that the vast majority of independent celebrants are self-employed, working as sole traders.[120] They operate on a commercial basis in the sense of offering a service for a fee. The fees they charge are similar to those charged by registration officers conducting weddings on

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117 S Pywell, "The day of their dreams: celebrant-led wedding celebration ceremonies" [2020] 32 *Child and Family Law Quarterly* 177. The precise number of celebrant-led ceremonies is unknown, since by their nature they are not formally recorded.

118 See Appendix 1 for the full Terms of Reference.

119 Consultation Paper, paras 5.138 and 5.139.

120 S Pywell, "Beyond beliefs: a proposal to give couples in England and Wales a real choice of marriage officiants" [2020] 32 *Child and Family Law Quarterly* 215.

approved premises or by Humanist celebrants.[121] Nevertheless, the fact independent officiants charge for their services while not employed by the state and without a religious or non-religious belief motivation, means that this category of potential officiants would have to be considered to be acting for profit. That fact is a factor for Government to take into account in deciding whether independent officiants should be able to conduct weddings. Our focus is on the implications for the rules as to what they would be able to charge and whether that would be different from those that apply to other officiants.

Authorisation

4.267 We provisionally proposed that (if enabled by Government to officiate at weddings) individuals should be able to apply to the General Register Office to be authorised and be included on the public list of officiants.[122] As we explained in the Consultation Paper, we took the view that there would need to be specific criteria by which such applications could be assessed. We therefore provisionally proposed that those applying to be authorised as independent officiants would need to demonstrate that they were "fit and proper" persons by proving that they:

(1) are aged at least 18;

(2) understand the legal requirements for being an officiant and performing the role; and

(3) have undergone mandatory training and continuing professional development in the legal aspects of being an officiant, with the content to be determined by the Registrar General.[123]

Consultation

Individual applications

4.268 While marginally more consultees agreed than disagreed with this proposal, there was not an overall majority in favour of it, with a number of consultees expressing other views. However, only a few consultees engaged with the specifics of the proposal rather than the broader policy issue of whether there should be a category of independent officiants.

4.269 Some favoured the process of authorisation being administered centrally, through the General Register Office, although a few local authorities thought that it should be administered at a local level. A number of consultees also specifically welcomed the proposal that there would be a public list of officiants.

4.270 Some consultees suggested that officiants should be required to be a member of an organisation, or that applicants should have the support of a minimum number of people. Professor Russell Sandberg further argued that celebrancy organisations

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121 S Pywell, "The day of their dreams: celebrant-led wedding celebration ceremonies" [2020] 32 *Child and Family Law Quarterly* 177.

122 Consultation Paper, para 5.152, Consultation Question 29.

123 Consultation Paper, para 5.188, Consultation Question 31.

should be able to nominate independent officiants in addition to individuals being able to apply for authorisation.

Criteria for authorisation

4.271 A substantial majority of consultees agreed with this proposal. Consultees emphasised the importance of the role of an officiant, and the need for regulation and standards.

4.272 Many consultees supported our proposed minimum age of 18. However, some consultees thought that it was too low, suggesting that 18-year olds would lack the necessary maturity or gravitas or would not understand or be able to uphold the complexity, dignity and solemnity of marriage. A few suggested alternative minima, ranging from 20 to 34 years, drawing parallels with the age at which individuals could be ordained as ministers of religion or noting the additional life experience or maturity that a higher minimum would bring. By contrast a couple of consultees suggested that the suggested minimum of 18 was too high, suggesting that a couple might want their child to officiate.

4.273 A number of consultees specifically welcomed the proposal that independent officiants should be required to prove that they understood the legal requirements for being an officiant and performing the role. No consultees disagreed with this aspect of the proposal, although a couple suggested that it would be subsumed within a requirement for mandatory training.

4.274 Only a few consultees disagreed with the proposal that training should be mandatory. Consultees focussed instead on the nature of the training and who would provide it. Some consultees agreed that the mandatory training should focus on the legal aspects of being an officiant. Many consultees highlighted the importance of training equipping officiants to deal with situations involving people who lack capacity or are at risk of abuse. Others thought that training should impart particular views about marriage and its meaning.

4.275 Some consultees put forward suggestions as to how individuals would be able to demonstrate that they had undertaken the required training, for example by undertaking a formal assessment. A few independent celebrants suggested that a National Open College Network Level 3 Diploma in Celebrancy should be required; others thought that celebrancy organisations could provide training or argued that existing qualifications should be taken into account. Celebrancy organisations, while assuming that training would be provided by the General Register Office, indicated that they would be willing to help devise suitable training.

4.276 A few consultees questioned the need for continuing professional development. Others noted that continuing professional development is a requirement for celebrants conducting legal weddings in Australia and New Zealand.

4.277 Some consultees suggested that applicants should have to satisfy further criteria, for example that they had no criminal record or had undertaken DBS checks. A couple of consultees said that applicants should have proof of permission to work in England and Wales.

4.278 A few consultees also made general suggestions about applicants being required to show experience of conducting ceremonies or to provide testimonials. Some also suggested that independent celebrants should be affiliated to a professional organisation or be required to have insurance.

Discussion and conclusions

Individual applications

4.279 We were not convinced by the argument that celebrancy organisations should be able to nominate independent officiants. In our view, there are some fundamental differences between religious and non-religious belief organisations on the one hand, and celebrancy organisations on the other. The former reflects specific beliefs, while the latter do not. The fact that many celebrancy organisations are well placed to provide training does not seem to be sufficient reason in itself to allow such organisations to nominate independent officiants. We also note that celebrancy organisations welcomed our proposal that authorisation should be by means of individual application to the General Register Office and were not seeking the right to nominate officiants.

4.280 In our view, the General Register Office would be the appropriate body to authorise independent officiants. Having a central authority for applications would ensure consistency and economies of scale. Given that independent officiants are unlikely to be operating in a single registration district (and will not be limited to doing so), we do not think that any local authority will be particularly well placed to determine or advise on applications.

4.281 For the same reason, we think that a national list is more appropriate than a local one, to enable registration officers and couples to check the authorisation of officiants. We do not think that the list should include an officiant's contact details but it would be helpful for the purposes of identification for it to include the town or district in which they reside. However, we also think that individuals should be able to opt out from having their area of residence included on the public list, where the inclusion of such information would expose them to a risk of a specific and identifiable harm.[124] It would be for the General Register Office to determine the format of the list and whether it should be separate from that for nominated officiants (which we discuss above).

Criteria for authorisation

4.282 As noted above in relation to nominated officiants, we have identified three core elements of being a "fit and proper" person: character, competence, and the absence of criminal convictions. Having revised our recommendation to require nominated officiants to fulfil more specific criteria, we have similarly revised our recommendation as to the criteria that independent officiants would be expected to fulfil if enabled by Government. These additional criteria also respond to some of the concerns raised by consultees.

4.283 As a result, in addition to the criteria proposed in the Consultation Paper, we think it would be helpful to include a specific requirement that the person seeking authorisation as an independent officiant is of good character. In addition, we think

[124] See further paras 4.194 to 4.196 above for discussion of this option.

that applicants should be required to disclose if they have any unspent convictions,[125] and that any offences that preclude a person from being authorised as a nominated officiant should also preclude them from being authorised as an independent officiant.[126]

4.284 The criteria that we proposed in the Consultation Paper related to the competence of an officiant: age, understanding, and training. Our recommendation on these aspects is similar to that we make in relation to nominated officiants, the main difference being in terms of who would be responsible for training. There were, however, some differences in consultees' comments on the proposed criteria that merit further discussion here.

4.285 In relation to the minimum age, very few consultees argued for a minimum age of less than 18 and as noted above we think it would be odd for someone who has not attained the minimum age of marriage to be able to officiate at a wedding.[127] Equally, we do not think that there are good reasons for requiring a higher minimum age, given that the age of majority is 18.

4.286 We think that there is value in having a specific requirement that an independent officiant should understand the legal requirements for being an officiant and performing the role. It will emphasise that engagement in training is a means of acquiring understanding, rather than simply an end in itself. It also makes it clear that de-authorisation would be justified if their actions demonstrate that they do not understand their legal duties, even if they have completed the required training.

4.287 We also think that it is important to have a requirement for both initial and ongoing[128] training. We note that training in being an officiant is not the same as training in being a celebrant; as we explained in the Consultation Paper, any training would be directed to the legal duties and responsibilities of being an officiant, with the precise content being determined by the Registrar General.[129] As we discuss above in relation to nominated officiants, we think that officiants should be aware of their legal obligations under the Equality Act 2010. Independent officiants, if enabled by Government, would be civil officiants and under the same obligations to officiate at same-sex weddings as registration officers. Officiants should also be aware of their obligations not to discriminate on the basis of other protected characteristics in the Equality Act 2010, including disability, sex, and race.

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125 We do not think that all applicants should have to undertake DBS checks, for the reasons given at para 4.222 above.

126 See further para 4.223 above for discussion of these criteria.

127 See further para 4.216 above. The minimum age to marry is 16 years (with the consent of specified persons), or 18 years (without such consent): Marriage Act 1949, ss 2 and 3. Once the Marriage and Civil Partnership (Minimum Age) Act 2022 is in force, the current provisions permitting 16- and 17-year olds to marry with the consent of specified persons will be abolished and so the minimum age to marry will be 18 years.

128 In the Consultation Paper we referred to "continuing professional development" but in the light of consultees' responses we think that "ongoing training" better captures what will be required of officiants.

129 Consultation Paper, para 5.168.

4.288 It would be for the Registrar General to determine whether training should be delivered by the General Register Office or could be delivered by other organisations. It would also be for the Registrar General to determine the mode of delivery and assessment.

4.289 Similarly, we think that ongoing training is important to ensure that independent officiants remain aware of their legal duties and responsibilities and any changes to the law that affect them.

4.290 As in relation to nominated officiants, weddings law does not need to get involved with immigration status or the right to work of independent officiants (which is covered by immigration law).

4.291 We do not think that experience of conducting non-legally binding ceremonies (or weddings in other jurisdictions) should be required. Nor do we think that applicants should be required to produce testimonials. Applications will need to be assessed by reference to whether the applicant meets the legal requirements to be an officiant, not by reference to their skills as a celebrant.

4.292 We note that there may be benefits in being members of a professional organisation, in terms of professional support and insurance. However, consultees' responses suggested no compelling reasons for departing from our view that neither professional affiliation nor insurance should be a requirement for being authorised.

Preventing independent officiants from acting with a conflict of interests

4.293 In the Consultation Paper we explained why we thought that different rules would need to apply to nominated officiants and independent officiants. In particular, we noted that the prohibition that we provisionally proposed would apply to nominated officiants – which would preclude them from making a business of officiating at weddings by elevating the making of profits above the expression of their beliefs – could not apply to independent officiants as they would not be acting in pursuance of particular beliefs. We also noted that any legal limits on fees would only apply to their role in officiating at weddings and would not extend to other services such as meeting with the couple to plan the ceremony and conducting the ceremony.[130]

4.294 Nonetheless, we thought the dignity of the role of officiant would be compromised if officiants used their role to require couples to purchase other services from them or if they received a commission from third parties for referring couples to particular providers of ancillary services. We therefore provisionally proposed that (if enabled by Government to officiate at weddings) independent officiants should be prohibited from acting with a conflict of interest but that there should not otherwise be any limits on the fees that they could charge for officiating at weddings.[131]

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130 Consultation Paper, para 5.177.

131 Consultation Paper, para 5.190, Consultation Question 33.

Consultation

4.295 There was an almost even split between consultees agreeing and disagreeing with our proposal. Most of the disagreement focussed on the question of whether there should be limits on the fees that independent celebrants could charge.

4.296 Consultees who favoured not limiting fees noted that the cost would largely depend on the choices made by the couple as to the role they wanted the officiant to play and the time involved in personalising ceremonies. Some noted that lower-cost options would still be available to couples. Others commented that market forces would in practice control the fees that independent officiants would charge.

4.297 However, many consultees argued that independent officiants' fees should be either capped or fixed. A number expressed concern about commercialisation as being incompatible with the dignity of the institution of marriage. Other consultees viewed competition as likely to lead to overcharging and the risk of couples being priced out of getting married.

4.298 Some consultees expressed the view that independent officiants should not operate as a business. Humanists UK, whose response was supported by Humanist Society Scotland, thought that our proposal prohibiting nominated officiants "from making a business of officiating at weddings, by elevating the making of profits above the expression of their beliefs"[132] should also apply to independent officiants; however, this was subject to their opposition to independent celebrants being authorised as officiants.

4.299 Conversely, some consultees suggested that there should be a minimum fee to avoid independent officiants undercutting other officiants. Others proposed that the same rule as to charging should apply to all officiants. A few consultees thought that officiants should not be able to charge a fee at all. Other consultees suggested that independent officiants should have to publish their fees or otherwise be clear in advance what the fee would be.

4.300 Very few consultees opposed the prohibition of conflicts of interests, but some raised questions as to its scope. Some noted that independent celebrants might be employed by a venue or provide other services such as catering. A couple of consultees also asked whether officiating at the wedding of a relative would be a conflict of interest.

Discussion and conclusions

4.301 We think that the same arguments against fixed or capped fees that we discuss above in relation to nominated officiants apply with equal force to independent officiants. In particular, any fixed fee could only apply to their role in officiating at a wedding and would be likely to form a relatively small part of their fee for crafting a bespoke ceremony and leading the ceremony. Moreover, we do not see the charging of a fee as detrimental to the dignity of the institution of marriage. Nor does there seem any reason why increased competition would increase costs or why couples should have to pay a set fee if independent officiants wished to offer their services for a lower cost.

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[132] Consultation Paper, paras 5.175 and 5.189, Consultation Question 32.

4.302 We also note that under our scheme, the potential to make a profit would not be restricted to independent officiants: nominated officiants would not be precluded from making a profit, so long as they did not do so in a way that subordinated their beliefs to commercial interests. This rephrasing does not change the fact that it would not be possible to apply the same restriction to independent officiants, who are not representing a belief.

4.303 In our view, preventing independent officiants from acting with a conflict of interests is an appropriate way to maintain the dignity of the officiant's role. In relation to the concerns expressed as to how such a rule would be enforced, we note the power of the General Register Office to de-authorise independent officiants.

4.304 In the light of consultees' responses, we have further considered what would constitute a conflict. In our view there would be no conflict in an independent officiant requiring the couple to engage them to lead the ceremony as well as to officiate at it; since the role of celebrant will often be combined with that of officiant, we see the two roles as complementary rather than conflicting. An independent officiant would also be able to offer other goods or services such as floristry, decorations or catering. However, they could not make it a condition of their officiating at a wedding that the couple buy these goods or services from them or their company. It would also be a conflict of interest for an officiant to accept a payment to recommend another provider of goods or services.

4.305 Some consultees also raised the possibility of independent officiants being employed by venues. We note that it would be a conflict for an independent officiant to require that the wedding take place at that venue as a condition of officiating, or to accept a payment to recommend a venue, whether they are employed by it or not. However, the rule would not otherwise prevent an independent officiant being employed by a venue. A venue would also be able to require a couple to use a particular officiant, although there would be no question of the venue itself appointing officiants; the appointment of independent officiants would be for the General Register Office alone to determine.

4.306 We do not think that officiating at the wedding of a relative would be a conflict of interest. We note, for example, that there is no legal bar to registration officers, Anglican clergy, Jewish secretaries, Quaker officers or authorised persons acting in relation to the wedding of a relative. Indeed, the closeness of the relationship might be the very reason why a particular person has been asked to officiate: a number of participants in the Nuffield project had chosen friends or family to lead their non-legally binding ceremonies.[133] Given that being authorised will require applicants to undertake specific training, we think it unlikely that friends or family would seek to become officiants to conduct a single wedding. It seems to us more likely that a couple who wanted a friend or family member to conduct the ceremony would have them do so alongside an officiant, rather than by becoming an officiant. If a friend or family member did in fact become an officiant, then they would of course be obliged to comply with their legal duties and responsibilities as such. And if, as some consultees

[133] R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final Report* (2022) ch 6.

feared, friends or family were complicit in forced or sham marriages, they would be guilty of a criminal offence.[134]

Monitoring and de-authorisation

4.307 As set out above, we took the view that the General Register Office would be the appropriate body to assess whether applicants meet the criteria to be authorised as independent officiants and to determine the content of their required training. It followed that it would also be the appropriate body to monitor and, if necessary, de-authorise independent officiants. We therefore provisionally proposed that the General Register Office should be responsible for monitoring independent officiants and de-authorising those who fail to comply with the fit and proper standard or their duties and responsibilities. As part of this role we provisionally proposed that the General Register Office should also be able to carry out such investigations as are necessary to exercise its powers.[135]

Consultation

4.308 A very substantial majority of consultees supported this proposal, noting that it would ensure standards were upheld and that the General Register Office was the appropriate organisation to exercise these functions. A number also highlighted the importance of having fair and transparent processes in place, together with a means of appealing against de-authorisation.

4.309 Consultees' reasons for opposing the proposal were more varied. Some were opposed to independent celebrants. Others were independent celebrants who argued that their own professional organisations should be responsible for monitoring them. Some local authorities similarly advocated a greater role for local authorities in regulating independent officiants. A few members of the public were critical of the proposal as leading to increased bureaucracy or suspected that the General Register Office might abuse its powers.

4.310 Other consultees doubted whether the General Register Office would in practice be able to monitor independent officiants adequately or suggested that a new organisation should exercise the proposed responsibility. Several commented on the importance of having clear standards to which independent officiants should be held. Others suggested that a complaints system should be put in place to make the General Register Office aware of any problems with a particular independent officiant.

Discussion and conclusions

4.311 If Government decides to enable independent officiants, some form of state regulation will be necessary, and the General Register Office remains the obvious body to monitor and (if necessary) de-authorise them. Given its long-standing role and

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134 Relevant offences include the offences of forced marriage (Anti-social Behaviour, Crime and Policing Act 2014, s 121), breach of a forced marriage protection order (Family Law Act 1996, s 63CA), assisting unlawful immigration (Immigration Act 1971, s 25), and conspiracy to commit a particular offence (Criminal Law Act 1977, s 1). For how the sham marriage offences could apply to officiants, see Crown Prosecution Service, *Immigration Offences legal guidance – Annexx: Table of Immigration Offences*, https://www.cps.gov.uk/sites/default/files/documents/publications/Immigration-Offences-Annex.pdf (last visited 1 July 2022).

135 Consultation Paper, para 5.214, Consultation Question 39.

expertise, we do not see any need for a new regulatory body to be created. Nor would the level of monitoring that we envisage require local authorities to play a role. In addition, while celebrancy organisations may have a valuable role to play in training, advising, and supporting their members, the high level of support for our proposal indicates that regulation by a Government organisation should be a pre-condition for recognition.

4.312 We note that monitoring would be limited to whether independent officiants continued to meet the criteria for being authorised (in terms of being "fit and proper") and whether they were fulfilling their duties and responsibilities as officiants. It would not be to assess the quality of the service provided by officiants or ensure that couples got a good experience. As we discuss above in relation to nominated officiants, occasional or accidental failures should not justify de-authorisation; only a serious or persistent failure in complying with their duties and responsibilities, or a willingness to conduct forced or sham marriages, would do so.

4.313 The basis for any intervention from the General Register Office would need to be concerns or evidence that the officiant was failing to meet the fit and proper standard, or was failing to fulfil their duties and responsibilities. We do not envisage the General Register Office observing weddings conducted by independent celebrants or making spot checks (something that the couples getting married might find intrusive). Instead, we envisage the General Register Office monitoring the uptake of ongoing training and de-authorising those who do not complete it satisfactorily or at all. We also think that there would be value in a complaints process, so that individuals can bring concerns to the attention of the General Register Office. We discuss this further at paragraph 4.360 and following below.

4.314 Any public decision-making process, including decisions to de-authorise officiants, has to be fair. If the General Register Office is to have the power to de-authorise independent officiants (and indeed nominated officiants, if their organisation has failed to act),[136] then there should also be a mechanism for appeals. We discuss this further below.

When authorisation would lapse

4.315 As we recommend above, there will be no time limit on the authorisation of officiants. However, that does not mean that an officiant's authorisation should continue indefinitely in the absence of further action on their part. As we explained in the Consultation Paper, independent officiants would be in a different position from other officiants. We therefore provisionally proposed that the authorisation of an independent officiant should lapse if they failed to comply with their obligation to undertake continuing professional development.[137]

Consultation

4.316 A substantial majority of consultees, including all four celebrancy organisations that responded, agreed with our proposal. Many consultees welcomed the proposal as a means of monitoring independent officiants, enforcing the obligation to undertake

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136 See Recommendation 21 at para 4.261(2) above.

137 Consultation Paper, para 5.216, Consultation Question 41.

continuing professional development, and ensuring officiants were aware of changes in the law or other requirements.

4.317 Among those consultees who disagreed with the proposal, some did so because they disagreed with the concept of independent officiants or thought that the proposal was insufficient to ensure that standards would be maintained. Others disagreed because they saw the proposal as an unfair or unnecessary burden on (and cost to) independent officiants.

4.318 Some consultees questioned the utility of continuing professional development and suggested that it should be optional. Other consultees queried what the content and frequency of any continuing professional development would be and who would be responsible for providing it and monitoring compliance. Dr Rehana Parveen (an academic) also commented that continuing professional development must be "accessible to different communities and backgrounds and in different languages so that we do not end up discriminating between different communities".

4.319 A few consultees questioned whether an independent officiant's authorisation should automatically lapse if they did not engage in continuing professional development, noting that there might be mitigating circumstances. A few also suggested that this proposal should apply to other types of officiant or all types of officiant.

Discussion and conclusions

4.320 Officiants need to be aware of any changes to the law that affect their legal obligations and responsibilities. Further, even if the law remains the same, there needs to be some means of ensuring that independent officiants continue to understand what is required of them. It is for these reasons that we recommend that independent officiants should have an obligation to engage in ongoing training. In our view, de-authorising independent officiants who fail to comply with this obligation is the best way to ensure the uptake of such training.

4.321 As we explain at paragraph 4.288 above, it would be for the Registrar General to determine the content of both initial and ongoing training. Such training could be delivered either by the General Register Office or delegated to another organisation. In the latter case the organisation responsible would need to inform the General Register Office when independent officiants had completed the required training.

4.322 It would be for the Registrar General to decide how (and how often) training should be delivered. However, we note that some consultees made comments about intervals between training that they regarded as unduly long or unduly short. These comments suggest that a requirement to undergo training every three years would probably be regarded as reasonable. We also note that if such training were provided online and could be completed within a defined period rather than on a specific day, then there would be less excuse for individuals not engaging with it (and extensions could potentially be provided in case of illness).

4.323 In the event of an independent officiant not engaging with the requirement to undertake ongoing training within the required period, de-authorisation would be automatic. If that person wished to continue as an officiant, they would therefore need to be re-authorised. However, if they were able to show that there were mitigating

circumstances for their failure to engage in the required ongoing training, we think that it would be fair for any fee for being (re)authorised to be reduced or waived.[138]

4.324 The fact that de-authorisation would be automatic raises the possibility of a person not realising that their authorisation had lapsed and continuing to officiate at weddings. The requirement for independent officiants to be named on the schedule[139] would also reduce the scope for those who had been de-authorised to continue to officiate. As we explain in Chapter 3, the officiant's authorisation will be checked when the couple give notice. Once the officiant had been removed from the public list, registration officers should not issue a schedule naming that person as the intended officiant. There may be cases where an independent officiant is named on the schedule but whose authorisation then lapses; however, the de-authorisation of the officiant would not affect the validity of any ceremonies at which they had officiated, so long as at least one of the couple was not aware that the officiant had been de-authorised.[140] Further, a requirement to engage in training every (say) three years would be likely to be less burdensome (and less expensive) than a requirement to be re-accredited every three years.

4.325 In our view there should not be a rule that other types of officiants would be de-authorised if they do not undertake ongoing training. Such a rule would not be compatible with our recommendations about the authorisation of registration officers and Anglican clergy or our recommendation that the primary obligation for monitoring (and if necessary de-authorising) nominated officiants should lie with the organisation that nominated them.

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138 See para 12.101 and following below.

139 See Recommendation 8 at para 3.201 above.

140 See para 9.42 below.

Recommendation 23.

4.326 We recommend that, if enabled by Government to officiate at weddings, independent officiants should apply to the General Register Office to be authorised.

4.327 We recommend that individuals applying to be authorised as independent officiants should be required to demonstrate that they are "fit and proper" persons, by providing evidence that they:

(1) are of good character;

(2) have not been convicted of any offence which the General Register Office has determined would preclude a person from being fit and proper, by disclosing to the General Register Office any unspent convictions;

(3) have attained the age of 18;

(4) have undertaken initial training in the legal aspects of being an officiant, the content of which is determined by the General Register Office and is provided by

(a) the General Register Office, or

(b) a provider approved by the Registrar General; and

(5) understand the legal requirements for being an officiant and performing the role.

4.328 We recommend that the General Register Office should hold a public list of independent officiants that includes officiants' names and the town or district in which they reside, but individuals should be able to opt out from having their area of residence included where the inclusion of such information would expose them to a risk of a specific and identifiable harm.

4.329 We recommend that independent officiants should be required to undertake ongoing training as prescribed by the General Register Office, and that they should be automatically de-authorised if they fail to comply with this obligation.

4.330 We recommend that the General Register Office should be responsible for monitoring independent officiants and de-authorising those who fail to comply with the fit and proper standard or their duties and responsibilities.

Recommendation 24.

4.331 We recommend that independent officiants should be prevented from acting with a conflict of interest. This rule should not prevent an independent officiant from being employed by a commercial venue, so long as the independent officiant does not insist that a wedding take place in that venue.

MARITIME OFFICIANTS

4.332 As we explain in Chapter 10, our recommended scheme will also include a new category of officiant, called maritime officiants. Their role will be solely to officiate at civil weddings in international waters on board cruise ships registered in the United Kingdom with a port of choice in England or Wales.

4.333 In order to be authorised as a maritime officiant, an individual will need to be a deck officer, a category that comprises the captain, chief mate, and other officers who take charge of a navigational watch on board a ship.[141] They will also be subject to the same processes for authorisation, training and monitoring that we recommend should apply to independent officiants.

4.334 However, there are two differences between maritime officiants and independent officiants.

4.335 First, the public list of maritime officiants would record the ship or ships on which they are employed rather than the district in which they reside. Given that maritime officiants are only able to officiate at weddings in international waters, we think that recording their district of residence while on land would be unhelpful and potentially misleading.

4.336 Second, maritime officiants must ensure that the wedding only takes place on the cruise ship on which they are employed as a deck officer. That would not be a conflict of interest for them, since it is the only circumstance in which they will be authorised to officiate. However, a maritime officiant will otherwise be prevented from acting with a conflict of interest such as accepting a payment to recommend a specific provider of goods or services, or placing their commercial interests above their duties and responsibilities as an officiant.

[141] International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) (1978) (as amended), reg I/1(1.5) and ch II.

Recommendation 25.

4.337 We recommend that maritime officiants should apply to the General Register Office to be authorised.

4.338 We recommend that individuals applying to be authorised as maritime officiants should be required to demonstrate that they are "fit and proper" persons, by providing evidence that they:

(1) are of good character;

(2) have not been convicted of any offence which the General Register Office has determined would preclude a person from being fit and proper, by disclosing to the General Register Office any unspent convictions;

(3) have attained the age of 18;

(4) have undertaken initial training in the legal aspects of being an officiant, the content of which is determined by the General Register Office and is provided by

(a) the General Register Office, or

(b) a provider approved by the Registrar General; and

(5) understand the legal requirements for being an officiant and performing the role.

4.339 We recommend that the General Register Office should hold a public list of maritime officiants that includes officiants' names and the ship or ships on which they are employed.

4.340 We recommend that maritime officiants should be required to undertake ongoing training as prescribed by the General Register Office, and that they should be automatically de-authorised if they fail to comply with this obligation.

4.341 We recommend that the General Register Office should be responsible for monitoring maritime officiants and de-authorising those who fail to comply with the fit and proper standard or their duties and responsibilities.

Recommendation 26.

4.342 We recommend that maritime officiants should be prevented from acting with a conflict of interest.

THE IMPERMISSIBILITY OF DUAL AUTHORISATION

4.343 Under our scheme, the concept of an officiant, and the duties and responsibilities of that officiant, will be common to all weddings. However, as we set out above, there will be different routes to becoming an officiant, each requiring specific criteria to be fulfilled. Moreover, our scheme envisages different bodies being responsible for monitoring different officiants, differences in the types of ceremony at which they may officiate, and different rules as to what they could charge.

4.344 As we explained in the Consultation Paper, these different criteria and restrictions led us to take the view that it should not be possible for a person to be authorised as an officiant by different routes.[142] Our consultation question focussed on nominated and independent officiants, as we did not envisage that there would be any overlap between these categories and either registration officers or Anglican clergy. Our provisional proposal was therefore that it should not be possible for the same person to be authorised as an independent officiant and nominated by either a religious or a non-religious belief organisation. We also provisionally proposed that it should not be possible for the same person to be nominated by both a religious and a non-religious belief organisation.[143]

Consultation

4.345 A significant majority of consultees agreed with our proposal. For many, the key issue was that an officiant nominated by either a religious or non-religious belief organisation would be representing the beliefs of that organisation. As the Church of England commented:

> No one seeking to be authorised as both a religious and non-religious officiant could be acting in good faith or be capable of working honestly with a couple to represent their beliefs in the wedding ceremony.

A number also commented that independent officiants would not be representing any specific set of beliefs and that they could not be independent while being nominated by an organisation. Other consultees commented that the proposal would ensure clarity and accountability and prevent individuals switching between categories to take advantage of different rules.

4.346 Some consultees suggested that the proposal should go further and prevent any officiant from being nominated by more than one organisation, whether religious or non-religious. This point was made by both Humanists UK and the Evangelical Alliance, among others. A number of consultees also said that registration officers should not be able to be authorised as independent officiants, although some local authorities did suggest that this should be permitted. A couple of consultees also suggested that the same rule should apply to all officiants.

4.347 Among those who disagreed, some consultees questioned why this restriction was needed. Some suggested that it should be up to nominating organisations to decide whether their nominated officiants could also be nominated by another organisation,

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142 Consultation Paper, para 5.183.

143 Consultation Paper, para 5.191, Consultation Question 34.

while Humanist and Secularist Liberal Democrats expressed the hope that religious and non-religious belief organisations would be able to work together.

4.348 Others actively supported nominated officiants being able to be authorised independently. A number of these consultees gave examples of how they currently operated as independent celebrants while also holding a religious role or how they would like to be able to conduct ceremonies according to specific religious beliefs. In addition, one Anglican clergyman said that he would welcome the opportunity to be authorised independently as well as officiating at Anglican weddings.

4.349 Some consultees raised the issue of interfaith couples. OneSpirit Interfaith Foundation commented that there is not always a clear distinction between religious and non-religious beliefs, while one consultee noted that interfaith ministers represent a range of different beliefs. Other consultees raised specific issues about Paganism, noting the diversity of organisations and beliefs it encompasses.

4.350 In addition, a few consultees who agreed with the proposal suggested that being authorised by one route should not preclude an officiant changing to a different route at a later stage, as long as they were only authorised in one way at any given time.

Discussion and conclusions

4.351 Consultees' responses reinforced our view that allowing individuals to be authorised by different routes – and so to act in different capacities – would lead to confusion and undermine other elements of our scheme. Our recommendations regarding the way in which officiants would be appointed, monitored and de-authorised, and the different rules that would apply in relation to fees and profit, are incompatible with officiants being simultaneously authorised by different routes.

4.352 Our view is that any officiant should only be able to be authorised by one route at any given time. In the light of responses from consultees we think it is necessary to make it clear that this rule will apply to all categories of officiant, including Anglican clergy and registration officers, rather than leaving this to their terms of employment. We think that there would be a clear conflict in registration officers employed by local authorities also operating on their own account as independent celebrants, especially given the differing rules on what fees could be charged. However, once an individual has ceased to be authorised in one capacity, they will be able to seek authorisation in a different capacity.

4.353 However, we recommend one exception to this general rule: that the unique category of maritime officiants should also be able to be authorised as independent officiants, if Government enables independent officiants to officiate at weddings. As we explain in Chapter 10, this exception is justified because maritime officiants will be subject to the same rules as independent officiants, in relation to their authorisation and in relation to fees and profit.[144]

4.354 We also take the view that an officiant can only be nominated for authorisation by one organisation at any given time. While our proposal did not expressly prohibit an officiant being nominated by organisations within the same category (two or more

[144] See para 10.157 and Recommendation 49 at para 10.190 above.

religious bodies, or two or more non-religious bodies), we did not envisage the same person being nominated by multiple organisations. Under our scheme, nominating organisations will be responsible for ensuring that those it nominates meet the requirements to be an officiant and receive appropriate training; they will also be responsible for monitoring officiants, and requesting the withdrawal of authorisation from those who fail to comply with the fit and proper standard or with their duties and responsibilities. All these responsibilities on the nominating organisation point in favour of there being just one organisation performing this role in relation to any given officiant.

4.355 We appreciate that, within some organisations, the distinction between religious and non-religious beliefs is not as clear-cut as it is for others. However, given our definitions of religious and non-religious belief organisations, we think it would be impossible for any organisation to qualify as both. We think that the concerns of consultees about the potential rigidity of that divide will be addressed by our recommendations regarding the ceremony. We discuss these in detail in Chapter 5; here we simply note that officiating at a ceremony that reflects different beliefs will not require an officiant to be nominated by different organisations but will depend on what their organisation permits.

4.356 In addition, as we explain in paragraph 4.136 above our Terms of Reference require a distinction to be made between religious and non-religious belief organisations. One of the reasons this distinction is necessary is because the locks in relation to same-sex marriage will continue for religious organisations but will not be extended to non-religious belief organisations if they are enabled by Government to officiate at weddings. These locks also provide a further reason for not permitting religious officiants to be independent officiants. There may well be religious officiants who would like to be able to conduct same-sex weddings but whose governing authority does not currently allow this. Allowing such religious officiants to be authorised as independent officiants to conduct same-sex weddings would create an obvious conflict between their two roles. If an officiant is not happy with the rules of their organisation then it is open to them to resign and find another organisation that does permit same-sex weddings, or (should this be an option) seek authorisation solely as an independent officiant.

4.357 Finally, we note that our scheme would not necessarily prevent nominated officiants (or indeed Anglican clergy or registration officers) from being independent *celebrants* conducting non-legally binding ceremonies. It will be up to each organisation to decide what it wishes to permit its officiants to do. Equally, there would be nothing to prevent an independent officiant from being appointed as a minister and conducting (rather than officiating at) weddings in that capacity. Our recommendation is only aimed at preventing dual authorisation.

Recommendation 27.

4.358 We recommend that an officiant should only be able to be authorised as one of the below categories of officiant at any one time –

(1) Anglican clergy;

(2) registration officer;

(3) nominated officiant; or

(4) independent officiant/maritime officiant.

4.359 We recommend that it should not be possible for a nominated officiant to be nominated by more than one nominating organisation at any one time.

COMPLAINTS AND APPEALS

4.360 We think that there should be a means for complaints about nominated, independent and maritime officiants to be made directly to the General Register Office, to enable it to be alerted to any problems. What form this complaints mechanism should take will be for the General Register Office to determine, although we think it should consult on any procedure it devises.

4.361 The role of a complaints procedure will also be different for different groups of officiants. As noted above, giving the General Register Office the power to de-authorise nominated officiants who failed to comply with the fit and proper standard or their duties and responsibilities as an officiant was supported by a very substantial majority of consultees. In the light of feedback from our consultees, we note that there was strong support for any complaints being directed to the nominating organisation in the first instance. However, we also note that there may well be cases in which a nominating organisation does not have a formal complaints process in place and the individual concerned does not know how to initiate a complaint otherwise than via the General Register Office. There may also be cases in which it is more appropriate for the complaint to be made directly to the General Register Office. We have heard from a number of consultees about the difficulties that women in particular may face in engaging with religious authorities and many might prefer to have the option of raising their concern via an independent body.

4.362 By contrast, the General Register Office would have direct responsibility for monitoring and de-authorising independent officiants. It therefore follows that any complaints about independent officiants would be made directly to the General Register Office.

4.363 As we explain above, under our scheme the Registrar General will have the power to decide not to authorise a particular nominee or applicant, and the power to de-authorise a nominated officiant (if their nominating organisation fails to act) or an independent officiant. A number of consultees highlighted the need for there to be an appeal mechanism.

4.364 We note that Scotland, Northern Ireland, Jersey, and Ireland all make provision for an appeal against the decision of the Registrar General (or equivalent figure) to de-authorise an officiant to be made to the relevant government department or minister.[145] Of these, Jersey has the most detailed provision. Appeals are to be made in writing stating the basis on which a review is justified. The relevant Minister may receive submissions or request a suitably qualified independent person to investigate,[146] and their decision is stated as final.[147] We think this would provide a suitable model for our scheme for an officiant to appeal against their de-authorisation (or a refusal to authorise) to the relevant Secretary of State.

Recommendation 28.

4.365 We recommend that there should be a means for complaints about nominated, maritime and independent officiants to be made directly to the General Register Office, with the procedure to be adopted to be devised by the General Register Office after consultation.

4.366 We recommend that the General Register Office should have the power to conduct investigations necessary to exercise its powers.

4.367 We recommend that there should be a procedure for officiants to appeal to the relevant Secretary of State against a decision by the General Register Office not to authorise them, or to withdraw their authorisation.

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145 Marriage (Scotland) Act 1977, s 10(4); Civil Registration Act 2004, s 56(2); Marriage (Northern Ireland) Order 2003, art 13(2); Marriage and Civil Status (Jersey) Order 2018, art 10.

146 Marriage and Civil Status (Jersey) Order 2018, art 10(3).

147 Marriage and Civil Status (Jersey) Order 2018, art 10(6).

Chapter 5: The wedding ceremony

INTRODUCTION

5.1 In this chapter, we consider and make recommendations about what elements are necessary to include within a wedding ceremony, and the other rules governing how a ceremony should take place. Because the requirement for the couple to express consent is central to our scheme, it is the main focus of this chapter.

5.2 The current law imposes different requirements for the wedding ceremony depending on its type. Different rules apply to civil weddings as compared to religious weddings, and to different types of religious weddings, whether Anglican, Jewish, Quaker, or in a registered place of worship. These differences in treatment have fuelled misunderstandings about the law, including what types of religious ceremony the law will recognise. Some requirements – for example the requirements for prescribed words and open doors – are premised on specific expectations about what a wedding will or should look like. That these two requirements only apply to some types of wedding contributes to the perception of the law imposing unwanted formalities onto some groups but not others.

5.3 As we explained in the Consultation Paper, our starting point is to recommend a new scheme that, as far as possible, imposes the same minimum requirements on all types of wedding.[1]

5.4 Our recommendations focus on the essential requirements of the ceremony, without imposing further formality requirements. With the robust system of preliminaries that we recommend, the system can give couples relative freedom to conduct their wedding ceremony in a way that reflects their beliefs and what is meaningful to them.

5.5 Under our recommendations, the couple will be required to express their consent to be married in each other's presence, as well as the presence of the officiant and two witnesses. But it will be possible for such consent to be expressed in a range of ways. In a belief ceremony, meaning a ceremony officiated at by a member of the Anglican clergy or a nominated officiant, the couple will be able to express consent by their words or actions, in any way that reflects a shared understanding of an expression of consent within that ceremony. In a civil ceremony, meaning a ceremony officiated at by a registration officer, a maritime officiant, or (if authorised) an independent officiant, the couple will be required to express their consent by saying required words of contract or words to the same effect. In whatever way the couple expresses their consent to each other, it will be at that moment that they would be married under the law. The schedule or marriage document will also contain a declaration, that the couple will sign, confirming that that they have expressed consent to be legally married to each other.

5.6 The recommendations that we make in this chapter in large part reflect the policy that we provisionally proposed in the Consultation Paper. Many of those who disagreed

[1] Consultation Paper, paras 6.3 and 6.4.

with the provisional proposals reflected views of religious groups for whom the current law works well, including those which echoed the briefing notes provided by the Christian Institute and the Coalition For Marriage. Consultation responses also revealed misunderstandings about the current law and the purpose of some of the current requirements. We appreciate that these views are sincerely held but retaining the current position (or in some cases, as responses appeared to advocate, adopting a more restrictive position than the current law) would not solve the real problems experienced by members of other groups. Nor would they enable us to fulfil the principles that underpin our review, including providing fairness and equality and respecting individuals' wishes and beliefs. Nevertheless, some of the points raised by consultees reflect legitimate concerns with our provisional proposals and have caused us to modify our policy.

THE REQUIREMENTS FOR ALL WEDDING CEREMONIES

5.7 The current Marriage Act 1949 prescribes rules about the form each type of ceremony must and can take. These rules vary.

(1) Anglican, Jewish and Quaker ceremonies are subject to unique provisions about the form they must take: Anglican weddings must take place "according to the rites of the Church of England"; Jewish weddings must take place according to the "usages of the Jews" and Quaker weddings according to the "usages of the Society of Friends". Jewish and Quaker weddings are confined by the Act to persons "professing the Jewish religion" and to members of the Society of Friends or persons authorised by the Society, respectively.[2]

(2) Religious ceremonies other than Anglican, Jewish and Quaker weddings may take place "according to such form and ceremony" as the couple "may see fit to adopt", providing they have the consent of the minister or trustees of the registered place of worship where the wedding takes place. The couple must also say the prescribed words, comprising the declarations and words of contract. The ceremony must take place with open doors.[3]

(3) Civil ceremonies, meaning those that take place in a register office or on approved premises, must also include the prescribed words, and take place with open doors or free public access. There is no provision that the ceremony should be in the form the parties wish.[4]

5.8 We explored in the Consultation Paper the history of these provisions, pointing to the evolution of the law from the Clandestine Marriages Act 1753 to the current law.[5] We explored the historical reasons for the specific treatment of Anglican, Jewish and Quaker weddings. We also explained that, when introduced in 1836, the provision for

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2 Marriage Act 1949, ss 5(1); 26(1)(c), (d) and (e); 26B(2)(a) and (4)(a); and 47(1).

3 Marriage Act 1949, s 44.

4 Marriage Act 1949, ss 45 and 46B. They are also subject to a prohibition on religious service, which we consider at para 5.142 and following below.

5 See eg Consultation Paper, para 6.8.

weddings in registered places of worship[6] or the register office simply echoed the structure of the Anglican service. This reflected the fact that these provisions were intended to apply to Non-conformist Christian denominations that had no history of celebrating weddings according to their own rites, and that civil wedding ceremonies were provided to cater to Non-conformists who saw marriage as a civil contract.[7]

5.9 We also explained the history of the requirement for open doors. This requirement is another example of the exceptional treatment of Anglican, Jewish and Quaker weddings, as it does not apply to those weddings, but only to weddings that take place in registered places of worship and to civil weddings. Despite a common perception that this requirement was introduced to enable members of the public to object to a wedding going ahead, it actually arose from 17th century rules governing the religious worship of Non-conformists: Protestant Dissenters were only permitted to assemble for religious worship after their meeting place had been certified, and were only permitted to preach with open doors.[8]

5.10 These rules are now inadequate to accommodate the diversity of beliefs and practices in England and Wales. The exceptional treatment of Anglican, Jewish and Quaker weddings fuels misunderstanding that the law only recognises those forms of religious weddings. The provision for civil weddings fails to give couples scope to determine the content of their ceremonies. And the requirement for prescribed words – a requirement that only applies to civil weddings and to religious weddings other than Anglican, Jewish and Quaker weddings – is perceived as an imposition by many non-Christian religious groups for which the words are entirely alien to their religious practice, and often treated as a separate civil ceremony within the religious one.[9]

5.11 These rules would also not work well for the individual and personalised ceremonies conducted by Humanist celebrants, and by independent celebrants, should these groups be enabled to conduct legally binding weddings.

5.12 To address these issues, we proposed a set of requirements which would apply to all wedding ceremonies equally. Under our scheme, a ceremony would be required to take place, attended by the couple, the officiant and two witnesses. The focus of the requirements of the ceremony would be on the couple expressing consent to be married. There would be no requirement for open doors.

The requirement for consent

5.13 Under our proposed scheme, an expression of consent would be the core requirement of a wedding ceremony.

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6 When the Marriage Act 1836 was passed, only Christian places of worship could conduct weddings, because only Christian places of worship could be licenced. It was not until the passage of the Places of Worship Registration Act 1855 that any place of worship could be certified as such, and so registered for marriage: see R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (2021) pp 39 to 40, 86 and 101 to 102.

7 Consultation Paper, para 6.8.

8 See Consultation Paper, para 6.123. See also W Kennett, "The Place of Worship in Solemnization of a Marriage" (2015) 30(2) *Journal of Law and Religion* 260, 265, citing Act of Toleration 1689, s 19.

9 See Consultation Paper, paras 6.9 to 6.22.

5.14 We provisionally proposed that during every wedding ceremony, the couple should be required to express their consent to be married to each other, whether orally or otherwise. We proposed that there should not be any legal requirement for consent to be expressed in any particular way. Further, we proposed that the couple should not be required to make a declaration that there is no impediment to the marriage, as impediments will have been assessed during the preliminaries process. We proposed that the marriage would be formed at the point when both of the couple had expressed consent to be married to each other, which could be during the ceremony or when they had signed the declaration in the schedule or marriage document: this declaration would provide that each party had during the ceremony expressed consent to be married to the other, or that each were now consenting to be legally married to each other. We further proposed that nominating organisations could submit details of their wedding ceremonies to the General Register Office to identify the way(s) each party expresses consent in accordance with the beliefs of that organisation.[10]

Consultation

5.15 Only a minority of consultees agreed with the provisional proposal: nearly twice as many consultees opposed the proposal as supported it.

5.16 Most consultees' reasons for disagreeing with the proposal echoed, at least in part, the reasons expressed in the briefing texts provided by the Christian Institute and the Coalition For Marriage. Many responses to this question revealed misunderstandings about the current law as well as about our proposals for reform.

Declaration of no impediments

5.17 Some consultees specifically agreed that couples should not be required to make a declaration of no impediments during the ceremony. These consultees described the declarations as unnecessary because the issue of capacity to marry is assessed during the preliminaries. Others said that the declarations convey negativity or begin the ceremony on a negative note.

5.18 Other consultees thought that there should be a legal requirement for the couple to make a declaration of no impediments during the ceremony. They argued that the declarations add protection to the preliminaries process: some further suggested that the parties might lie during the preliminaries or characterised declarations made during the ceremony as having a public nature. Some consultees separately argued that there should be an opportunity during a wedding ceremony for objections to be made. Other consultees linked the declarations to the solemnity and seriousness of the wedding.

5.19 Several consultees, including the Faculty Office of the Archbishop of Canterbury, said that the declarations of no impediment should remain optional for couples or organisations who wish to include them.

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[10] Consultation Paper, para 6.68, Consultation Question 42.

Consent and the prescribed words

5.20 Many consultees agreed with the proposal's focus on the expression of consent: no consultees appeared to disagree that there should be a requirement for the parties to express their consent to be married to each other. How consent could or should be expressed was, however, contentious.

5.21 Those consultees who favoured greater flexibility in how consent could be expressed – that is, without using the prescribed words of contract – noted how such flexibility would accommodate the recognition of a wider range of ceremonies. Some consultees commented that the proposal would allow couples to have a ceremony that is meaningful to them recognised by the law. Some specifically agreed that couples should be able to express consent non-orally.

5.22 Others focussed on religious weddings in particular. The Church of England described the proposal as "flexible enough to accommodate different religious traditions". The Religious Society of Friends confirmed that it would work for the Quaker wedding ceremony, which includes an expression of consent. Dr Rajnaara Akhtar (an academic) said that the "limited restrictions" in the proposal would "mean couples can undergo ceremonies which are meaningful to them". Referring to Muslim weddings, she thought that the proposal would "enable existing ceremonial norms to be recognised by the law", which "will help bridge the significant gap between religious-only and legally recognised marriages occurring within Muslim communities".

5.23 However, there was a great deal of opposition to our proposal that consent might be expressed other than by speaking the prescribed words of contract. This point was a core focus of the opposition in the briefing texts by the Christian Institute and the Coalition For Marriage.

5.24 The most common reason for disagreement that consultees gave connected the prescribed words to the seriousness and solemnity of marriage, or the meaning of marriage itself. Some consultees appeared to place weight on the content of the prescribed words. However, many consultees exhibited confusion about what the prescribed words are, with many suggesting that they involve the couple making promises. Some consultees placed weight upon the antiquity of the prescribed words; for example, the Coalition For Marriage's briefing said that the prescribed words were "always considered foundational" to wedding ceremonies. Consultees also saw the prescribed words as being intimately intwined with the public nature of weddings. Consultees arguing in favour of prescribed words also said that the law is sufficiently flexible as it is.

5.25 For other consultees, the fact of having prescribed words elevates the significance of the ceremony. And others suggested that the prescribed words provide clarity, certainty and standardisation across wedding ceremonies. Some, including the Law Society, suggested that prescribed words are a protection against forced marriage.

5.26 Consultees also raised various objections to permitting consent to be expressed non-orally. Often, these arguments repeated the concerns about the seriousness and significance of marriage. Some consultees, among them Welsh Women's Aid, thought that allowing consent to be given non-orally could also increase the risk of coercion.

Some consultees acknowledged the need to make accommodation for individuals with disabilities.

5.27 The National Secular Society were concerned that, in expressing consent, couples would only need to express consent to be married, but would not need explicitly to express their consent to be legally married. The Society was concerned that, to have a ceremony that is not recognized by the law, couples would be required "to declare that they have no intention to create legal relations", suggesting this approach is "contrary to usual legal sense". It also argued that it might interfere with religious or belief ceremonies by requiring "a 'disclaimer' amid their rites that the ceremony has no legal significance".

Signing the schedule or marriage document

5.28 Most of the responses that considered the proposal that the schedule or marriage document contain a declaration that the couple had or were expressing consent focussed on whether signing this declaration could itself constitute an expression of consent, a point which elicited mixed views.

5.29 Reasons for agreement included that it would eliminate any doubt that the couple had expressed consent during the ceremony or that it would reflect the perception of some couples that the moment of signing is the moment they are married.

5.30 Reasons for disagreement included that the couple expressing their consent aloud is an important tradition, or that it is the moment couples believe they are married. For example, Humanists UK said it is "important that people in attendance at the wedding see the expression of consent" because it is "in many ways the most significant moment of the wedding, that makes it a powerful occasion that has a lasting impact on all involved".

Time of formation

5.31 Consultees who expressly agreed with our proposal that the marriage should be formed at the moment the couple expresses consent did not offer many reasons in support. Those disagreeing with this aspect of the proposal variously suggested that the marriage should be formed when the schedule is signed, or when the officiant declares that the couple are married.

5.32 There was also a common misunderstanding among consultees that we had proposed that a marriage could be formed without the presence of both of the couple, a misunderstanding that appeared to generate disagreement with the proposal.

Submission of ceremony details by nominating bodies

5.33 Consultees also had mixed views on religious and (if authorised) non-religious belief bodies submitting details of their wedding ceremonies to the General Register Office to identify the way(s) each party would express consent within their ceremonies.

5.34 Those in favour offered that this approach would ensure that different types of ceremony could satisfy the requirements for a couple to express consent.

5.35 Those against raised various arguments, suggesting varying interpretations of this aspect of the proposal. Some disagreed that the General Register Office should have

a role in approving the rites or practices of belief groups. Others disagreed that nominating bodies should be required to submit the details of their form of ceremonies. Some consultees were concerned that, after the submission to the General Register Office, the body's ceremonies would be required to remain in that same form, with a suggestion that it could cause confusion about whether consent had been expressed if a different form of ceremony was followed. Some appeared to understand that the details would be required to be submitted to the General Register Office for every ceremony. One consultee simply queried what the purpose of this requirement would be.

5.36 Consultees who opposed the possibility of couples expressing consent in ways other than by speaking prescribed words also opposed the possibility that ceremonies containing different expressions of consent might be submitted to the General Register Office.

Discussion and conclusion

5.37 Although many consultees disagreed with this proposal, we nevertheless are proceeding with a recommendation in very similar terms, with the couple's expression of consent the central requirement. However, in light of consultees' concerns, we have clarified and, in some respects, modified aspects of our policy about how consent can be expressed.

No impediments

5.38 We provisionally proposed that the couple should not be legally required to declare that they know of no impediments to the marriage at the wedding ceremony because we did not believe that these declarations serve a useful purpose. The declarations are currently only required for civil weddings and religious weddings which take place in registered places of worship. That is, in Anglican,[11] Jewish and Quaker weddings, there is no requirement to include the declarations prescribed for other weddings. It is clearly difficult to justify requiring them in some religious weddings and not others and our general approach is to have the same rules for all weddings as far as it is possible to do so. Moreover, the extent to which a declaration of no impediments fits within a religious wedding in a registered place of worship is different for different religions.[12] Some religious groups have voiced their opposition to including them within their ceremonies: for example, the Religious Society of Friends (whose weddings do not currently need to include a declaration of no impediments) explained to us that, because pastoral counselling takes place prior to a Quaker ceremony, such a requirement in the wedding ceremony itself would imply doubts about the couple's honesty and integrity.[13] Extending the requirement so that it applied to their ceremonies would therefore clearly be undesirable. The only feasible way to treat all weddings the same is to remove the requirement in all cases.

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11 In an Anglican wedding service, the member of the clergy conducting the service first asks the congregation, and then the couple, to declare if there is any impediment to the marriage, rather than requiring a declaration of no impediments.

12 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final report* (2022) ch 5.

13 Consultation Paper, para 6.48(3).

5.39 Moreover, the declarations are unnecessary. Impediments to the marriage should be discovered during the preliminaries process.[14] In the civil preliminaries process, each party to the marriage is required to make a declaration of no impediments.[15] Under our recommendations in relation to Anglican preliminaries, both parties to the marriage will be required to provide evidence of their marital status in advance of banns being called or a licence obtained, and both will in addition have to swear a declaration of no impediments to obtain a common licence.[16]

5.40 Consultees have not convinced us that declarations of no impediments should be required. Their suggestions as to why a declaration during a ceremony would be more effective than a declaration made as part of the preliminaries process were unpersuasive. In particular, we do not think that someone who has made a false declaration about an existing marriage when giving notice would be compelled to tell the truth during the ceremony itself by this requirement. Moreover, the arguments in favour of the declarations did not address the difficulties faced by the many religious groups whose religious rites do not include such declarations. Of course, it will be open to any religious group to impose its own requirement for declarations to be made, as part of its own wedding ceremony. Similarly, a couple having a civil wedding would be free to include the declarations if, for them, the declarations have ceremonial or traditional value. But we do not think that the declarations should be required as a matter of the law. We reiterate our view that impediments are more properly addressed during the preliminaries stage.

The need for consent to be expressed in a ceremony

5.41 As we noted above, many consultees misunderstood our proposal, appearing to believe that it would allow the couple to be married in a ceremony without both being present. In retrospect, this confusion is understandable. But it was never our intention to suggest that a couple could be legally married without both of them being physically present with the officiant and witnesses.

5.42 Our proposals envisaged that a legal marriage would come into being at the moment when the couple expressed their consent to marry each other, in each other's presence and in the presence of the officiant and two witnesses. However, we also envisaged that the couple might be separate for part of the process; if so, signing the schedule or marriage document (again in each other's presence and the presence of the officiant and two witnesses) could amount to the expression of consent, and therefore, the ceremony that the law would recognise.

5.43 We explained that some religious-only ceremonies currently take place without both of the couple being present. We gave the example of some Muslim nikah ceremonies which take place without the presence of the bride, who has given consent earlier. The Nuffield project also evidenced this practice among some communities, illustrating that it might be the result of the bride and groom being kept physically separate until they are married or the result of sex-segregation within many mosques,

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14 Consultation Paper, para 6.43.

15 Marriage Act 1949, s 28.

16 See Recommendation 10 at para 3.257 and Recommendation 15 at para 3.307 above.

as two examples.[17] But we explained in the Consultation Paper that under our proposals the law would not recognise a ceremony unless both of the couple were present. Instead, in these cases, to be legally married the couple would have to come together after the nikah to sign the schedule, in the presence of the officiant and two witnesses.[18] Legally, the couple would be married only from the point at which they did so.

5.44 The confusion among consultees as to what would constitute the ceremony in such cases has led us to rethink our proposal. We conclude that the law should require a ceremony to create a marriage, and moreover that a ceremony should involve something more than the couple signing the schedule or marriage document. Although a legal relationship, including a civil partnership, can be formed by signing a document,[19] consultation responses demonstrate the need for a wedding to involve something more. We conclude that the couple should be required to express their consent to be married to each other by words or actions, not by signing the schedule or marriage document.

5.45 It remains central to our scheme, and to our recommendation, that the couple express consent to be married. As we explore below, we now recommend slightly different requirements for belief weddings and civil weddings about how they will have to express their consent. But in both cases, the couple must express consent, in each other's presence and the presence of the officiant and two witnesses, in a ceremony in advance of signing the schedule or marriage document. Because this will be a requirement of the ceremony, the officiant will have a duty to ensure that the parties have expressed consent before they sign the schedule or marriage document. If each of the couple has not expressed consent during the ceremony, the officiant will have a duty to confirm that they consent before they sign the schedule.[20] This acknowledgement of consent will satisfy the requirement for an expression of consent.

5.46 Although there will therefore be some rules about how the couple will be required to express their consent, failure to follow them will not affect the validity of the marriage. The core requirement under our scheme remains an expression of consent. So long as the couple express consent to be married in the presence of each other, the marriage will not be invalid simply because they did not do so in the required way.[21]

5.47 As we explained in the Consultation Paper, the requirement to express consent will not require that the couple make explicit that they are consenting to be legally married. Few religious ceremonies would satisfy this requirement. Nor would one form of the

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17 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 4.47.

18 Consultation Paper, para 6.62.

19 Civil partnerships are formed on the signing of the civil partnership document: Civil Partnership Act 2004, s 2. And a civil partnership is converted into a marriage on the signing of the conversion declaration: The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181), reg 3.

20 See para 4.27 and Recommendation 16 at para 4.63 above.

21 See Ch 9 for a discussion of the requirements for a valid marriage under our scheme.

currently prescribed words of contract, which requires each person to take the other as "wedded" wife or husband, making no reference to the law or legal marriage.[22]

5.48 We disagree with the suggestion that this approach runs contrary to what the law would ordinarily require for other types of agreement: an intention to be legally bound is often inferred from the circumstances. When a person, particularly one who has given notice, expresses consent to be married in the presence of witnesses and an officiant, the inference will be that they are expressing consent to legal marriage, unless they express the contrary intention. It is possible that a person could argue afterwards that they did not intend their consent to amount to consent to legal marriage, but it would be difficult to overcome the natural inference. And any such argument would be impossible if the person had signed the schedule or marriage document.

5.49 We continue to believe that it is important that the couple signs a declaration confirming that they have expressed consent to be legally married, to provide clarity and certainty. We explain this in more detail at paragraph 5.71 below

How consent can be expressed

5.50 We have not generally been persuaded of the need for prescribed words, particularly in their current form. However, we recognise the force of consultees' concerns that prescribed words can provide some level of clarity and uniformity. Notwithstanding, in the case of belief weddings we consider that these concerns are heavily outweighed by the benefits of accommodating the diversity of religious ceremonies in which the prescribed words cannot readily be incorporated, and which currently act as a deterrent to legally recognised weddings. The same considerations do not, however, apply to civil ceremonies. Therefore, we recommend that a form of prescribed words of contract (which we call required words of contract), or words to the same effect, should be required for civil ceremonies.

The expression of consent in a belief ceremony

5.51 It is worth emphasising that the prescribed words are currently not required to be said in Anglican, Jewish and Quaker wedding ceremonies.[23] The Anglican forms of service are not dissimilar to the prescribed words, because the prescribed words are based on the Anglican service.[24] However, Jewish and Quaker weddings do not include the prescribed words,[25] and have never been required to do so.

5.52 It is also worth noting what the prescribed words are. Under the Marriage Act 1949, the prescribed words of contract may be said in one of two ways:

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22 See para 5.52 below.

23 See para 5.7 above.

24 R Probert, "Secular or sacred? The ambiguity of 'civil' marriage in the Marriage Act 1836" (2022) *Journal of Legal History* (online), https://www.tandfonline.com/doi/full/10.1080/01440365.2022.2092947?scroll=top&needAccess=true (last visited 3 July 2022); R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 4.17.

25 See Consultation Paper, para 6.48(2) and (3) for a description of Jewish and Quaker wedding ceremonies.

"I call upon these persons here present to witness that I, [name], do take thee, [name], to be my lawful wedded wife [or husband]"; or

"I [name] take you [or thee] [name] to be my wedded wife [or husband]".[26]

5.53 Many consultees believed the prescribed words of contract require couples to say much more than this and, in particular, believed that they require couples to exchange vows or promises. It appears that many consultees confused the prescribed words with other standardised ceremonies that they are familiar with. If so, that would explain why many consultees thought that the prescribed words illustrate the meaning of marriage.

5.54 This confusion demonstrates how the prescribed words of contract have been seamlessly incorporated into many Christian ceremonies, reflecting the history of these ceremonies. Ceremonies of Protestant Dissenting churches were designed around the prescribed words: the Marriage Act 1836 permitted weddings to take place according to Christian rites other than Anglican ones,[27] and at the same time introduced the requirement for prescribed words for those weddings.[28] For couples marrying in, and guests attending, these ceremonies today, the prescribed words might seem an invisible and harmonious part of the service.

5.55 But the prescribed words do not fit harmoniously into the services of religious groups who developed their wedding rituals and ceremonies outside the influence of the weddings law of England and Wales. Jewish and Quaker weddings were simply excepted from the requirement for prescribed words when they were introduced in the Marriage Act 1836. But other religious communities have been required to incorporate them into their ceremonies, ceremonies which developed according to their own rich histories and traditions around the world. We explained in the Consultation Paper that many of these religious groups perceive the prescribed words as an imposition into their ceremonies, or as a separate "civil" ceremony altogether.[29]

5.56 The Nuffield project's findings similarly show the different ways the prescribed words are experienced by Christian groups on one hand and other religious groups on the other. Participants who were Christian religious officials or who had a Christian ceremony associated the prescribed words of contract with their own liturgies, seeing them as forming a whole. Participants with experience of other types of religious ceremony detailed the various ways they had to incorporate the prescribed words into their ceremony, often in very clumsy, obvious or unsatisfactory ways. Two Buddhist authorised persons explained how the local authority required them to ensure that the couple say the prescribed words at the beginning of the ceremony, creating a "'mismatch' between the legal and religious aspects of the ceremony". A Hindu and a Sikh priest also described the different ways various local authorities required the prescribed words to be included within the ceremony: the worst example was when

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26 Marriage Act 1949, s 44(3) to (3A).

27 Together with a formalisation of the previous exceptions for Jewish and Quaker weddings.

28 R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (2021) pp 65 to 66. There is also evidence of Catholic couples having to repeat the prescribed words separately in earlier decades: see *Tying the Knot*, p 129.

29 Consultation Paper, para 6.21.

they were required to take place in the middle of the religious rites – which had to stop and then start again to accommodate the prescribed words. Two Hindu participants had been deterred from having their legal marriage in a registered place of worship because of the awkwardness the prescribed words cause.[30]

5.57 We made our provisional proposals in order to accommodate a wide range of religious practices, to allow the law to recognise the ceremony that the couple believes makes them married in the eyes of their religion. The evidence of the significant problems the prescribed words cause many religious groups has only grown since we made these proposals. We have also not been offered any persuasive reasons why prescribed words should be required.[31] Therefore, we recommend that the prescribed words of contract should not be required in any belief wedding.

5.58 Instead, the couple will be required to express consent to be married to each other, but the law will not impose any requirement about how they must do so, other than that they must do so clearly. They will be able to express consent by their words or actions. This latter point is important, given the practices of some religious groups for a marriage to be formed by a series of rituals. For them, the imposition of an oral declaration of consent would be problematic; moreover, there is no reason why a ritualistic action should be any more ambiguous than words. The law will recognise the ceremony that has meaning to the couple. For example, in a Sikh wedding, the couple walking together clockwise around the Sri Guru Granth Sahib Ji (the holy scriptures) would amount to their expression of consent.

5.59 As we explained in the Consultation Paper, what is important is that there is a shared understanding among the parties, the witnesses and the officiant as to what constitutes a wedding ceremony, and what amounts to an expression of consent to be married within that ceremony. So long as both of the couple are present together with the officiant and two witnesses, this shared understanding within a religious community should be recognised by the law.[32]

5.60 This recommendation will also apply to non-religious belief weddings, if they are authorised. Couples having Humanist weddings will be able to determine, together with their officiants, how they will express consent to be married. In keeping with their Humanist beliefs, Humanist couples will be able to personalise their expressions of consent.

The expression of consent in a civil ceremony

5.61 The flexibility of not requiring prescribed words appears to be more necessary to facilitate the recognition of belief ceremonies than civil ceremonies. But some consultees were nevertheless in favour of not requiring prescribed words for all types of ceremony, including civil ceremonies.

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30 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) paras 4.18 to 4.37.

31 In particular, we think it is difficult to see how the prescribed words protect against forced marriage. A person can easily be coached and coerced into speaking the prescribed words, especially given how short they are.

32 Consultation Paper, para 6.57.

5.62 The Nuffield project showed that the experience of the prescribed words in civil ceremonies varied. Some participants liked the fact that there were prescribed words that marked the event as a wedding; similarly, some liked their formality. For others, the meaning of the words was undermined by the fact that they are prescribed. This was perceived as removing choice. Others viewed the words as too formal or old-fashioned or thought they evoked an Anglican or religious service. Two participants spoke of the importance of not being misgendered during their wedding. One participant, who has dyslexia and verbal dyspraxia, spoke of her anxiety of not being able to repeat the prescribed words exactly.[33]

5.63 Compared to the problems the prescribed words cause in many religious ceremonies, we think that the problems they cause in civil ceremonies are easier to address, while still maintaining a requirement for words of contract to be said. We favour this approach. We think it would go some way to addressing the concerns raised by consultees about the need for some aspect of the wedding ceremony to be standardised or identifiable to the wider community as a wedding: because civil weddings are not being conducted in accordance with a wider religious or (if authorised) non-religious belief, the law will provide an important core element which it might otherwise lack.

5.64 We did not consider the idea of requiring words of contract only in civil weddings in the Consultation Paper. Nor was it expressly proposed by consultees. But it is a feature of weddings law in other jurisdictions, including Australia and New Zealand.[34] We acknowledge that recommending a different rule for civil weddings than belief weddings runs contrary to the general principle of fairness and equality. However, we think it is justified in order to ensure certainty.

5.65 Many of the problems with the current prescribed words of contract would be ameliorated by providing flexibility in how they are said. In particular, requiring that either the words of contract or *words to the same effect* be said will avoid any uncertainty based on the couple deviating from a set form of words. It will remove the risk of a person being required to repeat the words because they did not say them exactly, and will prevent couples from feeling forced to recite a script. It will, moreover, ensure that individual's wishes and beliefs are respected, by allowing them to tailor the prescribed words so that they can reflect their own beliefs and circumstances.

5.66 Reducing the current prescribed words of contract to their core elements will also eliminate any concerns that the words are old-fashioned or excessively formal. The prescribed words can be distilled. While determining new prescribed words is not a matter for us, by way of example

> "I call upon these persons here present to witness that I, [name], do take thee, [name], to be my lawful wedded wife [or husband]" or "I [name] take you [or thee] [name] to be my wedded wife [or husband]",

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33 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) paras 4.8 to 4.17.

34 Marriage Act 1961 (Australia), s 45(1) and (2); Marriage Act 1955 (New Zealand), s 31(3).

could become

"I accept you [name] as my [husband, wife or spouse]".[35]

This core, together with the provision that words can be said to the same effect, would be similar to the requirement for declarations of words of contact in Scotland,[36] Northern Ireland,[37] and Ireland.[38]

5.67 It is important that a gender-neutral option is available, rather than requiring that every person be identified as either a "wife" or "husband". This option could be explicit in any formulation of the required words; however, with the provision that words can be said that have a similar effect, couples will in any event have scope to choose a version of these words that suits them.

5.68 A confirmation of past consent will satisfy the requirement for an expression of consent. Therefore, the couple will be able to say the required words or words to the same effect in the past tense. The ability to say the words in the past tense will be helpful for couples who have already had a non-legally binding ceremony, as it will allow the words to reflect that, according to their beliefs, they are already married.

5.69 Allowing words of the same effect to be used will also permit the words to be said in a language other than English or Welsh.[39] After the close of the consultation period, Cornwall Council, among others, contacted us to argue for the use of Cornish in wedding ceremonies. The Council drew attention to Government's recognition of the Cornish language as a regional or minority language within the meaning of the European Charter for Regional or Minority Languages 1992.[40] We believe that our recommendation that civil weddings must include required words of contract or words to a similar effect will permit the words to be said in Cornish. We think that it will allow those words to be said in any language understood by the couple, witnesses and officiant.[41]

5.70 Although we are recommending a requirement for required words of contract or words to the same effect for civil ceremonies, reasonable provision for those with disabilities

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35 The language of "take you" and "wedded" are expressions used in the Book of Common Prayer, so we have not used it in our example. The Welsh version of this could be "Yr ydwyf i [enw] yn dy dderbyn di yn [ŵr, wraig neu briod] i mi", but we note that there is more than one way of expressing this statement in Welsh.

36 Which requires a declaration by the parties "that they accept each other as husband and wife" or "that they accept each other in marriage": Marriage (Scotland) Act 1977, s 9(3).

37 Which requires the parties to declare their consent to marry each other, with no particular form of words required: Marriage (Northern Ireland) Order 2003 (SI 2003 No 413) arts 10(3), 15(2)(b) and 19(2)(b) to (3).

38 Which requires the parties to make a declaration "to the effect that each of them accepts the other as a husband, a wife or a spouse, as the case may be": Civil Registration Act 2004, s 51(4).

39 We therefore do not think provision needs to be made for translation, a point we considered in the Consultation Paper, paras 6.71 to 6.72.

40 European Charter for Regional or Minority Languages 1992, pt 2. See also: Council of Europe, "European Charter for Regional or Minority Languages" (2021) p 2, https://rm.coe.int/ukevaliria5-en/1680a287e0 (last visited 1 July 2022).

41 The requirement that the couple expresses consent by words or actions in a belief ceremony will also allow consent to be expressed in a language other than English or Welsh.

will be necessary to ensure that other alternative forms of consent will be possible where the couple cannot speak or hear those words, for example, through using British Sign Language.

Signing the declaration in the schedule or marriage document

5.71 As we noted at paragraph 5.49 above, we recommend that the schedule (or, for Anglican weddings, marriage document) should contain a declaration to be signed by each of the parties that confirms that they have expressed consent to be legally married to the other. Under our scheme, the expression of consent will play a central role in the validity of a marriage.[42] Although the ceremony will include an expression of consent other than this written declaration, this written declaration on its own will be sufficient to satisfy the requirement for consent in terms of the validity of the marriage. This requirement for a signed declaration will therefore provide certainty, foreclosing any argument that consent was not expressed during the ceremony.[43]

Timing of formation

5.72 Under our scheme, the core requirement in any wedding ceremony is for the couple to express consent to be married to each other, in each other's presence and the presence of the officiant and two witnesses. As we proposed in the Consultation Paper, we recommend that it should be this moment at which the couple will be married.[44]

5.73 We are not pursuing the alternative suggestions of some consultees. We disagree with the idea that the marriage should be formed when the officiant declares the couple married, in large part because many religious ceremonies do not involve a third party making any such declaration. Accordingly, this approach would, like the current law, involve the imposition of an unwarranted and, for many, unwelcome formality requirement into religious ceremonies. We also disagree that a marriage should only be formed when the schedule is signed. Under our scheme, a marriage may be formed at the time the couple sign the schedule or marriage document if consent had not been expressed during the ceremony as it should have been. However, where the couple have expressed consent earlier, during the ceremony, it will be this earlier moment when the marriage is formed. The law will therefore recognise this meaningful ceremonial moment as the point at which the couple are married.

The presence of the officiant and two witnesses

5.74 Under our recommendation, to be married the couple would have to express consent to be married to each other, in each other's presence and the presence of the officiant and two witnesses. All types of wedding ceremony will therefore be required to be

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42 Although we make recommendations about how consent should be expressed, in terms of validity, the only requirement is that each of the couple expresses consent to be married, in any form, including by signing the schedule. This will be sufficient to make a marriage valid. See Recommendation 38 at para 9.86 and Recommendation 39 at para 9.100 below.

43 Of course, the marriage will still be voidable if consent was expressed but was vitiated by impaired mental capacity, duress or mistake: Matrimonial Causes Act 1973, s 12.

44 As we noted above, the marriage will be validly formed however the couple expresses consent, so long as they do so in each other's presence and the presence of the officiant; failure to follow the specific requirements of how they express consent will not affect the validity of the marriage.

attended by an authorised officiant and two witnesses. This recommendation will address the lacuna, which we explained in the Consultation Paper, that there is no explicit requirement in the current law that anyone other than the couple attends a Jewish or Quaker ceremony.[45]

Submission of ceremony details

5.75 Many consultees were confused by the purpose of our proposal that nominating organisations could submit details of their wedding ceremonies to the General Register Office to identify the way(s) each party expresses consent in accordance with the beliefs of that organisation. They queried whether it would be mandatory, and how it would interact with the requirement that each of the couple expresses consent, raising questions about what would happen if a ceremony did not follow the form provided to the General Register Office. There may be a risk of these misunderstandings being perpetuated if the proposal became law, even if the law were clear that it was both optional to submit ceremony details and optional to use submitted ceremonies.

5.76 Moreover, as some consultees pointed out, amongst religions or beliefs that allow a high degree of customisation, it would be difficult to submit a single, standard ceremony.

5.77 We therefore do not recommend a process that involves nominating organisations submitting details of their wedding ceremonies to the General Register Office.

[45] Consultation Paper, paras 5.15 to 5.16 and 6.116. Although the secretary of the synagogue or registering officer and two witnesses are required to sign the schedule, they are not expressly required to be present at the ceremony: Marriage Act 1949, s 53C(5)(c).

Recommendation

Recommendation 29.

5.78 We recommend that, during every wedding ceremony, in the presence of each other, the officiant and two witnesses, the parties should be required to express their consent to be married to each other.

(1) In every belief ceremony (that is, a ceremony officiated at by a member of the Anglican clergy or a nominated officiant), consent to be married to each other should be able to be expressed by the parties' words or actions.

(2) In every civil ceremony (that is, a ceremony officiated at by a registration officer, maritime officiant or (if enabled by Government) independent officiant), consent to be married to each other should be expressed by the parties saying the required words of contract, or words to the same effect.

5.79 We recommend that confirmation by a person that they have previously consented to be married to the other person should amount to an expression of consent to be married to that other person.

5.80 We recommend that the schedule or marriage document should contain a declaration to be signed by each of the parties (in the presence of each other, the officiant and two witnesses) that confirms that they have expressed consent to be legally married to the other.

5.81 We recommend that the marriage should be formed at the point when both parties have expressed their consent to be married to each other in each other's presence.

The form of ceremony

5.82 Under our proposed scheme, the central requirement of the ceremony would be that the couple expresses consent to be married. Beyond this core requirement, the law would not dictate the form of a ceremony. To rationalise the varying provisions under the current law, we made proposals designed to ensure that all groups and all couples would be able to determine the form that their ceremonies would take.

5.83 We provisionally proposed that all wedding ceremonies should take place according to the form and ceremony chosen by the couple and agreed to by the officiant.[46] As part of this, we provisionally proposed that there should be no special requirements about the form the ceremony must take in Anglican, Jewish or Quaker weddings, and that there should be no legal rules on who is eligible to marry in any of these types of wedding; instead, those religious groups would be treated like all other religious groups, who can determine for themselves the form of their ceremonies and who they

[46] Consultation Paper, para 6.69, Consultation Question 43.

will marry (subject to the generally accepted duty on Anglican clergy to conduct the marriages of those who qualify to marry in their parish).[47]

Consultation

Chosen by the couple and agreed to by the officiant

5.84 Only a minority of consultees agreed with the provisional proposal that all wedding ceremonies should take place according to the form and ceremony chosen by the couple and agreed to by the officiant. Nearly two-thirds disagreed.

5.85 Consultees who did agree often supported couples being able to choose a wedding ceremony that is meaningful to them. Others thought the proposal struck an appropriate balance between officiants (and belief organisations) and couples. In particular, some religious groups noted that the proposal would ensure that they could continue to control the forms or rites of service in their own wedding ceremonies. Some consultees discussed the role the officiants conducting religious (or non-religious belief) weddings would play in ensuring that the beliefs and requirements of their organisation were honoured. The Church in Wales supported the proposal but suggested a shift in emphasis, requiring that "the form and ceremony should be chosen by the officiant and agreed to by the couple".

5.86 Other consultees suggested that the proposal, together with our other proposals to limit the formalities required in a ceremony, would facilitate the recognition of Muslim nikah ceremonies.

5.87 Consultees who disagreed overwhelmingly expressed the same or similar concerns to those outlined in the briefing texts by the Christian Institute and Coalition For Marriage. These arguments included that greater importance should be placed on the wedding ceremony reflecting the seriousness and solemnity of marriage than on couples being able to personalise their ceremonies; that non-legally binding ceremonies can be personalised as much as couples wish; that allowing fully personalised wedding ceremonies would encourage commercialisation or allow themed wedding ceremonies to take place; that blending together elements from different faith ceremonies could be inappropriate or offensive; and that the duty on officiants to uphold dignity would be subjective and ineffectual. Many consultees commented on what they believe to be the meaning of marriage, characterising it as serious or solemn; the implication of these statements, and a point sometimes made expressly, was that our proposal would undermine the meaning of marriage.

5.88 Many consultees also reiterated views in support of a requirement for prescribed words, for example, saying that there needs to be a core element to all ceremonies to reflect a shared view of marriage. Some consultees also suggested that there should be a requirement that wedding ceremonies are dignified, in some cases also suggesting that officiants need training or guidance on dignity.

5.89 Some consultees disagreed that the officiant could effectively ensure that the ceremony met the requirements of their nominating organisation. Some argued that

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47 Consultation Paper, para 6.70, Consultation Question 44.

nominating organisations should determine the form of ceremonies. For example, Humanists UK argued that nominated officiants should only be able to agree to a form of ceremony that matched the requirements of their nominating organisation, a suggestion they characterised as a safeguard against officiants "market[ing] themselves to a wider range of couples" by conducting ceremonies beyond the forms or beliefs of their organisation. Other consultees worried that officiants would be pressured or would corruptly agree to conduct ceremonies perceived as inappropriate.

Anglican, Jewish and Quaker weddings

5.90 A substantial majority of consultees agreed with the provisional proposal that there should be no special requirements about the form the ceremony must take in Anglican, Jewish or Quaker weddings, and no legal limitations on who can have those types of wedding.

5.91 One reason for agreement was support for equal and fair legal treatment of religious groups, including that the same legal requirements should apply to all. Another reason was support for religious freedom or that these religious groups should be able to determine and impose their own rules. This view was echoed by the Church of England, which said the proposal "preserves the right balance of religious liberty" (although it also noted that canon law would continue to be part of the law of the land).

5.92 The Religious Society of Friends thought this proposal would "simplify the process", eliminating the current requirement that, in order to have a Quaker wedding, persons who are not members must submit a certificate (to establish that they are authorised by the Society to be married according to its usages)[48] when giving notice to the civil authorities.

5.93 Among consultees who did not support the proposal, there appeared to be a significant degree of misunderstanding. Some consultees appeared to understand that the proposal was to create different rules for Anglican, Jewish and Quaker weddings and disagreed because of their view that these groups should not have special status. We had proposed the opposite: to eliminate the existing distinct rules governing these weddings.

5.94 However, some consultees disagreed because they considered that this proposal would remove protections for Anglican, Jewish or Quaker groups to determine for themselves whose weddings they would conduct (including the special provisions which ensure religious groups or officiants are not obliged to conduct same-sex weddings) or the content of those weddings.

5.95 The Faculty Office of the Archbishop of Canterbury and the Church in Wales suggested that the civil law should prescribe that weddings officiated at by Anglican clergy take place according to Anglican rites. The Faculty Office was concerned about leaving Anglican weddings to canon law alone, on the basis that it does not bind the laity; it thought that, together with the churches' commonly accepted duty to marry any eligible couple, couples would assert an ability to change the form of service. Although the Church in Wales was not strongly opposed to the proposal, it thought that alternative means might be necessary to ensure that Church in Wales weddings are

[48] Marriage Act 1949, s 47(2)(b).

restricted to the rites and ceremonies approved by the Church, again on the basis that canon law does not bind non-members.

5.96 Making a different point, Humanists UK agreed with the proposal, but argued in favour of a general rule that religious or non-religious belief organisations should only be able to provide weddings to their members or people who are part of their community. However, it conceded that there might need to be an exception for the Anglican churches.

Discussion and conclusion

The form of ceremony

5.97 Although there was significant opposition to the provisional proposal that all wedding ceremonies should take place according to the form and ceremony chosen by the couple and agreed to by the officiant, it was not in fact a radical proposal. It sought to extend an existing rule, which already applies to weddings in registered places of worship,[49] to all types of wedding. This rule would apply alongside the rule in Recommendation 29, to provide that, other than the core requirement of an expression of consent, the form of the ceremony would not be prescribed by the law, but determined by the couple together with their officiant.

5.98 Much of the disagreement with the proposal was similar to the disagreement to the proposal to abolish (for the weddings to which it applies) the requirement for prescribed words. Consultees did not appear to appreciate that this proposal could work together with a requirement for prescribed words, which is how it works currently: weddings in registered places of worship are required to include the prescribed words but otherwise may take place according to "such form and ceremony" as the couple "see fit to adopt", provided they have the consent of the minister or trustees of the building.[50] This is similar to how it will work for civil weddings under our recommended scheme.[51]

5.99 We believe that extending this existing rule to all types of wedding will provide significant benefits. As we explained in the Consultation Paper, because this rule does not apply to Anglican, Jewish and Quaker weddings, those groups have less scope than other religious organisations to change or personalise their form of wedding ceremonies as they see fit, or to incorporate elements from other faiths (for example for a couple of different faiths) should they wish to do so.[52] We also suggested in the Consultation Paper that the historical development of the Marriage Act 1949 has resulted in provision for civil ceremonies which does not reflect the function and meaning of those ceremonies to the couples who have them.[53] The Nuffield project provides further evidence of couples marrying in civil weddings having choices and assumptions about the content of their ceremonies, including readings and music,

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49 Marriage Act 1949, s 44(1).

50 Marriage Act 1949, s 44(1), (3) and (3A).

51 Which, as we explained above, will be subject to a requirement for required words of contract or words to the same effect: see Recommendation 29 at para 5.78 above.

52 Consultation Paper, para 6.13.

53 Consultation Paper, para 6.14.

imposed upon them.[54] Subject to the requirements of couples to express their consent, this rule will give all religious and (if authorised) non-religious belief groups control over the content of their ceremonies, and will ensure that couples having civil weddings are able to have ceremonies that are meaningful and personal to them.

5.100 Disagreement with this proposal was largely premised on a specific belief about what marriage is or means, together with an argument that this belief must be promoted by the civil law relating to weddings. But marriage has different meanings for different people. Since the beginning of our work on weddings in 2015, this has been clearly illustrated by the variety of ways in which marriage is celebrated. Moreover, the law governing marriage already accommodates this diversity of meaning.[55] It is this broad, legal meaning of marriage that underpins our project and our recommendations for reform. Religious groups will continue to have the right to celebrate and support only those marriages that fit with their views of what a marriage should be. But what the law requires is a different matter. The law governing weddings should reflect the diversity of marriages that are formed and celebrated in England and Wales.

5.101 Accordingly, although we agree that the state has an interest in protecting the dignity of weddings, that is not the only principle underpinning our review: the Terms of Reference for this project include the principle of respecting individuals' wishes and beliefs.[56] That necessarily includes respecting how those wishes and beliefs are reflected in the form of the ceremony.

5.102 Moreover, an overarching goal of the project is to ensure that couples can have a ceremony that is meaningful to them recognised by the law. The ability to personalise a ceremony is exactly what makes it meaningful for many couples, particularly those whose faiths or beliefs do not prescribe a set form of service.[57]

5.103 It is not an answer to the problems our review is addressing to say that non-legally binding ceremonies can take place in the form the couple wishes. Taking this approach would perpetuate the division given rise to by the current law whereby a religious wedding conducted according to the requirements of some religious groups is legally recognised, while others are not. An important aim in this project is to address, insofar as possible, the mischief of religious-only weddings, which can have devastating consequences, particularly for religious and ethnic minority women. This aim is one of the reasons why we have emphasised the need for the law to recognise as legally binding the ceremony that has meaning for the couple. The Nuffield project confirmed that doing so would reduce the number of religious-only weddings.[58]

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54 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) paras 4.56 to 4.64.

55 See eg *NB v MI* [2021] EWHC 224 (Fam), [2021] 2 FLR 786.

56 The full Terms of Reference for the project are included in Appendix 1.

57 For example, the Nuffield project found that, for weddings conducted by Humanist and independent celebrants, “bespoke ceremonies were a means of enhancing the commitment that the couples were making to each other”: R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A briefing paper for the Law Commission* (2021) para 4.72.

58 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A briefing paper for the Law Commission* (2021) paras 6.57 to 6.65, 6.69.

5.104 We do not think that the ability to personalise a wedding ceremony will result in the commercialisation of weddings. The link between allowing a couple to have a ceremony that meaningfully reflects their faith(s), belief(s) or relationship and creating a commercial market for ceremonies is far from clear, in our eyes. Further, a number of our recommendations are intended to guard against commercialisation[59] and all officiants will have a responsibility to ensure the dignity and significance of marriage.[60]

5.105 We disagree that the law should seek to prevent couples from blending elements of different faiths in their ceremonies. Weddings law does not currently prohibit one person from manifesting their beliefs in a way that another person disagrees with. Using the flexibility in the current law about the form of weddings in registered places of worship, some religious groups already permit interfaith or mixed-faith weddings in their buildings. Although individuals or individual religious organisations might advocate for religious orthodoxy, it is not for weddings law to impose it on those who take a different view. Indeed, we believe that our scheme should ensure that interfaith couples can have a ceremony that is meaningful to them recognised by the law, whether that is conducted by a religious group that is willing to include elements from another religion or by one that specifically conducts interfaith weddings.

5.106 By providing that the officiant must agree to the form of ceremony, our scheme gives religious and (if enabled) non-religious belief organisations the necessary tools to determine the form of the ceremonies they conduct. If a nominated officiant does not comply with the rules of the nominating body, the body will be entirely free to withdraw that officiant's nomination, and so their authorisation to conduct weddings. This control by nominating bodies, together with our recommendation that nominated officiants should not subordinate their beliefs to commercial interests,[61] should address any concerns that pressure could be brought on them to neglect their legal responsibilities or the rules of their nominating body.

5.107 We also disagree with Humanists UK's suggestion that the law should require weddings at which a nominated officiant is officiating to match the form imposed by their nominating body, or that the officiants of nominating organisations should only be able to provide weddings to that organisation's members or those who are part of their community. This restrictive approach currently applies to varying degrees to Anglican, Jewish and Quaker ceremonies and causes problems.[62] Extending it further would multiply these problems. Clearly, it would not work for many groups who offer flexibility in relation to the form of their ceremonies, including those who conduct interfaith ceremonies, such as the Unitarian church and OneSpirit Interfaith Foundation. It would also needlessly restrict groups for which "market[ing] themselves to a wider range of couples" (which Humanists UK raised as a concern with our provisional proposal if done so for profit and gain) may be important for religious (or non-religious belief) reasons, rather than financial ones. Simply put, it would undermine our

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59 See Recommendation 22 at para 4.262 and Recommendation 24 at para 4.331 above.

60 See Recommendation 16 at para 4.64 above.

61 See Recommendation 22 at para 4.262 above.

62 Consultation Paper, para 6.13.

recommendations to ensure that couples can marry in a way that is meaningful to them.

5.108 The Church in Wales proposed a modification to the wording of the provisional proposal, so that instead of taking place according to the form and ceremony "chosen by the parties and agreed to by the officiant", it would be that "chosen by the officiant and agreed to by the couple". We had worded our proposal to make it clear that the couple may ask questions or make suggestions, but the officiant would be able to refuse. Referring to the officiant's agreement makes clear that they essentially have a veto,[63] a point we think should be clear in the recommendation. However, to emphasise the officiant's role, we have modified the wording of our recommendation so that the ceremony may take place "according to the form and ceremony agreed between the parties and the officiant".

Anglican, Jewish and Quaker weddings

5.109 To ensure that all types of wedding can take place according to the form and ceremony agreed between the couple and the officiant, the specific rules which dictate the form which Anglican, Jewish and Quaker weddings must take place, and who may have a Jewish and Quaker wedding, must be removed.

5.110 A substantial majority of consultees agreed with this proposal, and in particular, consultees did not offer reasoned objections as to why Jewish groups or the Religious Society of Friends are in need of special protections, and restraints, on their ceremonies when other religious groups are not.

5.111 The Religious Society of Friends supported the proposal but the Board of Deputies of British Jews disagreed with it.[64] Although the Board of Deputies accepted that there should not be special rules about the form of any wedding, it believed that the words "in accordance with the usages of the Jews" should be retained, because the same wording appears in the Matrimonial Causes Act 1973.[65] This provision allows a court to order that a decree of divorce is not made absolute in relation to a marriage solemnized in "accordance with the usages of the Jews" until each party takes the necessary steps to dissolve the marriage (by way of a get) in accordance with Jewish law. However, as we explained in the Consultation Paper, we disagree that removing the requirement in weddings law for Jewish weddings to take place according to Jewish usages would cause any problems in relation to the order-making power under the 1973 Act. Jewish communities would continue to marry couples in accordance with these usages as a matter of fact. Indeed, the order-making power in the 1973 Act can be exercised in relation to any religious usages so long as they have been prescribed by the Lord Chancellor, regardless of whether couples are required to marry according to those usages as a matter of weddings law or not.

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63 For this reason, it also fits better with other aspects of our scheme. For example, that the officiant must agree to the location for a wedding: see Ch 6 below.

64 In correspondence clarifying its response, after the consultation period.

65 As amended by the Divorce (Religious Marriages) Act 2002. The Board of Deputies of British Jews also referred to the Marriage (Same Sex Couples) Act 2013, but the references in that Act are those provisions which amended the Marriage Act 1949.

5.112 Some consultees suggested that it was necessary for the civil law to require that Anglican weddings take place according to Anglican rites. We disagree that such provision is necessary. First, the Marriage Act 1949 does not, in terms, positively require that Anglican weddings follow the authorised forms of service. While the Marriage Act 1949 refers throughout to marriages "according to the rites of the Church of England", there is no provision in the Act that defines what these are or states in terms that an approved form of ceremony has to be used. The only specific injunction in the Act to have regard to the Book of Common Prayer is in the context of the calling of the banns rather than the form of the service.[66]

5.113 It is the canons of the Church of England that specify that ministers "shall use only the forms of service" authorised by the canons[67] and which set out the forms of service that may be used (the Book of Common Prayer and Common Worship "Series One Solemnization of Matrimony and the Marriage Service"[68]). The Church of England (Worship and Doctrine) Measure 1974 allows the General Synod to make provision by canon about worship, including forms of service.[69] And while canons require royal assent, they do not require Parliamentary approval.

5.114 The Church in Wales has its own canons, the making of which is a matter for its own governing body, with no royal assent required.[70] Under its constitution, all persons admitted to Holy Orders "undertake to be bound by the Constitution of the Church in Wales".[71] Before being ordained, clergy are required to declare "that they will use only those services prescribed by the Church in Wales"[72] (for weddings, the approved form of service is the 1984 Prayer Book[73]).

5.115 The Anglican churches would be free to require that their clergy conduct weddings only following particular forms. In fact, canon law would continue to so require, as clergy are bound by canon law.[74] Like nominated officiants, our recommendation will make Anglican clergy responsible for enforcing the rules of their own belief organisations, without using the civil law to enforce those rules directly onto couples.

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66 Marriage Act 1949, s 7(2). Although this provision provides that "all the other rules prescribed by the said rubric concerning the publication of banns and the solemnization of matrimony shall, so far as they are consistent with the provisions of this Part of this Act, be duly observed". The term "rubric" refers here to the instructions preceding the form of service. The reference to "the solemnization of matrimony" must be taken as referring solely to the stipulation in the rubric that if the parties live in different parishes banns are to be published in both and that the person marrying them must not do so without the certificate of banns from the other parish.

67 Canon B1.

68 Canon B1; Approved and Commended forms of service under Canon B2.

69 Church of England (Worship and Doctrine) Measure 1974.

70 N Doe, "The Constitution of the Church" in N Doe (ed) *A New History of the Church in Wales: Governance and Ministry, Theology and Society* (2020).

71 Church in Wales, Constitution, Chapter VI: Appointments and Nominations, s 10.

72 B Morgan, "The Clergy: Priests and Deacons" N Doe (ed) *A New History of the Church in Wales: Governance and Ministry, Theology and Society* (2020), p 136.

73 Created according to the process of revision set out in the constitution of the Church in Wales.

74 See eg the Clergy Discipline Measure 2003.

5.116 We do not think that there is any need for weddings law to enforce the rules of the Anglican churches directly onto couples, by requiring that Anglican weddings take place according to Anglican rites. Accordingly, we recommend that the same rule that we recommend applies to all other types of wedding also applies to Anglican weddings: that they take place according to the form and ceremony agreed between the parties and the officiant.

5.117 While referring to Anglican rites is not legally necessary, the established nature of the Church of England and the special status of the Church in Wales may be considered to provide wider policy reasons for doing so. The merits of such reasons are not matters for the Law Commission to assess and we note that Government might therefore take a different view to the one we have taken.

Recommendation

Recommendation 30.

5.118 We recommend that all weddings should take place according to the form and ceremony agreed between the parties and the officiant, provided it complies with the other legal requirements.

5.119 We recommend that in the new Marriage Act there should be no special rules about the form that Anglican, Jewish or Quaker weddings must take, and no legal limitations on who is eligible to be married in a Jewish or Quaker wedding. Like all religious groups, Anglican, Jewish and Quaker groups will continue to be able to impose their own requirements about the content of their ceremonies, and Jewish and Quaker groups will continue to be able to impose their own requirements about whose ceremonies they will conduct, as a matter of their own practice.

Open doors

5.120 We provisionally proposed to abolish the existing requirement that weddings in registered places of worship and civil weddings allow for public access during the ceremony.[75] Under our proposed scheme, no weddings would be required to take place with open doors.

Consultation

5.121 A substantial majority of consultees disagreed with this provisional proposal.

5.122 In large part, the disagreement was from religious organisations, including the Anglican churches, and members of the public. Many of the arguments made against the proposal were very similar to the briefing texts by the Christian Institute and the Coalition For Marriage. Their main arguments focussed on two points.

5.123 First, consultees argued that open doors should be required based on the nature and importance of marriage, in particular the idea of a wedding as a public declaration or

[75] Consultation Paper, para 6.136, Consultation Question 47. Under the current law, civil weddings comprise those on approved premises and in register offices.

act. For example, the Church of England said that “the open-door principle expresses very eloquently the idea that marriage is an institution that is of interest to the whole community”. It criticised as a “fundamental flaw” in the reasoning in the Consultation Paper “the failure to link the wedding to the institution of marriage”, which it described as a public institution. Many other consultees similarly argued that getting married is inherently a public act or that marriage is important to society as a whole, so the public should be able to attend. Some consultees went further to explain the larger community’s role in witnessing a wedding and supporting a couple in marriage.

5.124 Second, consultees argued for a requirement for open doors based on their understanding of the role open doors pays in relation to preventing forced marriage, marriages involving persons who are under age, sham marriages and bigamy. Many consultees argued that open doors allow the public to attend to object to a wedding. The Coalition For Marriage’s briefing text specifically advised that responses say that the open doors requirement “was introduced hundreds of years ago as a protection against forced marriage”, a statement many consultees repeated or expressed variations of, expressing a concern that an important protection against forced marriage would be lost. Some consultees also suggested that the public performs a broader supervisory role in ensuring that weddings are conducted properly.

5.125 Consultees in favour of the proposal often expressed agreement with the arguments we raised in the Consultation Paper.

5.126 Some, including several local authorities, said that the preliminaries process fulfils the function of identifying impediments or that objections can be made in advance of the ceremony. Some consultees more particularly agreed that our proposed amendments to the preliminaries process, including that notices to the civil authorities would be published online, would eliminate any need for public access to the wedding ceremony itself.

5.127 Dr Augur Pearce (an academic) agreed with our explanation of the history of the open doors requirement as a legacy from the Toleration Act 1688, adding that it was intended to prevent closed meetings for religious service being used as a cover for political sedition, and agreed that it has “nothing to do with allowing access for potential objectors”.

5.128 Other consultees agreed with the proposal on the basis of safety and practicality. Some noted the risk of theft or disruption, or to personal safety, if public access were required. Several consultees also considered the risks presented during the Covid-19 pandemic, citing public health restrictions limiting the number of people who can attend any one event or location.

5.129 Some consultees supported couples in having a right to privacy and to themselves determine who should attend their wedding.

5.130 Several consultees, including the Faculty Office of the Archbishop of Canterbury and Leicester Diocesan Registry, argued that there should be a general requirement for open doors with exceptions permitted. What circumstances would be sufficient to justify the exception of marrying in private varied, but they included where there were security concerns or where the couple wished to marry on private property.

Discussion and conclusion

5.131 The open door rule was not introduced to protect against forced marriages, sham marriages, or bigamy. It is a vestige of the historical regulation of the worship of Non-conformists.[76] We moreover remain unconvinced that it has any role to play in preventing forced or invalid marriages from going ahead or in identifying sham marriages.

5.132 The requirement that some weddings take place with open doors is not a safeguard against forced or predatory marriages. In weddings law, the most significant safeguard against forced and predatory marriages is the preliminaries process. It is this stage that offers the best opportunity for persons who are being coerced and/or who lack the mental capacity to marry to be identified and given support. It is for that reason, as we explained in the Consultation Paper, that enforcement action is not generally taken to prevent forced marriages from taking place on the day of the ceremony: instead, advice and support is provided to the person in advance of the wedding taking place.[77] As we explain in Chapter 3, the research into forced marriage stresses the need to understand it as a process, with the individual being "groomed" for marriage over time, and their ability to consent or withdraw their consent slowly being compromised: it is not a single event which occurs on the wedding day.[78] Nevertheless, in the rare situation that evidence of a forced or predatory marriage comes to light at a late stage, authorised officiants will be able to take appropriate action on the day of the wedding. As representatives of the interests of the state, officiants will be under a duty to ensure that neither of the parties is being coerced or lacks the mental capacity to marry. The role will be a delicate one, as the focus is on protecting the person from any risk of harm, but can include stopping or deferring the ceremony and seeking the advice of the Forced Marriage Unit or the police.[79] We do not think that allowing public access adds anything to these safeguards.

5.133 Similarly, the open doors requirement does not play a role in the rules designed to identify sham marriages. Again, the preliminaries process plays the most important role in doing so, including the specific process which enables the wedding to be investigated as a sham and the waiting period to be extended to 70 days.[80] As we explained in the Consultation Paper, Home Office policy does not focus on preventing a sham marriage from taking place on the day of the ceremony, but focusses instead on preventing a person from getting an immigration advantage – gaining a legal right

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76 See para 5.9 above.

77 Consultation Paper, para 7.149. See eg Foreign, Commonwealth and Development Office and Home Office, *Guidance: Multi-agency statutory guidance for dealing with forced marriage and Multi-agency practice guidelines: Handing cases of forced marriage* (13 June 2022).

78 See para 3.96 and following above, citing K Chantler, N Mirza and M Mackenzie, "Policy and Professional Responses to Forced Marriage in Scotland" (2022) 52(2) *The British Journal of Social Work* 833.

79 See paras 4.25 and 4.52 above. The Forced Marriage Unit has published guidance for registration officers about forced marriage, including what to do and what not to do. Where they suspect a marriage is being forced at the ceremony itself, the guidance emphasises the importance of confidentiality, speaking to the person in private, respecting and recognising the person's wishes, and not doing anything to put the individual at risk of harm: see Foreign, Commonwealth and Development Office and Home Office, *Guidance: Multi-agency statutory guidance for dealing with forced marriage and Multi-agency practice guidelines: Handling cases of forced marriage* (13 June 2022) ch 11.

80 See para 3.34 above.

to remain in the United Kingdom – based on the marriage.[81] Although registration officers would continue to be under a duty to report suspected sham marriages,[82] officiants would not have any role to play in stopping a sham marriage for the fact that being a sham is not an impediment to a marriage going ahead. Members of the public would also have no role to play in stopping such a ceremony, because it would not be a valid objection that the marriage was a sham.

5.134 We disagree that public access should be mandated so that members of the public can object on the basis of an impediment to the marriage. The likelihood of there being an impediment to the marriage is far lower than in 1837, when the open doors rule was imposed on certain types of wedding. As a part of the notice process, all individuals getting married will provide documentation that states their age;[83] the prohibited degrees are now limited to close blood relations;[84] and the availability of divorce (and the acceptability of cohabitation) has reduced the incidence of bigamy to a negligible level.[85] Unsurprisingly, then, we have not heard of a single occasion on which a member of the public stopped a wedding on the day of the ceremony by raising a legal impediment to the marriage. Despite a large number of local authorities and registration officers responding to our consultation, no concrete example has emerged. As we said in the Consultation Paper, we do not think that the legal requirements for a wedding should be based on the myth that members of the public raise impediments on the day of the wedding.[86]

5.135 It is noteworthy that there is no requirement for weddings to take place with open doors in Scotland or in Guernsey,[87] with no concerns arising in those jurisdictions as a result.

5.136 We continue to think that, instead of providing safeguards, the open door rule poses risks. We outlined in the Consultation Paper the potential safety risks it creates, including risks of violence against members of religious minorities and victims of domestic and "honour"-based abuse.[88] We also agree that it creates a risk of unnecessary and unwelcome disruption on a very important day in the couple's lives.[89]

5.137 We agree that a legal marriage is a public matter and that the state has an interest in how weddings are conducted. We do not think it follows that individual members of the

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81 Consultation Paper, para 7.149.

82 Registration officers are under a duty to report suspicions of sham marriages to the Home Secretary: Immigration and Asylum Act 1999, s 24.

83 Marriage Act 1949, s 28B and Recommendation 10 at para 3.257 above.

84 Marriage Act 1949, sch 1.

85 See R Probert, *Double Trouble: The Rise and Fall of the Crime of Bigamy* (2015).

86 Consultation Paper, para 6.126.

87 Marriage (Scotland) Act 1977; Marriage (Bailiwick of Guernsey) Law, 2020.

88 Consultation Paper, para 6.128.

89 The Nuffield project provided further evidence of the possibility of disruption, specifically the possibility of a wedding being interrupted based on the religious beliefs of one of the couple: R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 4.110.

public must have access to weddings, or that such access is necessary for the community to support the couple. Our scheme reflects and protects the public nature of marriage in other ways: publicising marriages as a part of the civil preliminaries process, requiring two witnesses to be present, requiring the attendance of an officiant authorised by the law to ensure the legal process is properly carried out, and ensuring that there will be a public record of the marriage.

5.138 We disagree that we have not engaged with the question of what marriage "is". As we noted above, religious groups will continue to have the right to celebrate and support only those marriages that fit with their views of what a marriage should be. However, in designing a new scheme to govern weddings law, our focus is necessarily on the legal conception of what a marriage is, rather than a conception that is based on specific beliefs, religious or otherwise.

5.139 While our concern therefore lies with the legal conception of marriage, the question of what marriage is according to the law is not the *primary* focus of a project on weddings law: it is more directly relevant to capacity to marry and the rights and responsibilities marriage imparts, issues specifically outside the scope of our review.[90] Judicial pronouncements about the meaning of marriage are now primarily found in the context of assessments of capacity to marry, in setting out what an individual must be able to understand in order to be able to marry. These statements focus on the essence of marriage. This essence is largely centred on marriage as a legal institution, from which flows status, rights, and responsibilities.[91] The law's current conception of marriage is broad and flexible, accommodating many different beliefs and many different relationships. As explained recently by Mr Justice Mostyn when considering the mental capacity required to marry, a shared economy, cohabitation, sexual relations and procreation are not essential features of marriage.[92] Many marriages will involve some or all of a shared economy, cohabitation, sexual relations and procreation, and some or all of these may be fundamental to how some individuals or religious faiths understand marriage. But none are essential to its legal status.

5.140 In our view, abolishing the existing requirements for open doors will help to ensure that the law can recognise the diversity of beliefs, expressed in the array of ceremonies used to celebrate weddings in England and Wales today. In particular, it will facilitate the recognition of some weddings, often religious weddings, which take place in private. As illustrated in the Nuffield project, the current open doors requirement prevents legally recognised weddings from taking place in Mormon Temples, which are only open to members of the Church of Jesus Christ of Latter-Day Saints who have a Temple recommend.[93] We also know that many Muslim nikah

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90 The full Terms of Reference for the project are included in Appendix 1.

91 See eg *Sheffield City Council v E* [2004] EWHC 2808 (Fam), [2005] Fam 326; *X City Council v MB, NM and MAB* [2006] EWHC 168 (Fam), [2006] 2 FLR 968; *YLA v PM, MZ* [2013] EWHC 4020 (COP), [2014] COPLR 114; *NB v MI* [2021] EWHC 224 (Fam), [2021] 2 FLR 786.

92 *NB v MI* [2021] EWHC 224 (Fam), [2021] 2 FLR 786at [20] to [26].

93 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 4.110. A Temple recommend is a certificate issued to members of The Church of Latter-day Saints which allows a member to enter the temple.

ceremonies take place in private. As Tristan Cummings explained, "the open doors principle has a disproportionate impact on some religious groups" and can operate to exclude them from conducting legal weddings.[94]

Recommendation 31.

5.141 We recommend that weddings should not be required to take place with open doors or with public access.

THE DISTINCTION BETWEEN CIVIL AND BELIEF CEREMONIES

5.142 Under the current law, couples having civil ceremonies are prohibited from including anything other than incidental religious content in their ceremonies. Readings, songs or music are only permitted if any religious references are incidental and in an "essentially non-religious context".[95]

5.143 There is considerable variation in how this rule is applied. To be prohibited, content must first be identified as religious, so it depends on a registration officer's familiarity with it. As a result, content from some religions is more likely to be prohibited than others.[96] In some cases, references and symbols which are significant to the couple for cultural, rather than religious, reasons are prohibited.[97]

5.144 As we explained in the Consultation Paper, many couples having civil ceremonies wish to include content in their ceremonies that has religious or cultural meaning for them. This includes same-sex couples, who often have little choice but to have a civil wedding due to the relatively few religious groups which have opted in to conducting same-sex weddings.[98]

5.145 Against the aim of ensuring that all couples can have a ceremony that is meaningful to them was the concern that there should remain a distinction between civil and religious weddings. We accepted that some protection of religious services could be warranted. We also sought to provide clarity and certainty over what is permitted in a civil wedding, to address the inconsistent application of the current law.

5.146 We provisionally proposed to relax the prohibition, by permitting religious content so long as the ceremony remains identifiable as a civil ceremony rather than a religious service. We asked consultees whether specific examples of types of religious content

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94 T Cummings, "Equality as a central principle? – The Law Commission's solutions to the religious-only marriage problem" (2021) 33 *Child and Family Law Quarterly* 63, 80.

95 Marriage Act 1949, ss 45(2) and 46B(4); Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 2 para 11. See Consultation Paper, paras 6.73 to 6.76.

96 S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies", (2018) 30(4) *Child and Family Law Quarterly* 415.

97 Consultation Paper, paras 6.73, 6.76 and 6.86.

98 Consultation Paper, paras 6.81 to 6.85.

should be expressly permitted at civil weddings, and if so, what those examples should be.[99]

Consultation

Proposal to permit religious content

5.147 A substantial majority of consultees agreed with our provisional proposal that religious content should be permitted in civil wedding ceremonies, provided that the ceremony remains identifiable as a civil ceremony rather than a religious service.

5.148 Many consultees who agreed with the proposal expressed support for the idea that couples should be able to include expressions of faith or culture within their civil ceremonies, even if they agreed that some limits should remain. Some consultees supported couples being able to incorporate material into their weddings that is meaningful or important to them. The National Secular Society said that:

> many nonreligious people, or people who do not want a religious wedding, find special meaning in songs, poems, prayers and other expressions that happen to be religious in origin and theme.

5.149 Some consultees who supported the proposal suggested that it might be odd for a couple to want a civil ceremony but to include religious content, but nevertheless supported their ability to do so. Other consultees considered the variety of reasons that a couple might have for wishing to include religious elements within their civil ceremony: these included to reflect their upbringing, to honour or include the beliefs of family members present at the wedding, or because they are unable to have a religious wedding, for example, because they have been divorced. Some consultees considered that mixed-faith couples might want a ceremony that had elements sympathetic to each of their beliefs, and similarly might not be able to have a religious ceremony.

5.150 Several consultees appeared to suggest that allowing religious content at a civil wedding ceremony would facilitate the legal recognition of Muslim couples' ceremonies.

5.151 Some consultees expressly agreed with the proposed requirement that the ceremony should remain identifiable as a civil ceremony. Some suggested that the elements of the ceremony must not be mostly or fully religious, with Dr Augur Pearce (an academic) offering that the test should be the "overriding impression given by the ceremony taken as a whole". The Reverend Professor Thomas Glyn Watkin QC repeated his concern that the law should preclude a suggestion that a "lay officiant is performing a function with religious significance which in a religious ceremony would require a suitably qualified or authorized person to perform". Similarly, the Church of England said that any religious content in civil weddings must "not be lifted directly from the rites of any religious body … as such material is integral to the religious rite and cannot be taken in isolation", giving the example of the vows from the Book of Common Prayer. Oxfordshire Registration Service suggested that the ceremony could be identified as civil in the introduction to the ceremony.

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[99] Consultation Paper, paras 6.109 to 6.110, Consultation Question 45.

5.152 Many of the consultees who disagreed, and some who agreed, expressed concern about the blurring of religious and civil weddings. They suggested that reform to allow religious elements in civil weddings will erode the important distinction between religious and civil ceremonies for people of faith. Consultees outlined that a marriage conducted according to some religious rites involves a specific commitment to key Christian values, and that allowing those rites to be performed in a civil context without that underlying commitment risks devaluing their significance. Consultees were concerned about a "mix and match" approach to religious rites, which would undermine or misrepresent religious beliefs.

5.153 Some consultees who disagreed said that couples who want religious elements in their ceremony should have a religious ceremony, seeing it as a matter of the couple's choice. Some consultees were also concerned about "unauthorised" persons purporting to conduct religious or belief ceremonies, whether in general or in accordance with particular rites or beliefs.

5.154 Humanists UK disagreed with the proposal for various reasons, which were supported by Humanist Society Scotland. It disagreed that the state should be involved in performances of religion or belief, and characterised civil weddings as a form of marriage "for those who don't want to get married in a way that expresses a particular religion or belief". It suggested that whether content is permitted in a ceremony should be determined based on the couple's motivation for wanting it included, so that content could only be included in a civil ceremony for sentimental or cultural reasons. It argued that human rights law requires there to be an analogous prohibition in civil ceremonies including content that is Humanist. In this prohibition it included readings from explicitly Humanist sources, published formats of Humanist ceremonies, and what it identified as the tenets of Humanism.

5.155 Some consultees expressed concern about the involvement of registration officers in ceremonies that include religious content. Humanists UK suggested that there could be employment law concerns with allowing religious content in a civil ceremony, on the basis that that the officiating registration officer might not share those religious beliefs. The Church of England, although comfortable with a relaxation of the current prohibition, was also concerned "to preserve the liberty of civil registrars who must not be required to use religious content in the course of their duties in order to preserve their rights of conscience". Accordingly, it said there must be a "clear distinction … between religious content which involves the active participation of civil registrars and the expression of religious sentiments in the course of peripheral aspects of the ceremony". To make this distinction clear, it made several suggestions (with which the Churches' Legislation Advisory Service agreed), which included that:

(1) civil officiants should not be obliged to use language of a religious nature during the ceremony;

(2) content of a religious nature should only be permitted in optional parts of the ceremony, rather than essential parts of the ceremony; and

(3) any "prayers, explicitly religious readings etc" said by someone other than the couple or guests "should be delivered by a minister or celebrant recognised by that religious community".

5.156 Other consultees, including several local authorities, agreed that the legal or central part of the ceremony should not be permitted to be religious.

5.157 Conversely, some consultees thought there should be no, or few, restrictions on the type of content permitted in a civil wedding, with some stating that the officiant should be trusted to decide what is appropriate.

Inclusion in the law of examples of permitted religious content

5.158 The support for inclusion of examples of religious content was mixed, with approximately half of consultees in favour. However, it is unclear whether some consultees supported a statutory list of permitted content, or instead simply supported specific types of content being permitted.

5.159 Consultees in favour cited the need to provide clarity and certainty, both to registration officers (or other civil officiants) and couples.

5.160 Consultees variously identified elements or types of content which should be permitted (often giving examples specific to a particular religion):

(1) religious music, hymns, religious songs, or gospel music;

(2) religious readings, including readings from the Bible, scripture or other holy books, and religious poetry or religious readings about love, marriage or commitment;

(3) religious dress, symbols, artefacts, iconography or decoration;

(4) religious or spiritual rituals or traditions, symbolic acts with religious connotations, or customs with spiritual or religious origins (including handfasting);

(5) prayers, including communal prayers, a prayer for God's blessing, chants, invocations, or other acts of devotion;

(6) blessings or prayers for the couple by a religious official;

(7) religious wedding services or vows; and

(8) statements that the couple is marrying in the sight of God, or other mentions of a god.

5.161 Some consultees suggested that examples provided should be specific, including naming individual texts or rituals that would be permitted.

5.162 Some consultees instead commented on the types of religious content that should not be permitted in a civil wedding ceremony, or suggested that the types of content that would be prohibited should also be listed. Some identified religious rites or marriage vows; prayers; sermons or blessings by a religious official; acts of worship; religious services; and religious icons or imagery as prohibited content.

5.163 Some consultees disagreed that examples should be provided about the type of content which would be permitted. Arguments included that doing so would be unnecessary, as officiants could use their own judgement, or that it would be unhelpful, as there would be an inference that only things listed would be permitted.

Discussion and conclusion

5.164 Under our scheme, there will be two types of ceremony:

(1) civil ceremonies, officiated at by registration officers, maritime officiants, or (if authorised) independent officiants; and

(2) belief ceremonies, officiated at by Anglican clergy or nominated officiants.

5.165 The part of the ceremony with which we are concerned is the part where the officiant is present. What the couple do to celebrate their marriage before or after the officiant attends the wedding ceremony is not a matter for weddings law to regulate.

5.166 Some concerns with the current law's prohibition on religious content in civil ceremonies will be addressed by other aspects of our scheme, particularly those that facilitate couples having religious weddings where they wish to do so. Under our recommendations about the location where weddings can take place, religious weddings will be permitted to take place in locations other than places of worship, so that religious couples marrying in civil weddings on what are now approved premises or in other similar types of location will instead be able to have a religious wedding there. They will therefore not be subject to any specific rules governing civil ceremonies.[100] Our recommendations about officiants should also better serve couples wanting an interfaith or mixed-faith wedding: our scheme would enable interfaith ministers to be nominated as officiants.[101] And mixed faith couples too will be able to have their religious wedding ceremonies in a location which they feel is right for them, including one that honours, or is neutral in relation to, their different beliefs.

5.167 But many couples having a civil ceremony might still wish to include religious elements within their ceremony. As we noted in the Consultation Paper, someone who was raised in a religious faith but who does not practise it as an adult might nevertheless wish to include religious references to pay tribute to their upbringing or to their parents' beliefs in their wedding. Couples may also wish to incorporate religious elements in their wedding for cultural rather than religious reasons.

5.168 We disagree that a civil ceremony is exclusively a form of wedding for those who wish to marry without expressing any form of belief. We note that early register office weddings could (and did) include religious content and that the rule prohibiting religious content was introduced as a side-effect of other reforms and was never debated in Parliament.[102] More significantly, the evidence from the existing research[103]

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100 See Ch 6.

101 See Ch 4.

102 Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (2021) pp 96 to 99.

103 See eg R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies* (2022); S Pywell and R Probert, "Neither sacred nor profane: the permitted content of civil marriage ceremonies" (2018) 30(4) *Child and Family Law Quarterly* 415.

and our own review makes clear the importance many couples having civil ceremonies attach to marrying in a way that is meaningful to them. For many couples, this includes incorporating religious elements to reflect their religious beliefs. Legislating to make civil ceremonies devoid of any beliefs would impose undue and unwarranted restrictions on these couples, and would frustrate one of the fundamental aims of our project.

5.169 Accordingly, we do not think the current law's strict prohibition on religious content in civil ceremonies should be replicated under our scheme. However, we do agree that some limitations are justified so that there remains a clear distinction between civil ceremonies and ceremonies conducted according to religious (or non-religious) beliefs.

5.170 We recommend that the prohibition on religious *content* in civil ceremonies should be replaced with a prohibition on a religious *service*. In a way, this approach will return the law to how it is expressed in the Marriage Act 1949 and abolish the further restrictions imposed in the Approved Premises Regulations.[104] However, our scheme will also make it explicit that this prohibition does not preclude religious content.

5.171 Under our recommendations, a civil ceremony will be required to be identifiable as such. Beyond that, it can incorporate religious elements so long as it does not amount to a religious service. We recommend two requirements which would aid the identification of a ceremony as civil, which we set out below. And we recommend that there should be a non-exhaustive list, outlined in legislation, about the types of content that can be incorporated into a civil ceremony, taking the approach in Jersey[105] as a starting point.

5.172 Furthermore, if non-religious belief organisations are enabled by Government to conduct legally binding weddings, we agree that any restriction applying to religious content should apply equally to non-religious belief content. Because religious and non-religious belief content will generally be permissible, we do not need to consider Humanists UK's suggestions about whether expressions of belief in the tenets of Humanism should be prohibited: couples will be able to express belief whether or not they evince a particular religious or Humanist conviction.

The identification of the ceremony as civil

5.173 A civil wedding ceremony should be identifiably civil. But the difference between what is a civil ceremony and what is a religious (or non-religious belief) ceremony is not

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104 As we explained in the Consultation Paper, paras 6.75 to 6.76, the rule which applies to weddings in the register office only prohibits a religious service: Marriage Act 1949, s 45(2). However, the more extensive prohibition on any religious content other than "incidental" references "in an essentially non-religious context" which applies to weddings on approved premises, has apparently been applied to weddings in the register office: Marriage Act 1949, s 46B(4) and Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 2 para 11.

105 Marriage and Civil Status (Jersey) Law 2001, art 17(8) to (10).

always obvious.[106] Therefore, we recommend two requirements that would apply to civil ceremonies to ensure that they are distinct.

5.174 First, we recommend that every civil wedding ceremony should be identified as such, either by the officiant (or another leading the ceremony). Alternatively, the officiant should be required to identify themselves as a civil officiant. This requirement means that the ceremony cannot be identified as a belief ceremony, or a ceremony according to any particular religious or non-religious belief. Whether the ceremony is identified as a civil ceremony or the officiant is identified as a civil officiant, such identification must be made to the couple and the two witnesses. This approach will ensure that there is no confusion in the minds of the couple and the witnesses about the type of ceremony, which should address any concerns about civil officiants purporting to officiate at religious or (if authorised) non-religious belief ceremonies.

5.175 Secondly, we recommend that religious and (if authorised) non-religious belief rites or rituals should not form part of the couple's expression of consent. This approach would be similar to that followed in Scotland.[107] We recommended earlier in this chapter that a couple in a civil wedding should be required to express their consent by saying required words of contract, or words to the same effect. Accordingly, couples will not be able to use part of the marriage rites of any particular religion when saying the words of contract. We do not think that this rule will be unduly prohibitive because couples will still be able to include references to their beliefs or cultural practices in other parts of the ceremony, including in any promises they make to each other.

A list of permitted elements

5.176 Although we think that civil ceremonies should be distinguishable from religious and (if authorised) non-religious belief ceremonies, couples having civil ceremonies should nevertheless be able to make them personally meaningful. We therefore recommend that belief content should be permitted within civil ceremonies. It will not matter what the couple's motivation is – for example, religious elements will be permitted to reflect a couple's religious beliefs.

5.177 To provide clarity and certainty in relation to the content that couples having civil ceremonies most frequently request, we think legislation should outline the elements that are permitted. This list should be non-exhaustive, so that other types of content should be permitted where it would not amount to a religious service. Specifically, we recommend that the law should provide that couples may incorporate into their civil wedding ceremonies religious and non-religious belief elements, including music; readings; symbols, iconography and dress; rituals and symbolic acts; prayers; blessings; and vows and statements or expressions of commitment or consent that make references of a religious or non-religious belief nature, so long that those vows or statements do not replicate the wording or the form of any ritual or vow that is required within a religious or (if authorised) non-religious belief marriage ceremony. As

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106 Consider the currently prescribed words, required in civil ceremonies but "structurally and linguistically similar" to the Anglican wedding service, perhaps why two participants in the Nuffield project experienced them as religious: R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) paras 4.16 to 4.17.

107 As we noted in the Consultation Paper, para 6.103.

an example, this would preclude a couple from reciting the vows in the Book of Common Prayer.

5.178 We are not recommending that there should be a limit on the proportion or percentage of religious or non-religious belief content in a civil ceremony, such as requiring that most of the ceremony for which the officiant is present does not reflect any religious or non-religious beliefs. We do not think this type of accounting would be helpful or necessary; it might take longer to sing a hymn than to say the required words. However, there will be a limit on the amount of any belief service that could be included in a civil ceremony: a religious or non-religious belief service in its entirety, or nearly its entirety, will not be permitted.

The participation of the civil officiant

5.179 We further recommend that civil officiants, including registration officers, will not be required to participate in any religious or non-religious belief element or ritual. This will include that they will not be required to say any religious words or sing any religious songs.

5.180 Given that, under the current law, registration officers are required to attend expressly religious ceremonies in registered places of worship in the absence of authorised persons,[108] we disagree that there are any problems with registration officers officiating at civil ceremonies that include religious or non-religious belief elements. The legal responsibilities and duties of an officiant are to be present and to ensure the legal requirements are met: officiants are not required to participate and need not play any role in conducting the ceremony. Accordingly, we do not think that requiring a registration officer's presence means the state is being required to be involved in performances involving religion or belief or is approving or promoting the couple's beliefs.

5.181 That said, civil officiants would not be prohibited from delivering any religious or non-religious belief content, should they agree to do so.

5.182 Of course, if any registration officer attempted to impose their own religious or non-religious beliefs onto a couple or to express them within a ceremony without the agreement of the couple, this would be an employment issue for the local authority. *Ladele v Islington LBC*[109] demonstrates that local authorities are able to limit an employee's expression of their beliefs in accordance with human rights law.

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[108] And to attend religious weddings involving persons who are detained or terminally ill: see Ch 10.

[109] [2009] EWCA Civ 1357, [2010] 1 WLR 955.

Recommendation 32.

5.183 We recommend that a civil ceremony should be required to be identifiable as a civil ceremony.

(1) The civil officiant or another person leading the ceremony should identify the wedding as a civil ceremony (so they cannot identify it as a religious or non-religious belief ceremony) or the civil officiant should identify themselves as a civil officiant, to the couple and two witnesses.

(2) The couple's expression of consent, using the required words, should not include references to or elements of religious or non-religious beliefs or practices.

5.184 We recommend that a religious or non-religious belief service should not be permitted in a civil ceremony; however, a civil ceremony should be able to incorporate religious or non-religious belief elements, including but not limited to:

(1) music;

(2) readings;

(3) symbols, iconography and dress;

(4) rituals and symbolic acts;

(5) prayers;

(6) blessings; and

(7) vows and statements or expressions of commitment or consent by the persons to each other that make references of a religious or non-religious belief nature, provided that any such vow or statement does not replicate words or form of any ritual, vow, statement or expression of consent required of any couple marrying in a religious or non-religious belief marriage ceremony.

5.185 We recommend that the civil officiant should not be required to participate in any religious or non-religious belief elements.

5.186 We emphasise that this recommendation has no application to belief ceremonies. It does not require a religious group to accept or believe that the inclusion of a religious component – such as a prayer – within a civil ceremony is sufficient to make that marriage valid or acceptable according to their religious beliefs. Just as the law does not recognise all religious ceremonies as legally valid, so too different religions may not regard a legal wedding as religiously valid. The religious validity of a marriage will remain a matter for individual religions to determine; it is not something with which the law governing weddings is concerned. The civil law is concerned with what makes a marriage legally valid, not religiously valid. Equally, the fact that a wedding ceremony

is not in fact religiously valid (despite it being the intention of the couple and the officiant that it should be) does not provide a basis for challenging the legal validity of a marriage.[110]

CEREMONIES WHICH THE LAW DOES NOT RECOGNISE

5.187 Section 46 of the Marriage Act 1949 currently makes provision for a religious service to be conducted following a wedding in a register office. The couple are required to produce their marriage certificate in order for the religious ceremony to take place, with the Act specifically providing that the religious service does not "supersede or invalidate" the existing marriage, and must not itself be registered as a marriage.

5.188 In the Consultation Paper, we explained the very specific historical reasons this provision was introduced in the Marriage and Registration Act 1856: it sought to remove doubt about the validity of civil weddings, in the light of some Anglican clergy advising couples who had been married in a register office that they must have another ceremony in church. We explained that the provision was no longer serving a useful purpose and indeed led to confusion.[111]

5.189 We provisionally proposed that the provision in section 46 of the Marriage Act 1949 to permit a religious service to be conducted after a civil wedding ceremony should be repealed.[112]

Consultation

5.190 Only approximately a quarter of consultees agreed with this provisional proposal, with the majority disagreeing.

5.191 Some consultees agreed that section 46 is legally redundant. One local authority, agreeing that the provision serves no useful purpose, added that it only serves to require couples to take unnecessary steps to have a religious service. Some consultees also agreed that section 46 causes confusion.

5.192 Other consultees, including the Churches' Legislation Advisory Service and the Methodist Church in Britain, agreed with the proposal on the condition that it would not in substance change the law, so that it would remain clear that a religious service could follow a civil wedding ceremony.

5.193 The most common reason for opposition to this proposal was a misunderstanding that its effect would be to prohibit a religious service after a civil ceremony. Many consultees told us why couples might want a religious ceremony after a civil wedding.

5.194 Although the Church of England supported the proposal, both the Church in Wales and the Faculty Office of the Archbishop of Canterbury appeared to suggest that section 46 plays a special role in relation to Anglican weddings. Dr Augur Pearce (an

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110 Including Anglican, Jewish and Quaker weddings: see Recommendation 30 at paras 5.118 and 5.119 above.

111 Consultation Paper, paras 6.112 to 6.113.

112 Consultation Paper, para 6.114, Consultation Question 46.

academic) put the point more clearly, saying that in the Church of England "no service can be held without some legislative authority".

5.195 The Religious Society of Friends also expressed concern that repealing section 46 could have an impact on how conversions of civil partnership into marriage take place, in particular that its repeal would prevent a conversion from taking place in a Quaker Meeting House.

Discussion and conclusion

5.196 A ceremony which the law does not recognise as creating a legal marriage need not be authorised under weddings law, either under the current Marriage Act 1949 or under our scheme. We may have been insufficiently clear in the Consultation Paper that our proposals would in no way prevent another ceremony – religious or otherwise – from taking place before or after a legally recognised wedding ceremony.

5.197 This provisional proposal was a technical one about how the law should give effect to the policy that ceremonies that the law does not recognise accordingly do not need to be regulated by the law. We made it because the original purpose of section 46 is spent: it had been enacted in response to concerns about Anglican clergy conducting Anglican weddings after a civil ceremony, where they were implying that the civil ceremony was not valid. The provision was not about permitting a religious service after a civil ceremony, but about imposing conditions on that religious service: in particular, that it could not be registered as a valid marriage.[113]

5.198 We continue to believe that section 46 is legally redundant.

5.199 In addition to being unnecessary, section 46 causes confusion in practice: it is sometimes interpreted as a prohibition on a non-legally binding religious ceremony taking place in advance of a civil wedding. Some consultees corroborated this belief. Confusion was also evidenced in the Nuffield project: two Buddhist participants would not conduct a religious ceremony in advance of a legally recognised civil ceremony and some couples were told they must have a civil ceremony before a non-recognised religious ceremony.[114]

5.200 We believe that repealing this section will address this confusion.

5.201 We do not think that repealing section 46 will deprive the Anglican churches of their ability to continue to conduct blessings or non-legally binding ceremonies. It is not the Marriage Act 1949 that authorises the services that the Church of England or the Church in Wales can hold, but rather its own canons. Since the Church of England (Worship and Doctrine) Measure 1974 the General Synod has had the power to approve, amend, continue or discontinue any forms of service and Parliamentary approval has not been required. Similarly, the canons of the Church in Wales are a matter for its own governing body. We also do not think that if section 46 is repealed that it could make Anglican clergy vulnerable to criminal liability under section 75(1)(b) of the Marriage Act 1949; conducting a blessing would not be "solemnizing" a

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113 R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (2021) pp 92 to 96.

114 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) paras 4.95 and 4.100.

marriage.[115] Moreover, we do not recommend that this specific offence should be carried forward into the new law in any event.[116]

5.202 We consider the impact on conversions of the repeal of section 46 in Chapter 13. As we recommend that the law should permit all weddings, and so all conversions, to take place anywhere, section 46 will no longer be necessary to permit a ceremony following a conversion to take place in any specific religious premises.

Recommendation 33.

5.203 We recommend that the provision to permit a religious service to be conducted after a civil wedding ceremony (section 46 of the Marriage Act 1949) should be repealed as redundant, but it should continue to be possible for a couple to have a non-legally binding wedding ceremony before or after a legally binding wedding ceremony.

115 *R v Benson*, *The Times*, 12 July 1856; *Galloway v Goldstein* [2012] EWHC 60 (Fam), [2012] 2 WLR 1003.

116 See Ch 9.

Chapter 6: Location

INTRODUCTION

6.1 We have made recommendations about who should be authorised to officiate at weddings in Chapter 4, and what elements any wedding ceremony should be required to incorporate in Chapter 5. We now turn to where weddings should be permitted to take place.

6.2 We are recommending a fundamental shift in weddings law, namely from a buildings-based system to an officiant-based system. Location will no longer play a fundamental role in the regulatory regime governing weddings. That shift in focus paves the way for weddings to be able to take place in a much wider range of locations, with the focus of regulation shifting from the location of the wedding to the officiant.[1]

6.3 Under our recommendations, weddings will be able to take place in any type of location. That does not, however, mean that couples will have the right to get married wherever they choose. First, the location will need to be agreed by the officiant, who will have legal responsibility for considering the safety of those attending and the dignity of the location. Second, religious and (if enabled by Government to conduct legally binding weddings) non-religious belief organisations will be able to set their own rules as to where weddings conducted according to their beliefs take place. Religions that wish to ensure that their weddings take place only within their place of worship will therefore be able to do so. For those religions, our recommendations in relation to location will in fact make no difference to their current practice.

6.4 Our recommendations reflect the policy that we provisionally proposed in the Consultation Paper. Our provisional proposals were not, however, supported by the majority of consultees. Many individual consultees who responded to the questions in this chapter expressed concerns identical or similar to those outlined in the briefing texts of the Christian Institute and the Coalition For Marriage. Other consultees, such as the Church of England and many Christian religious groups, also disagreed with these proposals. As we outline below, their concerns often centred on the dignity and public accessibility of locations for wedding ceremonies. We appreciate these concerns, which are legitimate and sincere. However, we think that the balance of factors falls in favour of our proposed reforms.

6.5 Our provisional proposals aimed to solve problems caused by the current law, which places unnecessary barriers in the way to couples getting legally married. The current law prevents many people from marrying in a way, and in a place, that is meaningful to them, including in a way that reflects their own religious or non-religious beliefs. The law is also unfair, with significantly different rules applying to different couples, depending on the type of wedding that they have. In this respect, it is notable that many of those who opposed our provisional proposals apparently did so from a Christian perspective. Since the current law generally works well for those who wish to

[1] Chapter 4, which focusses on the responsibilities of officiants and how they will be authorised and regulated, contains most of the detail about how weddings will be regulated under our recommended scheme.

marry in a Christian ceremony, these consultees would not necessarily have experienced, or even be aware of, the difficulties that other religious groups may face. Accordingly, many of those who opposed our provisional proposals did not engage with the problems caused by the current law for other groups (or accept that the current position gives rise to problems) or suggest alternative ways in which they could be resolved. It was clear that some consultees considered that the law should be more restrictive as to the location of weddings, rather than offer greater choice.

6.6 It is, however, apparent from our Terms of Reference that our recommendations cannot replicate the current law. The principle of respecting individuals' wishes and beliefs, together with the principle of removing unnecessary regulation to increase the choice and lower the cost of wedding venues for couples, direct us towards a system that imposes no more restrictions than are necessary to protect the state's interest. Given the principles underpinning our review, we could not make recommendations which would give couples less choice than they currently have, even if consultees would be in favour of doing so. Nor do we think that the law should be more restrictive.

6.7 The shift towards giving couples more options about where they can get married is already under way. When our project was announced, Government announced that it would separately consider how to deliver interim reform to the regulations governing approved premises, to allow outdoor locations for civil weddings and civil partnership ceremonies.[2] Consequently, and in light of the significant impact that the Covid-19 pandemic has had on couples and the weddings industry, Government introduced reforms to "offer greater flexibility and choice to couples and to owners of civil wedding and civil partnership venues or prospective venues".[3] Coming into force on 1 July 2021, these reforms have permitted weddings to take place outdoors on the grounds of approved premises.[4] Although originally temporary, Government has made this change permanent.[5] Government also intends to amend the law by way of a legislative reform order[6] to make similar provision for weddings to take place on the grounds of registered places of worship and Anglican churches and chapels, when legislative time is available.[7] These recent reforms – which those responding to Government's consultation were "overwhelmingly" in favour of[8] – show the demand among couples to be able to have, and venues to be able to offer, weddings

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2 See HM Government, *First ever marriage review to free-up dream wedding venues* (28 June 2019), https://www.gov.uk/government/news/first-ever-marriage-review-to-free-up-dream-wedding-venues (last visited 1 July 2022).

3 Ministry of Justice, *Outdoor Marriages and Civil Partnerships* (20 December 2021) p 7.

4 The Marriage and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021 (SI 2021 No 775).

5 Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2022 (SI 2022 No 295).

6 Under the Legislative and Regulatory Reform Act 2006.

7 Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022) p 32.

8 Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022) pp 30 and 32.

outdoors.[9] The demand for outdoor weddings has only increased during the Covid-19 pandemic. As Justice Minister Tom Pursglove MP said when announcing the reforms:

> A wedding is one of the most important days in a person's life and it is right that couples should have greater choice in how they celebrate their special occasion.[10]

6.8 Our recommended scheme will also make the law more similar to that in many other common law jurisdictions as well as to that in neighbouring jurisdictions. Australia, New Zealand and Canadian provinces prescribe few, if any rules, about the location for a wedding. Weddings laws in Scotland, Northern Ireland, Ireland, Jersey and Guernsey have also been reformed to liberalise where weddings can take place and to give couples more choice.[11] Similar changes are long overdue in England and Wales.

6.9 The recommendations we make in this chapter will give couples freedom and choice over the location of their wedding while providing safeguards to ensure that all wedding locations are safe and dignified. Our scheme will reduce the need for couples to have a separate non-legally binding ceremony to celebrate their marriage in the location of their choosing. We also think that the experience of other jurisdictions shows that many of the concerns that consultees expressed will not come to pass.

6.10 In this chapter, we first consider the problems with the current law and where weddings should be permitted to take place. As part of this, we consider whether weddings should be able to take place in locations which are not publicly accessible or regularly available for weddings. And we consider whether there should be restrictions limiting the use of religious or non-religious belief premises for religious or non-religious belief weddings, respectively.

6.11 Next, we consider the process governing how a specific location should be agreed in relation to a wedding, including the question of whether there should be either a formal or voluntary pre-approval process for wedding locations.

6.12 We discuss the implications of our general policy in relation to weddings in the territorial sea and coastal waters and on military bases in Chapter 10. In that chapter we also consider the discrete issue of weddings at sea in international waters.

WHERE WEDDINGS SHOULD BE PERMITTED TO TAKE PLACE

6.13 The current law in England and Wales is often described as a buildings-based system. In most cases, the authority for weddings to take place is based on regulation of the building. As a consequence, almost all types of wedding must take place in a place of

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9 Respondents to Government's consultation said that "outdoor ceremonies accounted for between 30-100% of the weddings they hosted": Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022) p 16.

10 Ministry of Justice and Tom Pursglove MP, *Press release: Outdoor civil weddings and civil partnerships made permanent* (15 March 2022), https://www.gov.uk/government/news/outdoor-civil-weddings-and-civil-partnerships-made-permanent (last visited 1 July 2022).

11 For an assessment of the law in Scotland, see M McLean, "Beyond belief: the law and practice of marriage formation in contemporary Scotland" [2018] *Child and Family Law Quarterly* 237.

worship or on approved premises. However, as with many other aspects of the current law, there are exceptions for certain types of weddings.

(1) An Anglican wedding must generally take place in an Anglican church or public chapel. Under future reforms the Government intends to bring forward, the law will permit a wedding to take place on the grounds of the church or chapel.[12] Couples are limited to marrying in the church of the parish where at least one of them is resident or usually worships, or in a parish with which one of them has a qualifying connection.[13] However, as an exception to this general rule, the Archbishop of Canterbury has a discretion under the Ecclesiastical Licences Act 1533 to issue a special licence to allow an Anglican wedding to take place anywhere. In practice, the special licence is used to permit weddings in Anglican places of worship which are not generally licensed for weddings, such as private Oxbridge chapels, or in which the couple would not be authorised to marry, for example because they do not have a qualifying connection. Special licences are also used for weddings in private hospitals and hospices, such as when one of the couple or one of their family members is terminally ill.

(2) The law is silent about where Jewish and Quaker weddings can take place. They are legally permitted to take place anywhere, in any type of location: they can therefore be held in places of worship, but also in hotels, outdoors in parks and gardens, on beaches and in fields, and in private homes.

(3) Every other religious wedding must take place in a certified place of worship that is registered for marriage. Government also intends to bring forward reforms to extend this rule to permit weddings to take place on the grounds of registered places of worship.[14] A couple marrying in a registered place of worship is also subject to rules about the registration district where the wedding can take place, based on where the couple is resident or their usual place of worship.[15]

(4) A civil wedding can only take place in a register office or on approved premises, with most weddings taking place on approved premises. To be approved under the Marriage and Civil Partnerships (Approved Premises) Regulations[16] ("Approved Premises Regulations"), the premises must be a permanent, immovable structure, or a permanently moored boat. Approved premises must not be religious premises and must be regularly available to the public for use for weddings and civil partnership ceremonies.[17] In 2021, the Approved Premises Regulations were amended to permit weddings to take place

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12 Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022) p 32.

13 Marriage Act 1949, ss 6, 12(1), 15, and 25(2)(a); Church of England Marriage Measure 2008, s 1.

14 Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022) p 32.

15 Marriage Act 1949, ss 34, 35, 41, 43A and 44.

16 SI 2005 No 3168.

17 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), regs 2(1) and 2C(1) and sch 1 para 2.

outdoors on approved premises, in an area linked with and within the boundary of the built premises in which a room has been approved. The linked outdoor area must have been approved by the superintendent registrar as seemly and dignified.[18] Outdoor areas cannot, on their own, be approved.

6.14 The reasons for this maze of different rules are largely historical, and the rules cannot be said to achieve modern policy goals.[19] Although the reasons for many of the rules are obscure, their effect is not: they make the law needlessly complex, confusing, restrictive and unfair.

6.15 The law requiring most types of religious wedding to take place in registered places of worship does not work well for many couples. Devised in the 19th century to reflect Christian patterns of worship, they do not work for many faiths present in England and Wales today. Many Muslim, Hindu, Jain and Buddhist couples do not see their place of worship as a meaningful place to marry. The law also does not work well for religious groups who do not worship indoors, such as Pagans, and for religious groups which do not have their own places of worship (such as some free churches).[20] Although these groups may wish to conduct legally recognised weddings in community venues, private homes, restaurants, or hotels, they cannot do so.

6.16 The law also does not allow most couples to marry in many outdoor locations. Although recent amendments allow outdoor weddings, those outdoor locations must be linked to a building that is itself authorised. These reforms will not assist religious groups who wish to conduct weddings outdoors but do not have places of worship or do not have suitable grounds surrounding their place of worship in which to conduct a wedding. Whether having a civil or religious ceremony, these reforms also do not assist couples who wish to be married in an outdoor location that is not connected or near to a particular type of building, which will be the case for many hilltops, woodlands, meadows or beaches.

6.17 The current rules also do not reflect where non-legally binding ceremonies conducted by Humanist celebrants or independent celebrants take place. In both cases, the location for a wedding is chosen by the couple based on its personal significance to them. Accordingly, these types of wedding take place in a wide range of places, from outdoors on hilltops to inside private homes, many of which cannot be authorised for a wedding under the current law.

6.18 To address these concerns, in the Consultation Paper we drew on the models used in other jurisdictions to assess options for reform against the five principles underpinning our review. We explained that our preferred solution was to remove the need for a pre-approval process for the locations of all types of wedding, instead requiring that the officiant and the couple agree to the location. Officiants would be required to

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18 The Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021 (SI 2021 No 775); Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2022 (SI 2022 No 295).

19 See eg R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (2021) ch 2; see paras 1.18 to 1.22 above.

20 Consultation Paper, paras 7.87 to 7.90.

consider the location's safety and dignity, and the General Register Office would provide guidance to officiants on how to discharge this requirement.

Weddings should be permitted to take place in any type of location

6.19 We provisionally proposed that all weddings should be legally permitted to take place anywhere. However, we also asked consultees for their views as to whether the law should prohibit weddings in any particular types of place, identifying outdoors, on inland waters (such as lakes or rivers), in the air, or in private homes.[21]

6.20 We also provisionally proposed that civil wedding locations should not have to be publicly accessible or regularly available to the public for civil weddings.[22]

Consultation

The locations where weddings should be permitted to take place

6.21 Only a minority of consultees supported the provisional proposal that all weddings should be legally permitted to take place anywhere. However, those consultees were often the ones who had experience of the problems created by the current restrictions.

6.22 For example, some consultees identified the problems caused by the current law for Christian churches that do not have their own places of worship. The Plymouth Brethren Christian Church spoke of the situation where a new church building has not yet been registered for marriages. It, and several individual consultees responding in similar terms, were strongly in favour of conducting weddings in private homes, to facilitate weddings within some Christian denominations. Drawing on the experience of members of its community in other jurisdictions, the Plymouth Brethren Christian Church explained:

> There are many persons that would find it meaningful to have their wedding in their own home (normally the bride's home) where the simplicity, dignity, and solemnity of the occasion can be fully experienced without other distractions.

6.23 Other consultees were also in favour of weddings at home. Some said that allowing weddings at home would have facilitated weddings when public health restrictions were in place during the Covid-19 pandemic. Others said that weddings in private homes could be more accessible to a person with a physical disability, or would allow couples to marry cheaply. The Law Society welcomed the possibility of couples being able to marry in private homes, which in its view would make "weddings more accessible".

6.24 Consultees also reinforced our understanding of the importance of reform for Muslim couples. These points were made by three academics and one barrister, who all emphasised the variety of places that Muslim nikah ceremonies take place, including at home and in banqueting halls. By allowing "any of these venues" to be used for a legally binding ceremony, Dr Rajnaara Akhtar (an academic) argued that "the

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21 Consultation Paper, para 7.158 and 7.159, Consultation Question 48.

22 Consultation Paper, para 7.160, Consultation Question 49.

proposals respond to the lived realities within (though not limited to) Muslim communities". Significantly, she thought that this proposal:

> should help facilitate legally recognised ceremonies, especially for couples who simply do not prioritise that when they are planning their more personally meaningful religious ceremony and celebrations.

Fouzia Azzouz (an academic) agreed that the proposal would "remove some of the obstacles" for many Muslim couples who "avoid or forgo marriage registration altogether".

6.25 Similarly, consultees provided evidence that Pagan weddings would be facilitated by broadening the permitted locations, particularly by allowing weddings outdoors. The Druid Network and an individual consultee identified ancient monuments, including stone circles, and yew groves as places where Druids or other Pagans would wish to get married.

6.26 More generally, many consultees were in favour of facilitating choice for couples. For example, the National Secular Society said that this proposal "will significantly enhance freedom and fairness for all couples, regardless of religion or belief". Some consultees also noted that secular wedding venues might benefit, including those which are unable to become approved premises under the current rules.

6.27 Both individual consultees speaking about their own wishes and consultees involved in providing weddings evidenced the demand for weddings in a greater variety of locations than is currently permitted. The Guild of Cornish Celebrants supported the proposal as allowing the law to recognise the variety of types of location couples already choose for their celebrations, includes beaches, moorland and gardens. British Marine, a trade association for the leisure and commercial maritime industry, said that there is a high demand for weddings on board domestic passenger vessels, which already host a variety of types of events, such as dinners, parties and business events. Skipton Boat Trips confirmed that "many people ask us about getting married on the boat each year".

6.28 Humanists UK and several Humanist celebrants confirmed our understanding that the ability to get married in a wider range of venues would be important for Humanist couples, if non-religious belief organisations were enabled to conduct legal weddings. Humanists UK, with Humanist Society Scotland concurring, said that the locations we identified in the question are all "locations which could, for varying personal reasons, be the most personally meaningful location to a couple for their wedding, and therefore an intrinsic manifestation of their humanism". They explained that "a very large proportion of humanist weddings happen outdoors or in private homes". While weddings on inland waters or in the air are less common, they envisioned that "a couple who work on or in the water, live on a houseboat, or work on aeroplanes, could wish to get married in one of these locations".

6.29 Some consultees in favour of our provisional proposal specifically expressed their support for fundamentally shifting the law from a buildings-based system to an officiant-based system. For example, Humanist and Secularist Liberal Democrats wrote:

> The provisional recommendations would allow all wedding ceremonies to be conducted in accordance with the wishes of the couple, subject to the agreement of the officiating body, and they address concerns relating to health, safety, planning, alcohol licencing etc, as well as the dignity and solemnity of the ceremony.

6.30 However, the majority of consultees were not in favour of the provisional proposal. Many outlined their general concerns with allowing weddings to take place in a location chosen by the couple.

6.31 Consultees who disagreed with the proposal frequently expressed concern that it would undermine the solemnity, dignity or seriousness of the ceremony, or that it would trivialise marriage or bring it into disrepute. These consultees often took the view that weddings should be dignified, solemn, formal or serious occasions, which the location must reflect. Some consultees elaborated that there would be negative knock-on consequences for couples – who might choose not to marry, or whose marriage might end prematurely – and for society.

6.32 As we noted at paragraph 6.4 above, many consultees who disagreed with this proposal raised the same concerns that the Christian Institute and the Coalition For Marriage outlined in their briefing texts on this question. Both briefing texts, and the responses of the Christian Institute and the Coalition For Marriage, acknowledged that the proposal could provide benefits to churches that do not own their own buildings; however, they expressed concern that our proposed system was unduly permissive. They said that the proposal would fail to prevent inappropriate places from being used for weddings, arguing that we provided insufficient detail on the requirements for safety and dignity and the mechanisms to enforce those requirements. They suggested that weddings in the air should not be considered dignified or safe, and gave other examples with which they were concerned, including weddings taking place underwater or in sadomasochism dungeons, or themed weddings at comic book conventions. They argued that such weddings trivialise weddings and marriage.

6.33 Other consultees expressed similar concerns. The Church of England put forward this view strongly:

> Elsewhere, the concept of dignity has been introduced (as in Q.52) as a desirable or essential factor in a wedding ceremony. Yet no attempt is made to define the parameters which would protect or promote dignity and, in conversation, members of the Commission have declared that they see no way to do so. This is a classic case of willing the ends but not the means.
>
> Instead, by abdicating any responsibility for enabling weddings to remain dignified, this proposal opens the door to frivolous, attention-seeking and farcical behaviours which could seriously undermine any notion that a wedding is a dignified and serious occasion in which both the state and the public have an interest. It is only necessary to see what has happened to the "dignity" of weddings in jurisdictions that make no requirements limiting locations to see that a kind of competitive absurdity is likely to develop among a small minority of attention-seeking couples trying to outdo each other in outlandish wedding locations.

6.34 Other consultees also expressed concern about couples intentionally choosing controversial, novel, or outlandish wedding locations, to attract attention. Some

consultees doubted whether couples need to be able to marry in a location that is uniquely meaningful to them. On this point, some consultees suggested that the solution was for couples to have a reception where they wished, but that the current law makes adequate provision for where the ceremony can be held.

6.35 Some consultees also worried that the proposal would result in wedding locations being more, rather than less, commercial. The Church of England suggested that the proposal amounted to a "a commercial free-for-all".

6.36 Consultees were also concerned that allowing weddings to take place in any type of location would undermine protections against forced and predatory marriages. Dr Rachael Clawson (an academic responding on behalf of her research project team) explained that "the more isolated the venue the greater the risk that any safeguarding issues may not be recognised".

6.37 Two local authorities also worried about practical concerns for local authorities. One noted that some registration officers might not be willing to attend unusual or hard-to-reach locations, and another suggested that it could prove difficult when a registration officer needed to be replaced at the last minute.

6.38 Some consultees, including wedding venues, were opposed to reforms on the basis that it could have a detrimental impact on some wedding venues, an industry already hard hit by the Covid-19 pandemic.

6.39 Consultees who disagreed frequently raised concerns about weddings taking place in particular types of location. Several recurring themes were raised about weddings in private homes, outdoors, in inland waters, or in the air, although to varying degrees: that these locations were inconsistent with the seriousness, dignity or solemnity of weddings, or would trivialise marriage; that they would not facilitate public access to weddings; or that they might be insufficiently safe for a wedding.

6.40 Particular concerns were raised that there would be a higher risk of forced marriage associated with weddings in private homes. For example, Welsh Women's Aid said that "weddings inside the home may increase opportunities to conceal abuse" or a forced marriage, worrying in particular about situations where "the ceremony is being conducted by a member of the family".

6.41 In relation to weddings taking place outdoors, in inland waters, or in the air, consultees were concerned that such locations might be difficult for persons with disabilities to attend. Consultees also raised specific health and safety issues, on the basis that weddings outdoors, on the water, and in the air might pose a variety of safety hazards, including to the officiant and guests, and moreover would make those attending more vulnerable to inclement weather. The National Commission on Forced Marriage was concerned that if weddings were taking place "for instance on a lake, a river or at sea, the opportunity for one party to withhold consent could prove impossible, especially if it is a forced marriage".

6.42 Consultees also identified other venues where they thought weddings should not be permitted to take place. These included in fast-food restaurants, pubs, theme or amusement parks, casinos or other locations where gambling takes place, nightclubs,

strip clubs or similar premises, sports venues, gymnasiums, shopping venues, or industrial facilities.

Public accessibility and availability of locations for civil weddings

6.43 Many consultees gave similar answers to our provisional proposal that civil wedding locations need not be publicly accessible or regularly available to the public for weddings as they did to our proposal, in relation to the rules governing ceremonies, that weddings should not be required to take place with open doors.[23] In this question, we were not asking whether the public should be permitted access to any given wedding ceremony. Instead, we intended to focus on the nature of wedding locations, particularly the specific requirements in the current law governing approved premises. Nevertheless, consultees' views about the public accessibility and availability of locations for weddings, including whether weddings should be permitted in private homes, or locations that could be difficult to access (such as hilltops or vessels in the territorial sea), were useful for us to consider.

6.44 Consultees in favour of our proposal argued that there were no sound reasons for the current requirements that approved premises be publicly accessible and regularly available to the public for weddings. For example, Oxfordshire Registration Service described the requirements as causing "unnecessary bureaucracy".

6.45 Some consultees were in favour of increasing couples' choices about where they could marry, arguing that weddings generally, or civil weddings in particular, should be permitted to take place in private places or places which might only be available for one wedding. One local authority acknowledged that, in practice, premises were already being approved for a single wedding, giving the example of a pub being approved exclusively for the wedding of the landlord's daughter. Other consultees said that being able to marry in private locations would be personally meaningful to some couples, who might regard their wedding as a private or intimate event. Others noted that this proposal would give couples low-cost options. As the Law Society said, removing this requirement would "allow weddings to be simpler and perhaps more affordable for individuals who wish to get married in these locations".

6.46 Other consultees noted that the nature of some locations would not practically permit public access during the ceremony. For example, British Marine commented that once a boat has left the mooring, public access would not be possible.

6.47 Dr Augur Pearce (an academic) made the point that allowing all weddings to take place in private places would promote fairness:

> marriages have always been solemnized in Jewish homes which are not open to the public; civil solemnization should not be subject to greater regulation than Jewish.

6.48 The most frequent argument against the proposal was that weddings should be required to take place with open doors or should be public events, with members of the public able to attend and object to a wedding if necessary. Many consultees referred to or repeated their answers to our question on open doors (which we consider at paragraph 5.121 and following above). For example, the Church of

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[23] Consultation Paper, para 6.136, Question 47.

England, the Church in Wales and the Faculty Office of the Archbishop of Canterbury all gave responses which supported public accessibility to or public interest in wedding ceremonies. The Church of England said:

> Again, this contradicts the important principle that a wedding is a matter of public interest - a principle which reinforces the public necessity of establishing the identity and consent of the parties.

Other consultees argued that this accessibility is necessary to reflect the principle that a wedding is a public event or declaration by the couple. Others spoke of the need to support a member of the public's ability to identify impediments to the marriage and to object.

6.49 Although consultees often made comments about public access to the wedding ceremony itself, it seems clear that many thought that the type of location for a wedding should facilitate this public access. For example, some consultees argued that private locations would increase the risk of forced or sham marriages, and others said that wedding should be held in places which are accessible to persons with disabilities.

6.50 Other consultees said that places which are regularly available for marriages were likely to be appropriate places for weddings. Two registration officers commented on the convenience of dealing with or attending locations which regularly host weddings.

Discussion and conclusion

6.51 Many consultees expressed strongly held views about where weddings should be permitted to take place. In doing so, they conveyed their values and beliefs about the nature of weddings and marriage itself.

6.52 But many of the types of location that consultees identified as inappropriate for a wedding are already locations which could be, or have been, approved premises for civil weddings.[24] Whether misunderstanding the current law or disagreeing with it, many consultees were in substance in favour of restricting, rather than liberalising, this area of weddings law.

6.53 However, our Terms of Reference direct us to approach this question with the aim of allowing weddings to take place in a wider variety of places. This approach is strongly suggested by two principles underpinning our review: that our recommendations should 1) respect individuals' wishes and beliefs, and 2) remove unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples. Our Terms of Reference also direct us to consider fairness and equality, guiding us to address the current law's disparate treatment of couples, with some given far more freedom to choose where to get married than others. Certainty and simplicity also point to giving similar treatment for all types of wedding. The only justifiable restrictions on where a wedding can take place are those connected to protecting the state's interest. We believe that the state's interest in where a wedding

[24] For example, as we noted in the Scoping Paper, para 1.4, casinos and shopping centres have been approved under the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168).

can take place is limited to safety and dignity. But we acknowledge that not everyone will agree with these aims of our project, or how we have sought to fulfil them.

6.54 We also emphasise that our recommendations are facilitative. They will not require religious organisations to conduct weddings in places with which they disagree, or which do not reflect their views about what is appropriate. As we explained in the Consultation Paper, religious (and non-religious belief) officiants will be able to impose further requirements on where they officiate at weddings, to reflect the beliefs of their faith or organisation.[25] Many religious groups may continue to require that the weddings they conduct take place in a church, with open doors. They will be able to do so under our scheme. For example, the Church of England and the Church in Wales could continue to require that Anglican weddings take place in a church or public chapel in a parish where at least one of the couple is resident, usually worships, or has a qualifying connection. But groups for whom the law does not work well will be able to offer weddings in other locations, and couples will be able to choose an officiant who is willing to conduct a wedding in a place that is meaningful to them.

6.55 Finally, we wish to underline that leaving the matter of location to be agreed between the parties and officiant is not a novel or untested approach. It is very similar to the law in Scotland.

Dignity and commercialisation

6.56 The most difficult issue consultees raised is dignity. Many consultees outlined strong views about the meaning of dignity and the need for a mechanism to protect it. Our provisional proposals sought to ensure that only dignified venues are used, in requiring that officiants are responsible for ensuring the location is dignified. We explore this issue in more detail at paragraphs 6.177 and following below, where we recommend the process for approving a location. It is clear that dignity is not a concept that has one objective or universal meaning. Just as different individuals have different views as to what makes a wedding meaningful and significant, individuals have different views as to what makes a wedding dignified. As a legal reform body, the Law Commission is not well placed to adjudicate on these views. Nevertheless, we think that our recommendations provide the mechanism to ensure that the state's interest in dignity is protected.

6.57 We disagree with the suggestion that our proposals would promote the commercialisation of wedding locations. It is worth emphasising that civil wedding venues are, by and large, commercial. This is a consequence of the current rules governing approved premises. The rules about which premises can be approved, together with the approval process and the (often high) fees for approval, put significant barriers in the way of non-commercial entities wishing to have premises approved. In short, many may simply be priced out of seeking approval.[26]

6.58 Most legal weddings take place on approved premises: in 2019, 73.7% of all weddings took place on approved premises.[27] A couple having a civil wedding is effectively

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25 Consultation Paper, para 7.131.

26 See Consultation Paper, paras 7.44 to 7.68.

27 Office for National Statistics, *Marriages in England and Wales: 2019* (19 May 2022).

limited to commercial venues, given the contraction in the number of register office weddings available.[28] Accordingly, most couples marrying under the current law are doing so in commercial venues. Under our scheme, we expect that the types of venues that can currently be approved will continue to be a popular choice for many couples, who will still choose to have their weddings in hotels or stately homes that offer beautiful locations and high-quality services.[29] However, our proposals would give couples who do not want to marry in a place of worship the opportunity to choose other non-commercial venues. Whether commercial entities remained the most popular would depend on couples' genuine choices rather than legal constraints.

6.59 In the Consultation Paper, we explained that our proposal would allow couples to marry in places which do not specialise in weddings, such as self-catering complexes, museums or farms, or smaller venues, increasing the range of more modest options.[30] We also identified that it would allow couples to marry in low-cost community locations, such as local parks, community centres, village halls, or at home. As we explained, these options have proven popular in the countries where they are permitted: for example, in New Zealand, many couples marry in "modest venues" such as in holiday homes or community venues, or in their own or a family member's home.[31]

6.60 Some consultees commented on the costs of approved premises, and that our proposal would free couples to consider lower-cost options. One individual consultee specifically explained that the approved premises where she and her partner wished to marry were out of their price range; if it were permitted, they would consider marrying in one of their family's home or garden. The Nuffield project, which interviewed couples who had non-legally binding ceremonies, further demonstrates the significance cost plays in couples' decisions about where they get married. Some participants in the project had a non-legally recognised wedding because of the costs of approved premises.[32] Some couples chose to have their non-legally binding weddings in village halls, with the lower cost of village halls compared to approved premises featuring as a key consideration for them.[33]

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28 R Probert, S Pywell, R Akhtar, S Blake, T Barton and V Vora, "Trying to get a piece of paper from City Hall? The availability, accessibility and administration of the register office wedding" (2022) 44 *Journal of Social Welfare and Family Law* (forthcoming), https://www.tandfonline.com/doi/full/10.1080/09649069.2022.2067651 (last visited 1 July 2022) found that many counties have only one register office.

29 As demonstrated by the Nuffield project, which showed that approved premises are popular venues even for couples having a ceremony that is not legally binding: R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) paras 5.33 to 5.35.

30 Consultation Paper, para 13.30.

31 M Baker and V Elizabeth, *Marriage in an age of cohabitation: How and When People Tie the Knot in the Twenty-First Century* (2014) pp 104 to 105.

32 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 7.9 and following.

33 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 5.38.

6.61 Accordingly, the amount spent on the average wedding might not change, but the option of marrying for considerably less than the average, including in a location that is personally meaningful to the couple, would be available to all couples, including those having civil weddings. Moreover, the availability of more options – particularly low-cost ones – might enable couples to marry who might otherwise have decided that a wedding was too expensive for them.

Public accessibility and availability

6.62 We have already considered the current requirement that certain weddings take place with open doors, recommending at paragraph 5.141 above that this requirement should be abolished.

6.63 With no requirement for open doors or public access to wedding ceremonies, it makes no sense to require that the locations for any type of wedding be freely publicly accessible. Nor do we think that locations should be required to be regularly available to the public for wedding ceremonies.

6.64 We appreciate that many consultees have strong views that the public nature of marriage requires the location of a ceremony to be open to the public, or to be a location in which weddings regularly take place. However, that is not the universal view. Imposing this as a legal requirement would be to impose a Christian (and Anglican) view on all couples and all weddings. But not all weddings currently take place open to the public, and not all groups believe that weddings must take place open to the public. Jewish weddings have long been able to be conducted in private. Many Muslim couples have their nikah ceremonies at home. Many Humanist ceremonies take place in private homes. And, as the Plymouth Brethren Christian Church explained, some Christian groups wish to have their wedding ceremonies at home. The Nuffield project also demonstrated that getting married at home was a popular choice for couples, a choice which was not "limited to any specific religious or belief group or to any particular type of ceremony". Christians, Hindus, Zoroastrians, Pagans and atheists were among those having weddings in private homes and gardens.[34]

6.65 This point is therefore an important part of how our scheme facilitates the recognition of a wide variety of ceremonies, particularly religious ceremonies. This was also the conclusion of Tristan Cummings, who conducted an equality analysis of our provisional proposals:

> The Commission's proposals… would go a significant way towards reducing the effects of the law on religious minorities who may not traditionally marry in public places, where their places of worship are not automatically registered for the solemnisation of marriage, or where the marriage takes place in some other building such as a restaurant.[35]

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34 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 5.48 and following.

35 T Cummings, "Equality as a central principle? – The Law Commission's solution to the religious-only marriage problem" (2021) 33 *Child and Family Law Quarterly* 63, 80.

6.66 In the Consultation Paper, we considered the requirement for approved premises to be regularly available to the public for weddings as a facet of the belief that weddings should take place in locations that the public associates with weddings, a view expressed to us by the Church of England. But many approved premises might not be places primarily associated with weddings, such as hotels, museums, or restaurants.[36] A further point has come out of the Nuffield project: that the association of a particular place with weddings may have negative connotations for some people. One participant to the project pointed out that the fact that LGBT+ people had historically been excluded from marriage meant that the locations in which weddings can take place are seen as "heteronormative"; accordingly "a lot of LGBT Plus people might not feel they want to" marry in spaces where legal marriages can currently take place. This respondent's spouse similarly emphasised the benefit to trans people of being able to marry in a "safe space".[37]

6.67 We also do not think it is necessary for weddings law to impose a specific requirement that ceremonies take place in locations which are accessible to persons with disabilities. Under the Equality Act 2010, businesses and organisations providing services to the public – including commercial wedding venues and public places of worship offering facilities for wedding ceremonies – are required to make reasonable adjustments for disabled people.[38] This requirement includes taking reasonable steps to ensure premises are accessible to disabled people, such as replacing steps with a ramp or painting a doorframe in a contrasting colour. The Equality Act does not require that all premises are completely accessible to anyone with a disability: only reasonable adjustments are required to be made, bearing in mind the basic nature of the service and the size and resources of the business or organisation.[39] This duty to make reasonable adjustments applies regardless of the law governing weddings.

6.68 We do not think that any separate requirement, beyond the requirements under equality law, should be imposed by weddings law. In particular, we do not think weddings law should require that private places where a wedding might take place should be required to be accessible to those with disabilities. In part, this conclusion flows from our conclusion that weddings should not be required to be open to the public; it is therefore unnecessary to facilitate the attendance of a person who is not invited to the ceremony. As we explained in the Consultation Paper, we would expect that a couple who invited a guest with physical disabilities to their wedding would ensure that the place they chose for their ceremony was accessible to that person. But equally, we do not think that the law should prevent a couple from being able to

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36 Consultation Paper, para 7.145; Scoping Paper, p 16, figure 5.

37 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 5.77.

38 Equality Act 2010, ss 20 to 22 and 29.

39 Equality and Human Rights Commission, *4. The three requirements of the duty*, https://www.equalityhumanrights.com/en/multipage-guide/three-requirements-duty (last visited 1 July 2022); and Equality and Human Rights Commission, *6. How do we define 'reasonable'?*, https://www.equalityhumanrights.com/en/multipage-guide/how-do-we-define-reasonable (last visited 1 July 2022).

get married in a place meaningful to them simply because it is not accessible to someone else.[40]

6.69 We moreover think that removing the restrictions on where a wedding may take place could offer improvements over the current law in terms of accommodating couples or guests with disabilities. The Nuffield project highlighted "the difference between a venue being accessible by a person with disabilities, and a particular individual with disabilities being able to access that venue". A participant in the project commented that it was difficult for their two grandmothers to travel to the register office, and suggested that, from the point of view of disability, it was "more inclusive to be able to have weddings wherever you want to have them". Another example was provided by a second participant, whose nikah ceremony had taken place in the care home where the bride's father was resident.[41]

Forced and predatory marriages

6.70 Some consultees raised concerns about forced or predatory marriages taking place in private or inaccessible locations. Consultees suggested that the type of location could play a role in whether risks will be identified and addressed, with location perhaps acting as a proxy for other concerns. However, we think that safeguards to prevent forced marriages are better, and more directly, provided in other ways.

6.71 It is worth emphasising that although weddings law generally, and the preliminaries process more specifically, have an important role to play in identifying forced marriages, many other professionals have a role in protecting individuals from forced marriage, as we explain in Chapter 3. Forced marriage is a process, rather than a single event, with many victims also experiencing other forms of violence or child abuse and neglect. Preventative work needs to address the factors that give rise to forced marriages, rather than only focussing on the wedding itself.[42]

6.72 As we explained in the Consultation Paper, enforcement to prevent forced marriages involving persons with capacity does not generally occur on the day of the ceremony: instead, the person is provided with support prior to the wedding taking place. We have not received any evidence of members of the public acting to stop a forced marriage by disrupting a ceremony to which they were not invited. We also note that forced marriage is a crime: if police are involved and decide to take action to prevent a wedding on the day of the ceremony, the fact that the wedding is in a private venue is no bar to them doing so.[43] We therefore do not think it is necessary to require weddings to take place in public places simply to facilitate interventions which either do not occur in practice or which would not be hampered by a wedding taking place on private property.

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40 Consultation Paper, para 7.181.

41 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 5.101.

42 See para 3.98 above, citing K Noack-Lundberg, AK Gill and S Anitha, "Understanding forced marriage protection orders in the UK" (2021) 43 *Journal of Social Welfare and Family Law* 371; and K Chantler, N Mirza and M Mackenzie, "Policy and Professional Responses to Forced Marriage in Scotland" (2022) 52 *The British Journal of Social Work* 833.

43 Consultation Paper, para 7.149.

6.73 In the Consultation Paper, we also emphasised the role of the officiant.[44] Regardless of where the wedding takes place, an officiant will be required to attend the ceremony and will be under a duty to ensure that neither of the parties is being coerced or lacks the mental capacity to marry.[45] The most direct and straightforward way of ensuring that officiants can recognise forced marriages is in relation to their training and guidance, not limiting where weddings can take place.

6.74 In weddings law, the most potent safeguard against forced marriages is the preliminaries process, a point with which the Forced Marriage Unit has told us it agrees. We consider forced and predatory marriages in detail in Chapter 3. We recommend that, whether the wedding is preceded by civil preliminaries, banns or a common licence, there should be an in-person element as part of the preliminaries process, with each of the couple seen separately. This requirement will ensure that an independent third party has an opportunity to assess the person's capacity and willingness to marry and the person getting married has an opportunity in private to seek help.[46]

6.75 Within weddings law, we think these measures will be more effective at preventing forced marriage than rules governing the location of weddings.

The recognition of meaningful ceremonies

6.76 A significant benefit of the proposal to allow weddings to take place in any type of location is that it would allow the law to recognise many of the types of ceremonies which currently take place outside the legal framework.

6.77 In the Consultation Paper, we explained that the current law does not work well for many religious groups. Specifically, it does not work well for those who do not ordinarily marry in places of worship or who do not worship indoors. Nor does it work well for those who do not have their own places of worship, whose places of worship do not qualify to be registered, or who have only a few places of worship across England and Wales. Other than Jewish and Quaker weddings, religious weddings outside places of worship are not recognised by the law. Our consultation has provided further evidence of the need for reform, with consultees describing Muslim, Pagan, and Christian ceremonies in locations other than places of worship. Similarly, the Evangelical Alliance noted that allowing religious weddings to take place in locations other than places of worship would help Evangelical churches who do not own their premises. It noted that its own research shows that "many churches in the UK gather in a variety of venues such as private homes, converted shops, engineering factories and industrial units".

6.78 Further evidence of the need for reform of the rules governing religious ceremonies has come from the Nuffield project. It described the variety of places in which non-legally binding ceremonies have taken place. It also identified that there are few Zoroastrian and Bahá'í registered places of worship where couples can marry, and

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44 Consultation Paper, para 7.149.

45 See Recommendation 16 at para 4.63 above.

46 See Recommendation 2 at para 3.78, Recommendation 3 at para 3.109, Recommendation 14 at para 3.296 and Recommendation 15 at para 3.307 above.

only one registered place of worship for a particular strand of Buddhism; as a result, in most cases couples belonging to these groups have to marry in other venues. It provided examples of a small evangelical Christian fellowship and a Catholic congregation without their own places of worship. It further emphasised that for Pagans, requiring a wedding to take place in a building is itself seen as an "imposition". The Nuffield project also provided evidence that the current law often precludes interfaith ministers from conducting legally binding weddings or couples from being able to have a ceremony that integrates elements of two faiths in a "neutral" setting.[47]

6.79 We also explained in the Consultation Paper how the current law does not work well for couples having civil weddings who want to marry in a location personal to them, a location which often is not one that could be or is approved under the Approved Premises Regulations.[48] As Humanists UK explained, the location for a Humanist wedding is chosen as one that is most personally meaningful to a couple, and as such is "an intrinsic manifestation of their humanism". Other consultees also emphasised the deep meaning that a wedding's location can have to a couple.

6.80 The Nuffield project also showed the importance many couples place on having a wedding in a location which is personally significant to them. For example, Pagan participants explained the deep sense of connection they had for the particular places where they had their non-legally binding ceremonies. A Humanist participant spoke of the importance of the location they had chosen – beside a lake – as personal and reflective of them as a couple.[49]

6.81 Allowing all weddings to take place in a location meaningful to the couple will enable more couples to marry in a place that has significance for them, whether as a place they associate with worship or that reflects the life experience of one of both of the couple. Further, by enabling wedding ceremonies to take place in locations which are appropriate or traditional in religious communities who are not well served by the current law, our recommendations will avoid confusion about where particular weddings can take place that may be caused by the differing requirements. Our recommendations will also remove the barrier provided by the law governing wedding locations to couples having a legal wedding, helping to address the issue of religious-only marriage.

Practicalities for local authorities

6.82 We appreciate that currently many registration officers only conduct weddings on approved premises. Under our scheme, they would be required to officiate at weddings in a variety of locations. We anticipate that our recommendation that only one registration officer should be required to attend to officiate at a wedding[50] will free up significant existing resource for local authorities, addressing the staffing challenges

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47 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) paras 5.9 to 5.20.

48 Marriages and Civil Partnership (Approved Premises) Regulations 2005 (SI 2005 No 3168).

49 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 5.42 and 5.71.

50 See Recommendation 18 at para 4.94(2) above.

that might result from registration officers attending weddings in a wider range of places. We also note that many local authorities already conduct so-called "duo" or "celebratory" ceremonies, meaning non-legally binding ceremonies held in conjunction with a civil ceremony, in a wider range of locations than the law permits a civil wedding to take place. Accordingly, many local authorities will already have experience of its staff attending weddings in a wide range of locations.[51]

Weddings in the home

6.83 As compared to other types of location, the possibility of weddings in private homes attracted the most opposition from consultees.

6.84 Consultees' main concern was that the option of marrying at home would create a higher risk of forced marriage. We have taken this concern very seriously. However, as we explained at paragraph 6.70 and following above, in our view the need to identify and prevent forced marriages does not dictate that weddings must take place in public locations. The risk of a person being forced into a marriage is better addressed directly, by rigorous preliminaries and by the training of officiants.

6.85 We have considered whether there are any particular risks associated with private homes against which the other protections in our scheme would be less effective. Concerns that the officiant could be complicit in forcing someone into a marriage in their home, including where the officiant was a family member, are addressed by the fact that only authorised officiants will be able to officiate at weddings, wherever they take place. Any officiant involved in using coercion to cause a person to enter into a marriage, or doing anything to cause a person who lacks capacity to enter into a marriage, would be in fundamental breach of their obligations as an officiant. And apart from that, they would be committing a criminal offence.[52] Training and guidance for officiants should include instruction on how to recognise potential forced marriages.

6.86 Moreover, weddings already take place in private homes. Most often, these weddings involve a person who is housebound or terminally ill, weddings for which specific provision is made under the current law.[53] Beyond these special cases, some Jewish weddings also take place in private homes under the current law. We have not heard of any problems with these weddings. Nor have we heard of problems arising in other jurisdictions where weddings are permitted in private homes, such as Scotland or Guernsey.

6.87 Weighing heavily in our consideration is the evidence that many couples and communities do, or wish to be able to, hold weddings in private homes. Some consultees argued that weddings at home can enhance, rather than detract, from the dignity of the occasion: we have highlighted the response of the Plymouth Brethren Christian Church that weddings in the home can be deeply meaningful and dignified to

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51 See Consultation Paper, paras 7.29 to 7.31.

52 Anti-social Behaviour, Crime and Policing Act 2014, s 121. The existing rules on secondary liability would apply to any person who aids, abets, counsels or procures the commission of the offence: Accessories and Abettors Act 1861, s 8; Magistrates' Courts Act 1980, s 44. Under the Serious Crime Act 2007, ss 44 to 46, encouraging or assisting a substantive offence is also an offence.

53 See Consultation Paper, paras 11.8 to 11; and Ch 10.

members of their community, while allowing for an element of simplicity that public locations may not.[54] There is copious evidence of Muslim nikah ceremonies taking place in the home. The Nuffield project found that nikah ceremonies are often conducted at home as a matter of tradition and culture. For example, one participant explained that having a private ceremony at home could allow a bride who ordinarily wears a hijab to be without it.[55] Our consultation also showed that many Humanist ceremonies take place in private homes.

6.88 In our view, weddings should be permitted to take place in private homes.

Weddings outdoors, on inland waters or in the air

6.89 We also conclude that the law should permit weddings to take place outdoors, on inland waters, and in the air.

6.90 Many consultees' concerns about these types of locations were premised on the need for public accessibility. However, as we explained at 6.62 and following above, we do not recommend that the location of a wedding must be accessible to the public.

6.91 Although weddings in these locations may have unique safety considerations and be particularly vulnerable to the vagaries of the weather, we do not think that these reasons justify disallowing them as locations for weddings.

6.92 We consider safety in more detail at paragraph 6.165 and following below, where we explain our recommendation that an officiant should consider the safety of the location for those attending before agreeing to it. It is worth noting here that other areas of the law are devoted to safety, including the safety of maritime and airborne vessels, and will continue to apply to activities on the water and in the air.[56] It is not clear why weddings law should determine that the general law governing health and safety, or specific safety regimes applying to airborne or waterborne vessels, are insufficient. That a wedding ceremony is taking place on board does not put a boat or a hot air balloon at any greater risk.

6.93 It is not clear to us why weddings law should insist that all participants in a wedding ceremony must be protected from the elements, even where the participants wish to brave them. It would be sensible for the couple and officiant to agree to a suitable alternative location should the weather prove poor on the day of the ceremony, but we think this is a point of practicality, not something that the law needs to prescribe. We also note that it is not only outdoor locations which are vulnerable to the elements: indoor locations may be uncomfortably hot in summer, or cold and draughty in winter.

6.94 We also note that one significant concern about adverse weather has fallen away with the replacement of marriage registers with schedules and marriage documents.[57] A marriage register is large and cumbersome to transport. It is also an important public

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54 See para 6.22 above.

55 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021) para 5.55.

56 For one example see the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 (SI 1998 No 2771).

57 See Consultation Paper, paras 7.35 and 7.36.

document which recorded the details of many marriages. By contrast, a schedule or marriage document is a single piece of paper containing information about one marriage which will be registered centrally. Although it will still be necessary to take precautions to ensure that the schedule or marriage document is kept dry, that is not a good reason, in our view, to prevent couples from marrying outdoors.

6.95 The logistics of officiants, including registration officers, attending weddings on waterborne or airborne vessels would be a matter for discussion between the officiant, the couple and the vessel operator. If it was impracticable for an officiant to attend a wedding at a given place on inland waters or in the air, because they would need to leave the vessel once the wedding had taken place, they could decline or suggest alternative arrangements.

6.96 Many of consultees' specific concerns about the dignity of weddings in these locations were focussed on the couple participating in an activity during the ceremony, such as a wedding taking place while the couple are skydiving. We explain below that the couple's ability to turn their minds to the question of whether they are consenting to be married could be important in assessing dignity.[58]

Conclusion

6.97 We recommend that the existing restrictions on where weddings can take place should be lifted and that under weddings law all weddings should be legally permitted to take place in any location.

6.98 We add that this recommendation sits against the background of many other laws which regulate the use of premises and locations, such as the law of trespass. Our recommendation does not confer a right on the couple to marry wherever they wish. We explore this point when we consider the process of agreeing to a wedding location, at paragraph 6.183 and following below.

The use of religious or non-religious belief premises

6.99 Although we proposed that weddings should be able to take place anywhere, we considered whether there should be an exception to this general rule to limit the use of the premises of religious or (if enabled to conduct legally binding weddings) non-religious belief groups. We noted that, despite the wide choice given to couples in Scotland, Northern Ireland, and Ireland, those jurisdictions continue to prevent civil weddings from taking place on religious premises; this approach, however, would involve imposing different rules on certain weddings. We were also unpersuaded that this protection was necessary to ensure that religious or non-religious belief groups could control their premises.[59]

6.100 We therefore asked an open question, as to whether the law should prohibit:

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58 See para 6.182(2) below.

59 Consultation Paper, paras 7.152 to 7.156.

(1) civil weddings from taking place in religious venues and (if non-religious belief organisations are enabled by Government to officiate at weddings) non-religious belief venues?

(2) (if non-religious belief organisations are enabled by Government to officiate at weddings) religious weddings from taking place in non-religious belief venues?

(3) (if non-religious belief organisations are enabled by Government to officiate at weddings) non-religious belief weddings from taking place in religious venues?[60]

Consultation

6.101 Consultees' views on these points were mixed: there was not a majority view either in favour of or against limiting the use of religious or non-religious belief premises to religious or non-religious belief organisations respectively.

6.102 Some consultees in favour of imposing limitations argued that the type of wedding should be apparent from its location, with a clear distinction between religious, non-religious belief and civil ceremonies. For example, the Church of England said:

> It is important to maintain the clear distinction between religious organisations, non-religious belief organisations and the state. They are separate categories. Weddings are not "Mix and Match" affairs where couples can take a venue from here, a text from there and a celebrant from somewhere else.

Other consultees also suggested that coherence of belief required prohibitions in relation to location. In many cases, consultees argued for the need to preserve the distinctiveness or sanctity of religious weddings.

6.103 For others, it was important to ensure certainty, with some suggesting that clear distinctions are necessary to prevent confusion, including among guests, about the type of ceremony.

6.104 Consultees emphasised, as they had in response to another consultation question,[61] the importance of owners and occupiers of venues being able to control the use of their properties. Consultees who agreed with prohibitions made comments about the need to protect religious venues and the congregations of places of worship from other types of weddings or activities. Some emphasised the need to protect the sanctity or special nature of the religious venue or of religious marriage.

6.105 Some consultees expressed concern that, without specific prohibitions in weddings law, religious or non-religious belief premises could be compelled to host ceremonies outside their own belief systems, or which were contrary to their values. In particular, some consultees were concerned that religious venues would not be protected from claims of discrimination for refusing to host same-sex weddings.

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60 Consultation Paper, para 7.161, Consultation Question 50.

61 Where we provisionally proposed that weddings should be able to take place in any type of location: see para 6.19 and following above.

6.106 Many consultees did not seem to understand what we meant by “non-religious belief” venues, appearing to equate them with civil or secular venues. Others argued that non-religious belief organisations did not have premises. Humanists UK noted that at present there is only one specifically Humanist building, Conway Hall in Holborn, London.

6.107 Other consultees more generally raised the difficulty of clearly defining and identifying what amounts to a religious or non-religious belief venue for the purpose of imposing restrictions. Some consultees explained that religious groups may not have their own place of worship but will regularly meet and worship in a specific place. That place might also have civic and secular functions or be used by another religious or non-religious belief group. The Marriage Foundation commented on the difficulty of defining religious or non-religious belief venues, describing restrictions as “unnecessary and potentially a minefield of complexity”.

6.108 Consultees who did not favour any express prohibitions often emphasised the goal of giving couples as many options as possible. Some highlighted that even if a couple was not having a religious ceremony, they might have a connection with a religious building, such as a family connection. Others noted that chapels might be in private ownership or control: Historic Houses and the Heritage Alliance commented that there was significant demand among couples to marry in civil ceremonies in private historic chapels.

6.109 Other consultees argued that the use of premises should be a matter for the owners or operators. They argued that the organisations themselves should be free to determine how their buildings are used. This point was made by some religious organisations. For example, the Religious Society of Friends expressed its openness to allowing other organisations to host weddings in Quaker venues, stating that it would be a matter for individual Quaker Meeting Houses. Similarly, the United Reformed Church – Cumbria said it could “imagine for community reasons permitting a civil wedding on our property and surely what I permit in my property is up to me and my trustees no one else”. In addition to commenting that many religious groups already host non-religious events on their premises, some consultees suggested that any prohibition on the use of religious or non-religious belief organisations’ premises would be unwarranted meddling in the affairs of those organisations. The benefits, including that groups might be able to raise revenue for the upkeep of their building by hiring them out or accepting donations for their use, were also noted. Humanist and Secularist Liberal Democrats also made the point that if non-religious belief weddings (if permitted) were prohibited from taking place in religious venues, and vice versa, the law would “prohibit religious and non-religious belief organisations from working together to meet the wishes of the couple”.

6.110 The need to ensure that organisations would be free to decide which weddings to host also emerged among consultees who disagreed with any prohibitions. For example, Dr Augur Pearce (an academic) favoured leaving the matter to the property owner’s discretion but suggested that there might need to be an exemption in equality law “so that the owner's policy is protected from challenge”.

6.111 Some consultees said that the location of a wedding should have no legal significance, with some pointing out that specific prohibitions on types of location are unnecessary in an officiant-based system.

Discussion and conclusion

6.112 We appreciate the importance many consultees placed on preserving the distinctive nature of religious ceremonies. However, on reflection, we do not think that it is necessary, or consistent with other elements of our scheme, to achieve this by imposing restrictions on the use of certain types of location.

6.113 Under our scheme, religious and non-religious belief weddings will be able to take place in secular venues. This is a considerable benefit of our scheme for religious groups which do not have their own places of worship, cannot feasibly host weddings in their places of worship, or do not see their place of worship as a meaningful place to marry. Moreover, it would be practically impossible, if non-religious belief weddings are permitted, to say that they could not take place in secular venues, as non-religious belief organisations may not have their own distinct venues. In practice, for example, there will necessarily be an overlap in where Humanist ceremonies and civil ceremonies would take place.

6.114 More significantly, our scheme is officiant-based, not buildings-based. The officiant, and the source of their authorisation, determines the type of wedding, not where the wedding takes place. This point was made by consultees who commented that it should not matter where the wedding takes place; the rules governing the officiant and the ceremony will be determinative of the type of wedding. Imposing prohibitions about where civil, religious or non-religious belief weddings can take place is not necessary.

6.115 We also agree that it would be difficult, and potentially confusing, to attempt to define what amounts to religious or (more particularly) non-religious belief premises. One option would be to rely on existing case law defining what amounts to a place of worship, with a comparable definition for a place of gathering for non-religious beliefs.[62] However, it might be harder to define religious (or non-religious belief) premises for the purpose of excluding activities from taking place on them than when determining whether they can be registered for weddings. Another option would be to draft a definition of a religious or non-religious belief venue based on the current Approved Premises Regulations definition of religious premises as those "used solely or mainly for religious purposes", or premises which were used solely or mainly for religious purposes "and have not been subsequently used solely or mainly for other purposes".[63] However, this definition has made some approved premises reluctant to host non-legally binding religious ceremonies, suggesting that in practice any restriction might be interpreted more broadly than intended.

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62 It might not be possible to define places of worship based on certification. Because we recommend eliminating the need to register a place of worship for marriage, it is possible that the ability to certify a place of worship under the Places of Worship Registration Act 1855 will not be retained. This was anticipated, in the Local Government Act 2003, s 68, which is un-commenced, but which would remove the requirement for certification so that all public places of worship would be exempt from non-domestic rates.

63 The Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 2.

6.116 We moreover agree that religious and non-religious belief groups should decide for themselves how their premises are used. The law does not impose restrictions generally on how religious groups can use their premises; for example, religious groups are free to allow or refuse other religions or denominations to hold services in their spaces. We therefore think it would be difficult to justify imposing restrictions in weddings law, particularly on groups which see their premises as community venues.

6.117 We understand consultees' concerns that religious organisations should be free to refuse to permit weddings on their premises with which they disagree without the risk of claims of discrimination. We identified this issue as one potential justification for imposing prohibitions on weddings taking place in religious or non-religious belief venues, as a means of protecting such places. However, as we noted, property law, including the rules about licences and trespass, will continue to apply regardless of reforms to weddings law.[64] Moreover, as we explain in Chapter 8, legislation that implements our recommendations should include the creation of a specific exception in equality law to protect owners of religious premises, ensuring that they could refuse to allow their premises from being used for same-sex weddings. This specific exception would buttress a general exception which already exists, which allows religious and belief organisations to restrict participation in activities of their organisation and the use of their facilities and premises on the basis of religion or belief or sexual orientation.[65] These exceptions in equality law, together with the general rules of property law, will offer sufficient protection.

6.118 Our conclusion is that there should not be legal prohibitions on the use of religious or non-religious belief venues for any type of wedding.

6.119 At paragraph 6.183 and following below, we consider the need for the officiant and couple to ensure that they have the permission of the owner of the location.

THE PROCESS OF AGREEING TO A LOCATION

6.120 Having recommended that weddings should be permitted to take place in any type of location, we now consider what, if any, pre-approval process should be required.

6.121 In the Consultation Paper, we explained that the specific regulatory regime applying to approved premises appeared largely redundant, given the requirements of planning law, licensing law, tort law, and health and safety law. In light of the significant regulatory burden and cost associated with the approved premises regime, our provisional view was that it was not justified. We also explained that the requirement that most religious weddings take place in a registered place of worship does not involve any assessment of the building's safety or dignity.[66]

6.122 Our provisional view was that the state's interest in where a wedding takes place is limited to ensuring that the location is safe and dignified. We explained that our initial conclusion was that this interest does not require wedding locations to be subject to a

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64 Consultation Paper, para 7.155.

65 See paras 8.40 to 8.43 below.

66 Consultation Paper, para 7.164 to 7.165.

formal authorisation process. Instead, we proposed that the decision about a location should be the responsibility of the officiant.

The responsibilities of the officiant

6.123 We provisionally proposed that the individual officiant should be responsible for deciding whether to approve a location for any given wedding.[67] We proposed that, as part of their responsibilities, the officiant should ensure that the wedding location is safe and dignified. We further proposed that the General Register Office should, in its guidance to officiants, provide advice on how to assess whether a location is safe and dignified for a wedding.[68]

Consultation

The officiant's role

6.124 Consultees' views were roughly split in response to the proposal that the officiant should be responsible for deciding whether to approve a location.[69]

6.125 A number of consultees agreed that this responsibility is an appropriate one for the officiant to have, being consistent with the other duties and responsibilities we proposed they should have. Some consultees explained that, in relation to non-legally binding weddings, this role was one that independent celebrants already perform.

6.126 The Religious Society of Friends advised that this approach would work for Quaker weddings. The National Spiritual Assembly of the Bahá'ís of the United Kingdom and the Methodist Church in Britain clarified that the responsibility, in those organisations, would lie with the nominating body itself.

6.127 Several local authorities also commented that local authorities would take responsibility, including imposing their own criteria, where a registration officer was officiating at a wedding. Some local authorities noted the need to consider health and safety law in relation to employees.

6.128 Other comments included that this approach would be simple and straightforward. The Heritage Alliance favoured this approach over the current rules governing approved premises, which it described as "bureaucratic and complex" and making it difficult for heritage sites to host weddings.

6.129 Some consultees who disagreed argued in favour of retaining the building-based system, and against an officiant-based system. The Church of England argued that, if the building-based system were abandoned, there should be a "central authorisation of wedding venues so that celebrants, wedding venues and couples know exactly where they stand".

6.130 Although not considering the proposal in terms of the switch to an officiant-based system, many consultees who disagreed expressed support for a formal approval process. However, in many cases, it was not clear to which types of wedding the

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67 Consultation Paper, para 7.190, Consultation Question 51.

68 Consultation Paper, paras 7.191 and 7.192, Consultation Question 52.

69 We mistakenly did not include an "other" option for this question on the online response form.

process should apply: to all weddings, including religious weddings, or only to civil weddings. Consultees frequently did not outline the process they thought necessary: some simply stated that the decision should not just be for the officiant, or that the decision must be determined by "the law" or subject to rules.

6.131 Generally, consultees' reasons included that a formal approval process is necessary to prevent undignified or inappropriate places from being approved or to ensure that wedding locations are safe. Several venues which are currently approved premises argued that the current approved premises regime ensures that wedding venues are suitable for hosting weddings. Some consultees pointed to existing Covid-19 public health measures as evidence of the need to regulate locations for weddings.

6.132 Consultees also argued that the proposal was too subjective or liberal or would result in variation. One worry was that individual officiants would approve venues that they should not, with some consultees expressing particular concern that independent officiants would be susceptible to pressure or bribery to approve inappropriate locations.

6.133 Several local authorities, and the National Panel for Registration, argued that local authorities were best placed to oversee locations for civil weddings, with religious organisations approving religious wedding locations, and suggested that the General Register Office should keep a database of all approved locations. Some local authorities outlined the requirements for any location to be approved, many of which were derived from the current Approved Premises Regulations.

6.134 A concern was raised by some consultees about the meaning of "responsibility" in the proposal. They outlined concerns that officiants would be legally liable for accidents. Similarly, some consultees suggested that officiants should be required to be covered by insurance.

Safety and dignity

6.135 Most consultees agreed with the proposal that the officiant should be responsible for ensuring that the wedding location is safe and dignified.

6.136 Consultees largely thought that this proposal was necessary or sensible. Some specifically commented that the officiant is the appropriate person to be responsible for the safety and dignity of the ceremony location.

6.137 In particular, there was a high degree of support for officiants having a responsibility in relation to safety. However, there was also a variety of views among consultees about what a requirement for safety should entail.

6.138 At one extreme, some consultees argued for a very high level of safety, with officiants responsible for eliminating any conceivable risk. Other consultees argued for safety to be considered in a more measured, common sense or contextual way.

6.139 Many consultees suggested that risk assessments should be undertaken. Whereas some consultees would confine risk assessments to particular locations, others – including the Local Government Association and the National Panel for Registration – appeared to argue for a general requirement for risk assessments. Some local

authorities argued that dynamic risk assessments should be required, involving a continuous reassessment of risk on the day of the wedding.

6.140 Some consultees were concerned that the proposed responsibility should not be too onerous, or that officiants would lack the expertise necessary to discharge it. Although consultees noted that some officiants will have received formal training, "officiants are not health and safety experts", in the words of Queen's House – Royal Museums of Greenwich. For example, the Church Growth Trust noted that the number of guests is not necessarily something an officiant would know. Several consultees commented that the location's owners would otherwise be responsible for safety at the location.

6.141 Consultees again expressed concerns about legal liability. Apparently on this basis, some disagreed that officiants should be responsible for considering safety. In some cases, consultees argued that responsibility (and legal liability) for the safety of the location should remain with the person responsible for the location or the event. Some consultees said that there should be a requirement for insurance.

6.142 Considering the officiant's responsibility in relation to dignity, numerous consultees made the point that the concept of dignity is subjective. On this basis, some consultees disagreed that there should be a requirement for the officiant to consider dignity: for example, the Local Government Association suggested that, because it "will be open to individual interpretation and could lead to an inconsistent approach", dignity should not be a requirement.

6.143 More consultees, however, were in favour of retaining dignity as a requirement for the officiant to consider in deciding whether to agree to a location for the ceremony. Many consultees also argued that dignity should have a precise meaning.

6.144 Consultees offered thoughts on what dignity did or should mean in this context.

6.145 One view was that dignity depends on what is meaningful to the specific couple. Some consultees explained that assessing the reason for the couple's choice of location would be relevant, for example, whether the couple first met in the particular location or whether it represented a shared passion.

6.146 Another conception of dignity was whether the location conveyed or reflected the seriousness or solemnity of the commitment the couple would be making. A related view was that dignity should prevent the trivialisation of marriage, with concerns raised about couples choosing locations in order to be perceived as unusual, frivolous, provocative or offensive. Many consultees expressed concerns about themed weddings. Other consultees appeared to suggest that the location should permit the couples to focus on the seriousness of their commitment, without distraction. Similarly, dignity was also thought to include a sense of separateness from other events or activities.

6.147 Another idea of dignity linked it to being outdoors or otherwise being physically affected by the elements or surroundings. Here consultees suggested that being in the air would not be dignified; for example, Humanists UK doubted whether dignity could be maintained "in a hot air balloon caught in turbulence".

6.148 Some consultees were concerned that the concept of dignity could be drawn too narrowly. Worried that it could be "used to object to culturally diverse practices", the Evangelical Alliance said that guidance should ensure that the requirement for dignity is interpreted in a culturally sensitive way. Other consultees suggested that dignity should be given a broad meaning so that weddings were not unnecessarily prevented from taking place at different types of location.

6.149 Some consultees suggested that the officiant should have responsibility to ensure that the landowner had given permission for the wedding to take place.

Guidance from the General Register Office

6.150 A substantial majority of consultees agreed with the proposal that the General Register Office should produce guidance advising officiants on how to assess whether a location is safe and dignified for a wedding.

6.151 The main point arising from consultation responses to this proposal was whether the guidance should be mandatory for officiants to follow. A significant source of the disagreement with the proposal appeared to relate to the provision of guidance rather than something that would be binding. Some consultees argued that there should instead be laws, rules, codes of practice, or more stringent safeguards applying to the assessment of safety and dignity. A small number of consultees went further to suggest that there should be an oversight mechanism for ensuring compliance with the guidance, including that there should be spot checks or that local authorities should be involved where two officiants have come to different conclusions about the same location.

6.152 Conversely, a few consultees who agreed with the proposal expressly limited their support to guidance, rather than mandatory requirements.

6.153 Several consultees offered views on the process that the General Register Office should undertake in setting guidance. A consultation was the most common suggestion, with various suggestions about with whom the General Register Office should consult, including nominating organisations, religious and belief groups, and minoritized religious communities.

6.154 Some consultees highlighted that local authorities, nominating organisations or celebrancy organisations should be able to provide their own guidelines to their officiants.

Discussion and conclusion

6.155 Consultees raised important points, which have required us to consider our proposals in detail. But we continue to believe that a formal pre-approval process for wedding locations is not justified. We conclude that officiants should be responsible for deciding whether to approve the location of each wedding at which they officiate. In deciding whether to approve a location, officiants should consider safety and dignity. We think that guidance from the General Register Office will be able to address the concerns that consultees raised in relation to those matters.

The officiant's agreement

6.156 The first question to consider is whether there should be a mandatory pre-approval process in relation to the locations where weddings can be held. We conclude that there should not be.

6.157 Most of the disagreement with the proposal that officiants should be responsible for agreeing to wedding locations appears to flow from concerns about weddings taking place in locations which are insufficiently dignified. Consultees suggested that a pre-approval process would ensure agreement across the wider community about the locations where weddings can take place. However, we think consensus is unlikely. Our project has demonstrated the range of views about where weddings can be held; indeed, it is apparent that many consultees would disagree with some of the types of premises which can be approved for civil weddings under the current law. However, that is not to say dignity has no role to play. We consider this point in more detail at paragraph 6.177 and following below.

6.158 Concerns about safety also led many consultees to argue for a more formal approval process. However, many of the safety concerns consultees raised are not exclusive to weddings but apply to any gathering. The scale of the wedding may have implications for safety, but a wedding ceremony is not necessarily a large event. Indeed, many of the safety concerns identified by consultees appear more focussed on wedding receptions. But receptions are not regulated by weddings law. Any approval process we could recommend would be specific to wedding ceremonies. It could therefore not address most of the concerns consultees identified, in addition to being superfluous to the general law, a point we touch on below.

6.159 Although many consultees were in favour of a more formal process, it was unclear what form such a process should take. In particular, it is not clear from our consultation whether the same process should apply to all types of wedding; few consultees considered, or commented on, the fact that processes currently differ significantly depending on whether the wedding is civil, Anglican, Jewish, Quaker, or in a registered place of worship. With fairness and equality, and certainty and simplicity, underpinning our review, we would need a strong justification to recommend any process that applied different rules depending on the type of officiant.

6.160 Any pre-approval process considering safety and dignity would subject religious wedding locations to greater external regulation than the current law. This would be particularly true for Jewish and Quaker weddings, which are subject to no external regulation at present.

6.161 However, we think it is disproportionate to require pre-approval by an organisation that would otherwise have no involvement in the wedding. Aside from being unnecessary, in our view, it would be inefficient: if a location were pre-approved by the General Register Office or a local authority, any nominated officiant would still need to decide whether they would agree to officiate at a wedding at that location, taking into account any additional criteria imposed by their nominating organisation.

6.162 There is also the issue of cost. Any pre-approval system would require fees to be paid. The current system of approved premises involves a high cost: our research at the time of the Consultation Paper found that, although limited to charging a fee which

"reasonably represents" the authority's costs or average costs for approval applications, the median fee was £1,500.[70] We explained in the Consultation Paper that many businesses or organisations are priced out of hosting weddings due to these costs. We do not want our scheme to replicate these problems. Fundamentally, we do not think these costs are necessary to regulate where weddings, including civil weddings, can take place.

6.163 We believe that the officiant for any given wedding is best placed to assess whether the wedding should go ahead at the location the couple has chosen. We emphasise that the question the officiant needs to consider is whether the location should be approved for the particular wedding; not whether the location is suitable for any wedding. This approach stands in contrast to that for seeking approval for premises to conduct civil weddings under the current law, reflecting the shift in focus of regulation from the building to the officiant. Placing the responsibility on the officiant is coherent and rational in light of the shift to an officiant-based scheme. In particular, we think that this responsibility sits well alongside the other duties and responsibilities the officiant will have in relation to the wedding. It will facilitate the recognition of weddings in a wide range of places, including Muslim nikah ceremonies, Pagan weddings, interfaith weddings, and (if permitted) Humanist weddings. It also has the benefit of simplicity.

6.164 We disagree with the argument that independent officiants (if enabled to conduct legally binding weddings) would be particularly likely to flout or fail to uphold their responsibilities. They would have the same responsibilities as any other officiant, with the potential sanction of being de-authorised if they failed properly to discharge them. We are not persuaded that independent officiants should be subject to different rules, or that the regulatory scheme we recommend in Chapter 4 is insufficient to regulate them. In Chapter 4, we also outline our recommendations that nominated officiants should be prevented from subordinating their beliefs to commercial interests, and that independent officiants should be prohibited from acting with a conflict of interest. These regulatory tools will ensure that officiants do not wrongfully accept payments to approve locations that are not safe or dignified.[71]

Safety

6.165 In our view, officiants should be required to consider the safety of those attending, with what safety means in any given context being determined by reference to the general law.

6.166 We do not think that a requirement to consider whether the wedding location is safe for those attending the ceremony should require the officiant to eliminate any possible risk. An absolute guarantee of safety is unrealistic, and such a requirement would go beyond any existing requirement in the general law.

6.167 As we explained in the Consultation Paper, civil wedding ceremonies do not pose unique safety risks that justify requiring venues to go through a bespoke approval process, particularly bearing in mind the existing planning, building and licensing law

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70 For approval of a single room that is not already licensed to serve alcohol. See Consultation Paper, para 7.61.

71 See Recommendation 22 at para 4.262 and Recommendation 24 at para 4.331 above.

regimes. They are not riskier than funerals or non-legally binding weddings, for example. So we did not think that existing safety laws are insufficient for wedding ceremonies.[72] And consultees' responses have not provided evidence that wedding ceremonies are inherently risky events. They do not usually involve dangerous chemicals, machinery, cooking, flammables, or risky sports, for example.[73]

6.168 Nor do we think that officiants should be required to conduct detailed safety evaluations in all cases. As some consultees noted, typically the owner or occupier of the location will be better placed to make judgements about safety. For commonly used venues like hotels, there is probably little or nothing that an officiant can add to the existing safety assessment. Any responsibility to consider the safety of those attending the ceremony must also be reasonably balanced, to prevent the role of an officiant from being too onerous.

6.169 It therefore seems reasonable to conclude that officiants should not as a matter of course be responsible to ensure a higher standard of safety than is required by the general law. As we explain below, this includes considering what might be required of them as a matter of occupiers' liability and negligence law.

6.170 The responsibility to consider the safety of those attending will be a contextual one. Under occupiers' liability, visitors must be reasonably safe for the purposes for which they are invited onto the premises; the premises themselves do not need to be made safe in any absolute sense. What is safe for the purpose of attending a wedding ceremony will vary, depending on the nature of the ceremony, the type of location and the people attending, including in some cases their experience or skills. For example, a field, woodland or hilltop cannot reasonably be expected to be as safe as a hotel function room: there might be dips in the ground, ditches, lakes, or cliffs. That does not mean it cannot be made reasonably safe for the officiant, couple and guests to attend for the purpose of a wedding ceremony. Anyone going into such a place will be expected to have regard to the level of risk they are voluntarily undertaking; the fact that they are attending a wedding does not absolve them of being responsible for their own safety and wellbeing. Accordingly, the focus should be on identifying clear safety risks and considering whether there are any features that makes the location more dangerous than a typical field, woodland or hilltop. The officiant and couple, usually together with the occupier of the location (if the occupier has not done so already), can then assess how to mitigate any risks. That said, there may be locations which are so unsafe that the officiant would be obliged, given their responsibility to consider safety, not to approve that location. An abandoned quarry, for example, might be too dangerous to be made safe for the purpose of a wedding.

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72 Consultation Paper, para 7.163.

73 The only wedding ceremony ritual which we know of which does genuinely seem to pose a safety risk is, in Hindu or Jain ceremonies, the sacred fire around which the couple walks. It is worth noting that this fire risk is unregulated by weddings law currently: the law presumes Hindu and Jain weddings are taking place in registered places of worship, and there is nothing about the regulation of weddings in registered places of worship that have anything to say about fire safety. And we are not aware of there being any problems with these ceremonies: the Hindu priests who gave evidence to the Nuffield project said that they already carried out risk assessments. They also had experience of lighting their sacred fires in a wider range of venues than just registered places of worship, so the proposals would make no difference to their practices.

6.171 The General Register Office should in its guidance to officiants outline how to assess safety, using a contextual approach.

6.172 Consultees were concerned about who would be liable in the event of an accident. We are not recommending that officiants should be liable for damages by virtue of being an officiant or their responsibility in agreeing to a location for a wedding ceremony. The officiant having a "responsibility" simply means that, in making a decision about whether to approve a location, the officiant will have a statutory responsibility to consider the safety of those participating in and attending the ceremony. Failing to do so could result in the withdrawal of authorisation as an officiant.[74]

6.173 Although officiants will have no legal liability for accidents under weddings law, our scheme will not shield officiants from liability under the general law. Officiants will be subject to the same regimes as anyone else, including those who conduct non-legally binding ceremonies: they could be liable under occupiers' liability, negligence, or contract law; and, if they are employers, they will have duties in relation to their employees under health and safety law.

6.174 In particular, it is possible that in some circumstances where the officiant has sufficient control over the premises they may be liable, under the tort of occupiers' liability or negligence, for injuries or losses resulting from failing to take reasonable care towards those attending the ceremony in approving the venue.[75] (This level of control might be rare for some types of officiant, particularly registration officers, but not others, such as nominated officiants who are conducting weddings in their own places of worship.) Officiants could also be liable in negligence for their own actions. Such liability would be based on ordinary common law principles, including foreseeability and proximity.[76]

6.175 Officiants will therefore need to bear in mind what legal obligations they may have under the general law, just as any person agreeing to conduct a wedding should do. In order to discharge any duty that they may have under the general law to ensure a location is reasonably safe for those attending – whether under occupiers' liability, negligence or health and safety law – officiants might be responsible for conducting a risk assessment. The General Register Office should in its guidance to officiants outline how to do so.[77]

6.176 It might be sensible for officiants to consider whether a location has public liability insurance. But it does not seem proportionate to require insurance in all cases. Requiring insurance for a small wedding, which is not open to the public and is held on private property, seems disproportionate to any risk posed.

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74 A negligent failure by an officiant to discharge their statutory responsibility in relation to safety will not in itself give rise to a private law cause of action: *X (Minors) v Bedfordshire CC* [1995] 2 AC 633.

75 *Wheat v E Lacon & Co Ltd* [1966] AC 522, [1996] 2 WLR 581. See for example W Norris, "Duty of care and personal responsibility: occupiers, owners, organisers and individuals" (2008) 3 *Journal of Personal Injury Law* 187.

76 For recent explanations of these principles by the Supreme Court, see *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4, [2018] AC 736 and *N v Poole Borough Council* [2019] UKSC 25, [2020] AC 780.

77 Guidance on conducting risk assessments by the Health and Safety Executive might be useful.

Dignity

6.177 It is difficult to argue with the views of many consultees that dignity is a subjective concept. This was something we acknowledged in the Consultation Paper.

6.178 In Chapter 4, we recommend that officiants should have a responsibility to uphold the dignity and significance of marriage. We concluded that it is not for us to say what is dignified or not.

6.179 Similarly, we do not think it is for us to determine what dignity means as it applies to the location of a wedding. Instead, we focus on the current law and what consultees have told us, as well as our finding that couples care about their weddings as significant events.

6.180 As we explained in the Consultation Paper, current weddings law has little to say on dignity. Dignity only features as a requirement in relation to approved premises and is therefore confined to specific locations for civil weddings. The Approved Premises Regulations require that, to be approved, "having regard to their primary use, situation, construction and state of repair" the premises must be a "seemly and dignified" venue. The standard conditions imposed on approved premises in relation to food and drink are also believed by some to be important in protecting the dignified nature of the ceremony. The conditions require that during the wedding, and for an hour leading up to it, no food or drink can be sold or consumed in the room of the ceremony, with an exception that non-alcoholic drinks can be consumed prior to the ceremony. This prohibition also applies where a wedding takes place in a linked outdoor area, to those gathered for the proceedings.[78]

6.181 The current law therefore provides little guidance on what dignity does or should mean.

6.182 However, having heard from many consultees on this point, we think that certain matters are or could be relevant to the assessment of dignity.

(1) Separateness: many consultees equated dignity with the importance and seriousness of the creation of a legal marriage, with its attendant rights and responsibilities. One way to reflect the significance of the event could be to ensure that it is physically separate from other events or activities in the location. Jersey, for example, prohibits unrelated activities from taking place in the same part of the approved location for a wedding.[79] We were told by the Superintendent Registrar of Jersey that this might mean that a wedding cannot go ahead at a location if, for example, a music festival is also taking place there.[80]

(2) Ability to focus on the wedding: we think that the couple's ability to focus on expressing their consent to be married, and the significance of that act, is relevant to an assessment of dignity. This would exclude the ceremony itself

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78 Consultation Paper, paras 7.174 to 7.177; Marriages and Civil Partnership (Approved Premises) Regulations 2005 (SI 2005 No 3168), sch 2 para 7 and sch 2B para 3.

79 Marriage and Civil Status (Jersey) Order 2018, art 20.

80 Consultation Paper, para 7.137 n 66.

from taking place in locations or during activities which were fundamentally distracting.

(3) The personal meaning to the couple: whether the location is personally meaningful to the couple could be relevant to the assessment of dignity. Consultees argued that a location might be appropriate based on a couple's reason for wanting to marry there, for example, that it reflected their relationship or life together. This conception of dignity would reflect the diversity of views about what is meaningful about a wedding. At the same time, it would prevent couples from choosing a location for frivolous reasons (for example, to impress on social media or to try to push the boundaries, both concerns expressed by consultees) if that location was not considered to be dignified.

(4) Culturally specific considerations: culture plays a large role in what one considers dignified or meaningful. Any conception of dignity must be culturally sensitive.

Permission of the landowner

6.183 Throughout their responses to the questions in this chapter, consultees have stated that couples must have the permission of the owner or occupier of the land, with some saying that officiants should be responsible for ensuring that express permission has been given.

6.184 There will be many types of owners or occupiers of property, who may give permission in different ways. Some, such as local authorities or parks authorities, might require a formal application form and payment for some types of event; other owners may give permission orally. Moreover, permission will not be necessary for the officiant to consider where the wedding is taking place in the couple's own home or in the officiant's place of worship.

6.185 That the couple is seeking to use a location for a wedding as opposed to another event does not change the underlying application of property law, including the law governing trespass. Accordingly, we are not persuaded that weddings law needs to contain a separate requirement for permission. Certainly, whether the couple have the permission of the owner or occupier of the land should not, in our view, impact on the validity of the marriage. But because officiants themselves will wish to avoid committing trespass, it would be sensible for guidance from the General Register Office to note that officiants should ask couples or otherwise ascertain if the couple has permission.

Disagreement

6.186 As we explained in the Consultation Paper, religious and (if enabled to conduct legally binding weddings) non-religious belief organisations will be able to impose their own rules about location in addition to the requirements for safety and dignity. These rules can be enforced by the officiants of each organisation. Should an officiant agree to officiate at a wedding in a place their nominating body forbids, the nominating body will be able to withdraw the officiant's authorisation. Similarly, the Church of England or Church in Wales will be able to impose its own rules about where Anglian clergy can officiate, using their internal processes; they could, for example, remove a member of the clergy's authority to officiate if they were not following the rules.

6.187 Some consultees thought that there should be mechanisms to review officiants' decisions. However, given the broad scope that nominated officiants and Anglican clergy will have to impose their own rules, we do not see any sense in creating a review mechanism. If a couple wishes to marry in a location where their nominated officiant refuses, then it is open to the couple to find another officiant.

6.188 However, as we outlined in the Consultation Paper, registration officers and (if enabled to conduct legally binding weddings) independent officiants will generally be responsible for officiating at weddings in a wide variety of types of location.

6.189 Registration officers, in particular, are in a unique position, based on their role as officers of local authorities providing a public service. Accordingly, registration officers will be responsible for officiating at weddings in all sorts of locations, so long as they are safe and dignified. The individual preferences of registration officers should not prevent a couple from being able to have a wedding in the location of their choice. However, so long as the local authority ensures couples can marry where they choose, whether individual registration officers can exercise choice about where they conduct weddings is a matter for the terms of their employment, subject to their duties as officers appointed under the Registration Service Act 1953 and any legislation implementing our recommendations. Guidance from the General Register Office will help to ensure decisions are as consistent as possible across local authorities.

6.190 As employers, local authorities will also have duties to registration officers under the Equality Act 2010 to make reasonable adjustments for those with disabilities. This might mean, for example, that if a location is not accessible to a registration officer, the local authority should find another registration officer who is able to access the couple's chosen location. Local authorities also have obligations to their employees under the Health and Safety at Work etc Act 1974. These obligations may also have a role to play in ensuring that a wedding location is safe for the registration officer.

Guidance by the General Register Office

6.191 Consultees were in favour of our proposal that the General Register Office should, in its guidance to officiants, provide advice on how to assess a location's safety and dignity.

6.192 Although many consultees argued that the General Register Office's guidance should be mandatory for officiants to follow, we are not persuaded that making the guidance mandatory is necessary. Under our scheme, all officiants will have a statutory responsibility to consider the safety of those attending and the dignity of the location. How they fulfil those responsibilities may vary. However, whether an officiant followed the guidance will be a relevant factor in any assessment of whether they failed in their responsibility to consider safety and/or dignity.

6.193 We also do not offer any recommendation on the process the General Register Office should follow in determining the content of their guidance in relation to assessments of safety and dignity. We note that some consultees suggested that the General Register Office should consult before drafting the guidance and outlined their views on which organisations should be consulted. We leave this as a matter for Government to consider. However, we reiterate that religious and (if enabled to conduct legally

binding weddings) non-religious belief organisations will be able to impose their own, additional, criteria about where the weddings they conduct can take place.

6.194 At paragraphs 6.165 to 6.176 above, we have outlined our conclusions that safety of those attending is to be assessed in line with the duties of officiants under the general law, including occupiers' liability and negligence. At paragraph 6.182 above, we have also offered our views as to the factors are or could be important in assessing dignity. We believe these conclusions will assist the General Register Office in preparing its guidance.

A voluntary pre-approval process

6.195 In the Consultation Paper we considered whether an optional pre-approval process might be efficient for locations which regularly host weddings, such as hotels. We envisaged that where a location had gone through the pre-approval process, there would be no need for individual officiants to assess its safety or dignity. Because religious and (if enabled to conduct legally binding weddings) non-religious belief organisations would be able to impose additional criteria, we thought that such a process might most benefit officiants conducting civil weddings: registration officers and (if authorised) independent officiants.

6.196 However, we questioned whether such a system would be efficient in practice. We therefore invited consultees to share their views as to whether there should be an optional pre-approval process, alongside the general rule that the officiant must agree to the location. We also asked, if there were a voluntary pre-approval process, who should be responsible for it and how it should work.[81]

Consultation

6.197 Although the majority of consultees gave a positive response to this question, the extent of support for a voluntary pre-approval process is difficult to gauge. A substantial proportion of consultees answered the question as if it were about the types of locations at which weddings should be allowed to take place, or the standards against which approval decisions should be made. Some consultees appeared to answer "yes" to this question because they saw optional pre-approval as (partly) remedying what they otherwise perceived as being an overly liberal scheme created by our provisional proposals. Indeed, some consultees argued that pre-approval should be mandatory. Other consultees disagreeing with the question thought this process would be unnecessary if, as they preferred, weddings could only take place in certain, pre-approved locations. Some consultees also appeared to find it confusing that we were asking about the possibility of an optional pre-approval process operating alongside our general proposal making the officiant responsible for agreeing to the location.

6.198 Among consultees who engaged with the direct question we asked, there was both agreement and disagreement.

6.199 Some consultees thought an optional pre-approval process would be efficient. They commented that pre-approval would mean that an individual officiant would not have

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81 Consultation Paper, paras 7.199 to 7.200, Consultation Question 53.

to visit or give approval to the location for every wedding held there. Some consultees also thought it would provide certainty that weddings could be held at a specific location. Several consultees thought this certainty would give a marketing advantage to locations on the pre-approved list.

6.200 Consultees opposed to an optional process of pre-approval argued that it would be unnecessary, complicated, bureaucratic, or difficult to manage. Consultees commented that an optional process of pre-approval could be helpful in reassuring an officiant that the location was safe, but would not remove the need for many officiants, particularly nominated officiants, to take their own view as to whether the location was a suitable one for a wedding. Some emphasised that an officiant should be able to refuse a location that had been pre-approved.

6.201 Consultees also offered views on how premises approved under the existing regime should be treated under our reforms, arguing that existing locations should be automatically pre-approved. Consultees supported automatic pre-approval for approved premises, Anglican parish churches, or registered places of worship.

6.202 In considering who should be responsible for any optional system of pre-approval, the most frequent suggestions were either local authorities or the General Register Office. Others suggested that officiants or officiant organisations, including nominating organisations, should be responsible. For example, some consultees suggested that individual religious groups should themselves be responsible for their wedding locations.

6.203 Consultees' views on how an optional pre-approval process should work varied. Some emphasised that it should be simple, unbureaucratic or inexpensive, particularly in comparison with the current process for approved premises. By contrast, others said it should be based on the current approved premises process. Some consultees said that the location's past use as a wedding location should play a role: one suggestion was that local authorities should keep a list of locations where its registration officers had officiated at a wedding; another was that a location should be required to have hosted a certain number of weddings before it was added to the pre-approval list. Other consultees contemplated more detailed processes, which involved risk assessments, inspections, public consultations, and appeals.

6.204 Consultees also expressed a range of views as to how long pre-approval should last.

Discussion and conclusion

6.205 The high level of confusion this question provoked has led us to conclude that any statutory provision for an optional pre-approval scheme would be similarly confusing. We also think that it would be unnecessary and would risk a needless layer of bureaucracy.

6.206 We moreover think that any certainty that a pre-approval scheme might add would be marginal. Under a system of optional pre-approval, although a couple might have the certainty of knowing that they could get married at a particular location, they would not have the certainty of knowing that they could have the type of wedding they wanted at that location. As we have explained, religious and (if enabled to conduct legally binding weddings) non-religious belief officiants may have their own rules on where

they would officiate. In addition, if the system of pre-approval was also to apply to religious buildings (and any non-religious belief venues), then couples would not even have the certainty of knowing that they could get married there: religious and (if enabled to conduct legally binding weddings) non-religious belief organisations will have their own rules – based on beliefs or membership – about whose weddings they will conduct.

6.207 Therefore, we do not recommend that the legislation governing weddings should make provision for a voluntary pre-approval process.

6.208 Informal versions of such a scheme may nevertheless arise in practice. For instance, in Scotland, some local authorities publish lists of venues that frequently host weddings as places which will be considered appropriate places under the Scottish framework.[82] We expect that some local authorities might take a similar approach, keeping track of venues where they previously conducted or regularly conduct weddings. Similarly, any nominating body could keep a record of locations its officiants had already assessed as safe and dignified. Independent officiants (if enabled to conduct legally binding weddings) might also organise collectively to make such lists, for example through the Wedding Celebrancy Commission or individual celebrancy organisations. An informal scheme would provide the same benefits as a formal one.

6.209 We agree that whether a location has previously hosted a wedding is relevant to an assessment of safety and dignity. We think that the guidance by the General Register Office should advise officiants that premises which are currently approved for civil weddings and places of worship registered for marriage should be considered safe and dignified for weddings in the future under our scheme. In relation to approved premises, they should be assumed to be safe and dignified for the duration of their existing approval. Similarly, we also think that the guidance should also invite officiants to consider whether another officiant has considered the location safe and dignified in the past.

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82 For example, see Midlothian, *Arranging a Marriage*, https://www.midlothian.gov.uk/info/640/birth_marriage_and_death/47/arranging_a_marriage (last visited 1 July 2022) which provides a list of popular wedding venues and outlines the process if you chose an alternative venue.

RECOMMENDATION

Recommendation 34.

6.210 We recommend that the existing restrictions on where a wedding can take place should be abolished.

6.211 We recommend that all weddings should be legally permitted to take place in any location. In particular,

(1) civil wedding locations should not have to be publicly accessible or regularly available to the public for the solemnization of civil marriages; and

(2) there should be no legal prohibitions on the use of religious or non-religious belief venues for any type of wedding.

6.212 We recommend that wedding locations should not be required to be pre-approved. Instead, officiants should be responsible for deciding whether to approve the location of each wedding at which they officiate. In deciding whether to approve a location, officiants will be responsible for considering the safety of those attending and the dignity of the location.

6.213 The General Register Office should provide guidance to officiants on how to assess whether a location is safe and dignified for a wedding.

Chapter 7: Registration

INTRODUCTION

7.1 In this chapter we deal with the specific rules governing how marriages are registered. There is widespread confusion about the need for "registration", with the term often used to refer to different parts of the process of getting married.[1] Accordingly, it is important to clarify that our focus here is on the recording of a marriage that has already taken place.

7.2 The registration (or recording) of a marriage is not what makes it legally binding. A valid marriage will still be valid even if it is not registered, and there is no option to validate a non-qualifying ceremony by subsequent registration. If a couple who have had a non-qualifying ceremony subsequently have a wedding in a register office, in the eyes of the law they are married by this later ceremony.

7.3 Registration is nonetheless an important part of the legal process. It is particularly valuable in promoting certainty as to whether a couple are legally married. For the couple, a legal marriage certificate is evidence of the fact that they are married, and there are various official contexts in which they might be asked to provide such evidence. For the state, registration underlines the fact that marriage is a public status, since the record of the marriage is a public record. The registration of a marriage is also vital to the collation of statistics and to understanding social trends.

7.4 Since the publication of the Consultation Paper, the rules governing the registration of marriages have been reformed, with the introduction of the schedule system.[2] As we discussed in the Consultation Paper, we expected and welcomed these reforms, and our provisional proposals were developed on the basis of the draft regulations that were available at that time.[3] In this chapter we first explain how the law governing registration has changed. We then explain what further changes will be needed under our scheme and what changes we think should also be made.

CHANGES EFFECTED BY THE REGISTRATION OF MARRIAGES REGULATIONS 2021

7.5 The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 enabled Government to introduce a new system for the registration of marriages. The Registration of Marriages Regulations 2021 made provision for marriages to be registered using a marriage document or schedule and came into force in May 2021.[4]

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1 See R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final Report* (2022) ch 3: participants variously used the term to refer to giving notice, recording the fact that a marriage had taken place, and the entire process of getting married.

2 The Registration of Marriages Regulations 2021 (SI 2021 No 411).

3 Consultation Paper, ch 8; Registration of Marriages Regulations (draft statutory instrument), deposited in the House of Lords Library on 17 April 2018 by Baroness Williams of Trafford.

4 The Registration of Marriages Regulations 2021 (SI 2021 No 411).

7.6 As we explain in Chapter 3, where a marriage is solemnized on the authority of Anglican preliminaries, the member of the clergy who is to solemnize the marriage must issue a marriage document.[5] For all other marriages, a schedule is issued by the superintendent registrar in the district in which the wedding is to take place.[6]

7.7 The marriage document or schedule has a dual role. As well as being the authority for the wedding to take place, it is also the document that will be signed as evidence that the wedding has taken place. As such, it must be signed "as soon as is reasonably practicable" after the solemnization of the marriage.[7]

7.8 For every wedding, a specific person is tasked with ensuring that the document is signed by the parties and by two witnesses. That person will be the person who would previously have been described as having the responsibility to register the marriage. In the case of Anglican weddings, that person is the member of the clergy who solemnized the marriage.[8] In the case of other religious weddings, it will be either an authorised person or registration officer, Jewish synagogue secretary, or Quaker officer.[9] In the case of civil weddings, it is the registration officer. There is now an express requirement that any other person who solemnizes the marriage should also sign the schedule.[10] There are also express requirements for each person who is required to sign the marriage document or schedule to do so in the presence of each other.[11] There is an exception for Quaker officers and Jewish secretaries, who need neither witness anyone else's signature nor have their signatures witnessed.[12]

7.9 The content of the schedule or marriage document is largely the same as the pages of the old register books.[13] The main change is that there is now a field for the parties' mothers' names and occupations to be recorded.[14] A parent can be recorded as "mother", "father", or "parent",[15] and up to four parents can now be recorded for each party,[16] including (as under the old law) step-parents.[17]

7.10 Under the old law, it was the act of making entries in the marriage register books that constituted registration.[18] Copies of those entries were then forwarded to local

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5 Marriage Act 1949, s 21A.

6 Marriage Act 1949, s 31(2).

7 Marriage Act 1949, ss 53B(3) and 53C(5).

8 Marriage Act 1949, s 53B(3).

9 Marriage Act 1949, s 53C(8).

10 Marriage Act 1949, s 53C(5)(c).

11 Marriage Act 1949, ss 53B(3) to (4) and 53C(5) to (6).

12 Marriage Act 1949, s 53C(7).

13 Registration of Marriages Regulations 2015 (SI 2015 No 207), sch 1.

14 The inclusion of mothers' details provided the political impetus behind the passage of the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019.

15 Registration of Marriages Regulations 2015 (SI 2015 No 207), sch 1.

16 Registration of Marriages Regulations 2015 (SI 2015 No 207), regs 9C(4) and 10C(4).

17 Registration of Marriages Regulations 2015 (SI 2015 No 207), regs 9C(3) and 10C(3).

18 Marriage Act 1949, s 55 (repealed).

superintendent registrars and onwards to the Registrar General,[19] and the Registrar General would keep an index of the copies held by them.[20] By contrast, under the new law, the act of signing the schedule or marriage document does not constitute registration. Instead, the specified person must ensure that the completed marriage document or schedule is delivered to a registrar in the registration district in which the wedding took place within 21 days.[21] Where the specified person is a registrar, they simply retain the schedule.

7.11 The registrar to whom the marriage document or schedule is delivered (or by whom the schedule is retained) must, as soon as is reasonably practicable register, the marriage by entering the details into the marriage register.[22] That marriage register is a new creation, which must be maintained by the Registrar General, and must be accessible in an electronic form.[23] After registration, the schedule or marriage document is given to the local superintendent registrar who keeps it for at least five years.[24]

7.12 If the schedule or marriage document is not delivered within 21 days, the registrar may issue a notice to the specified person requiring them to deliver the schedule or marriage document within a further eight days.[25] If that requirement is not met, the registrar may issue a further notice to the specified person requiring them personally to attend the register office or other premises to deliver the schedule or marriage document, or to explain why they cannot do so, within a further eight days.[26] If they fail to comply with this notice without reasonable cause, they commit an offence and are liable to a level 3 fine (currently, up to £1,000).[27]

7.13 Because the marriage is not registered until details of it are entered into the central marriage register by a registrar, there is no longer an option for a certified copy of the register to be provided on the day of the wedding.[28] Instead, certified copies of the register can be obtained from the registrar who registers the marriage, from superintendent registrars (who are responsible for keeping indexes of entries in the

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19 Marriage Act 1949, ss 57 to 58 (repealed).

20 Marriage Act 1949, ss 64 to 65.

21 Marriage Act 1949, s 53D(1) to (3).

22 Marriage Act 1949, s 53D(1)(a).

23 Marriage Act 1949, s 53A(1) to (2).

24 Registration of Marriages Regulations 2015 (SI 2015 No 207), reg 11B.

25 Marriage Act 1949, s 53D(5) to (6).

26 Marriage Act 1949, s 53D(7) to (9).

27 Marriage Act 1949, s 76A; Sentencing Act 2020, s 122(1).

28 Should a couple require immediate evidence of their marriage, there is an option for a "Form of Acknowledgement" to be completed that confirms that a marriage took place and that a marriage certificate will be available once the marriage is registered: see eg General Register Office, *A Guide for Authorised Persons* (July 2021) Appendix G.

marriage register), or from the Registrar General.[29] The cost remains £11 per copy, or £35 per copy for a priority service.[30]

7.14 Provision is also made for "registers of marriage services" to be kept in Anglican churches and chapels, to record weddings conducted there.[31] Entries are required to be made by the member of the clergy who conducts the wedding.[32]

CHANGES CONSEQUENT UPON OUR SCHEME

7.15 As we noted above, our provisional proposals were drafted on the assumption that a schedule system would be introduced. Although some further changes will need to be made as a result of our scheme being implemented, these will make the rules simpler and remove the need to distinguish between different types of weddings.

The role of the officiant

7.16 As we have explained, our scheme will replace the current categories of persons responsible for ensuring that a marriage is registered with the single concept of an officiant.[33]

7.17 Under our recommended scheme, each wedding will be attended by an officiant who will be responsible for signing the marriage document or schedule and ensuring that it is signed by both parties and two witnesses. There will no longer be separate rules for Quaker officers and Jewish secretaries; accordingly, officiants nominated by Quaker or Jewish organisations will not need to be exempted from the general rule that each person whose signature is required must sign in the presence of every other person whose signature is required.

7.18 The officiant will also be responsible for delivering the documentation to the register office to be registered. In the Consultation Paper, we envisaged that this responsibility would lie with the couple, on the basis of the illustrative draft regulations published in 2018.[34] As this issue was the subject of separate reform, we did not ask consultees for their views. Nonetheless, a few volunteered the opinion that the responsibility should rest with the officiant, and that is also consistent with the approach that has been taken by Government in the 2021 Regulations.

7.19 At present, there is provision for the specified person to correct the schedule or marriage document before the marriage is solemnized.[35] However, different rules apply to registration officers and authorised persons as compared to Anglican clergy, Quaker officers, and Jewish synagogue secretaries. Registration officers and

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29 Marriage Act 1949, ss 53D(10)(b) and 64 to 65.

30 Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1 para 1.

31 Marriage (Keeping of Records in Churches and Chapels) Regulations 2021 (SI 2021 No 538), reg 2.

32 Marriage (Keeping of Records in Churches and Chapels) Regulations 2021 (SI 2021 No 538), reg 3.

33 See Ch 4.

34 Registration of Marriages Regulations (draft statutory instrument), reg 16, deposited in the House of Lords Library on 17 April 2018 by Baroness Williams of Trafford.

35 Registration of Marriages Regulations 2015 (SI 2015 No 207), regs 11H to 11J.

authorised persons are obliged to correct any errors that are apparent to them;[36] Anglican clergy, Quaker officers, or Jewish synagogue secretaries have a discretion whether or not to correct the marriage document or schedule.[37] In addition, corrections made by registration officers and authorised persons must be made in the presence of both of the parties, and be initialled by all three persons.[38] Corrections made by Anglican clergy, Quaker officers, or Jewish synagogue secretaries need not be made in the presence of the parties or initialled by anyone.

7.20 Under our scheme, the categories of Anglican clergy, authorised persons, Quaker officers and Jewish synagogue secretaries will all be subsumed within the concept of officiant. A decision will therefore need to be taken as to whether different rules should apply to registration officers alone, or whether there should be a single set of rules governing the making of corrections by officiants. As we did not consult on this point, we are not making a recommendation. We note, however, that it would be contrary to the spirit of our scheme for an officiant's obligation to correct errors to depend on the type of religious group by which they were authorised or nominated.

7.21 Under our recommendations, the schedule will not state the date of the wedding when it is issued. It would therefore be difficult for registration officers to follow up with officiants who have failed to return the schedule within the required timeframe. That said, an officiant could still be under a duty to return it within 21 days of the wedding, given that the completed schedule will record the date of the marriage. The General Register Office could follow up with any officiants who were not returning schedules within the required period of time.

The form and content of the schedule

7.22 The shift from a buildings-based scheme to an officiant-based scheme also has consequences for what information needs to be recorded on the marriage document or schedule, and so what information will in turn be registered. In the Consultation Paper, we explained that the parties would continue to supply their personal details (their name, date of birth, occupation, and marital status) and that this would be recorded in the marriage document or schedule, as at present.[39] We also envisaged that the parties would be required to provide the name of their intended officiant, although we now recommend that it should be possible to identify the intended officiant by other means.[40] We also took the view that it should be possible to add further details to the schedule for the purpose of having as full a record as possible. We therefore provisionally proposed that after the ceremony it should be possible to add the date and location of the wedding, together with the names and occupations of the parties' parents, who could be identified as "mother", "father" or "parent".[41]

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36 Registration of Marriages Regulations 2015 (SI 2015 No 207), reg 11H(3).

37 Registration of Marriages Regulations 2015 (SI 2015 No 207), reg 11H(9) to (10).

38 Registration of Marriages Regulations 2015 (SI 2015 No 207), reg 11H(9) to (10).

39 Consultation Paper, para 8.12.

40 See Recommendation 8 at para 3.201.

41 Consultation Paper, para 8.29, Consultation Question 54.

Consultation

7.23 A very substantial majority of consultees were in favour of our proposal. Consultees noted that the information would be useful as evidence of the wedding having taken place as well as providing information for historians and genealogists.

7.24 A few consultees who disagreed queried the necessity of including such information. Others disagreed because they thought that it should be compulsory to include it. Among the latter, some argued that location should be included because they also took the view that weddings should only be celebrated in pre-approved locations.

7.25 Some consultees commented that the information listed in the proposal should be added prior to, or at the time of, the wedding ceremony. Many of these consultees also wanted to ensure that the information could not be added to or altered after the marriage document or schedule had been signed, with some noting that there was a formal procedure for making corrections.

7.26 Some consultees suggested that it would be unnecessary or undesirable to include the names of parents, noting that upset might be caused by including parents who were abusive, estranged or deceased. Some commented on the variability of family arrangements and wanted a wider range of persons to be included; others were opposed to anyone other than the biological parents being recorded. A number also questioned why parents' occupations needed to be recorded.

7.27 A few consultees asked how location would be recorded if a ceremony took place in a hot air balloon or expressed concerns about the description of the location being left to the discretion of the officiant.

7.28 A few consultees suggested that the signatures of (and information about) the witnesses should be included. The Faculty Office of the Archbishop of Canterbury commented that the form of preliminary "might usefully be added (as at present)". Humanists UK further suggested that the schedule should also record "the religion or belief of the wedding" or if it was officiated by a registration officer or (if enabled) an independent officiant.

Discussion and conclusions

7.29 Given the concerns of some consultees about amendments being made to the records of the marriage, we should clarify that our proposal related to the information that could be added to the documentation before it was signed, as we explained in the Consultation Paper.[42] We have revised the wording of our recommendation to make that clear.

7.30 We also note that our proposal did not cover all the information that would be added to the marriage document or schedule. Again, we have revised our recommendation to clarify all the information that either must or can be included.

7.31 Our revised recommendation makes clear that the signatures and names of the two witnesses should be added. In the case of Anglican weddings, the marriage document

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[42] Consultation Paper, para 8.13.

will continue to record whether the wedding was after banns or by a common or special licence.

7.32 A further revision is required to reflect how the intended officiant will be identified on the schedule. We initially proposed that the officiant be named on the schedule,[43] and so saw no need for a separate proposal about their name being added to it. In the light of consultees' responses, we now recommend that identification will be by role in the case of registration officers and Anglican clergy,[44] while nominated officiants will be identified as "[the name of the chosen officiant] or another authorised officiant under the Marriage Act nominated by [name of nominating organisation]". We also recommend that, should the named officiant or officiant of the named organisation be unable to act at the last minute, a substitute officiant should be able to officiate at the wedding, without the schedule needing to be re-issued. The possibility of identifying the intended officiant other than by name, or of a subsequent substitution, means that the schedule as issued will not necessarily identify the person who officiates at the wedding. We therefore recommend that, at the wedding, the identity of the officiant who officiates at the wedding should be added to the schedule, in addition to their nominating or authorising body. The latter requirement will also address the point raised by Humanists UK.

7.33 As noted above, the new law requires the person who solemnizes the marriage to be added if this is someone different from the person tasked with responsibility for ensuring that it is registered. While this requirement did not previously form part of the law, it did form part of the guidance issued to authorised persons.[45] Because many religious traditions do not require a third party to conduct a wedding, we think that the document should make clear that the addition of information about the person conducting the ceremony is optional if that person is someone other than the officiant. The Anglican marriage document will continue to require the signature of the member of the clergy by whom the marriage was solemnized.

7.34 We have also considered whether the inclusion of information about the date and location of the wedding should be compulsory rather than optional. We note that a failure to include such information would have no impact on the validity of the marriage; registration has never been essential to the validity of a marriage and we are not recommending any change in approach. Nonetheless, we think that including the date and location will provide certainty. It is important for a couple to ensure that a couple have an official document stating when they got married, and including details about location may potentially be helpful in verifying that the ceremony did in fact take place in cases of dispute. It will also provide a helpful record for historical purposes.

7.35 Given that the location of the wedding will play no role in its validity, the precision with which it is recorded is not as crucial a matter as some consultees suggested. How

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43 Consultation Paper, para 4.99, Consultation Question 11.

44 See Recommendation 8 at para 3.201 above. The schedule will refer to a "registration officer in [name of] registration district" or "Clerk in Holy Orders authorised to exercise ordained ministry in [name of] parish" respectively.

45 General Register Office, *A Guide for Authorised Persons* (March 2019) para 4.25. In addition, the guidance issued to Jewish secretaries noted that such person "may" also sign the register book: General Register Office, *Guidebook for Secretaries (for Marriages) of Synagogues* (March 2019) para 4.39.

exactly locations should be recorded will be an operational matter for the General Register Office to include in its guidance.

7.36 Following the introduction of the Registration of Marriages Regulations 2021, the marriage document or schedule does now allow for the inclusion of the names and occupations of the couple's mothers and for the neutral designation of "parent" as well as "mother" or "father". Indeed, the Regulations go further than our proposal in allowing for up to four parents, including step-parents, to be listed for each of the couple.[46]

7.37 In this respect, our revised recommendation therefore simply reflects the current law. Given the concerns expressed by a number of consultees, we think it is helpful to clarify that there is no obligation for the couple to include such information if they do not wish to do so.

7.38 To summarise, there are three different sets of information that will or can be recorded.

(1) Information that is given by the couple as part of the preliminaries and is recorded on the marriage document or schedule automatically, comprising the nature of the preliminaries, the name and surname, date of birth, marital status (referred to on the schedule as "condition") and occupation of each of the couple,[47] and the identity of the intended officiant.

(2) Information that should be added to the marriage document or schedule once the ceremony has taken place but before the schedule is signed, comprising the date and location of the wedding, the signatures of the couple, the signatures and names of two witnesses, and the signature and identity and authorising or nominating body of the officiant.

(3) Information that may, if the couple so wish, be added to the schedule once the ceremony has taken place but before the schedule is signed, comprising details of the couple's parents and the name of any person (other than the officiant) conducting the ceremony.

FURTHER CHANGES

The issue and completion of schedules in Welsh

7.39 In the Consultation Paper we noted that Welsh has "official status in Wales"[48] and the explanation of the Welsh Language Commissioner that "Welsh speakers in Wales have rights to deal with public organisations through the medium of Welsh".[49]

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46 Registration of Marriages Regulations 2015 (SI 2015 No 207), reg 9C.

47 With the removal of the need for the couple to give notice in their district of residence, residence will no longer be recorded on the schedule.

48 Consultation Paper, paras 8.8 and 8.19; Welsh Language (Wales) Measure 2011, s 1(1).

49 Consultation Paper, para 8.19, citing Welsh Language Commissioner, *Rights to use the Welsh language*, http://www.comisiynyddygymraeg.cymru/English/My%20rights/RightstousetheWelshlanguage/Pages/RightstousetheWelshlanguage.aspx (last visited 1 May 2020); see instead Comisiynydd y Gymraeg / Welsh

Although bilingual forms are available, couples do not currently have the option of registering their marriage in Welsh only. We provisionally proposed that couples should have the option of registering their marriage in English only, in Welsh only, or in both English and Welsh.[50]

Consultation

7.40 A very substantial majority supported this proposal. Consultees who agreed welcomed it as reflecting the choice of the couple and their sense of cultural identity. A few also noted the legal status of the Welsh language and the Welsh language rights of Welsh speakers.

7.41 Some consultees were of the view that registration should not take place in Welsh only. They argued that few people speak Welsh and that allowing for registration in Welsh alone would make records less accessible. Some focussed on the administrative burden and/or cost if translations of a Welsh-only document were required. Others highlighted that future historians or genealogists might not be able to read the records. A few also advocated the use of English as well as Welsh to prevent forced marriages.

7.42 Other consultees said that registration in Welsh or in English and Welsh should only be available for couples marrying in Wales. One registration officer noted that if the wedding was taking place in England, any forms would need to be printed in both English and Welsh for registrars who do not speak Welsh. A few specifically thought that registration in Welsh should be available only if one or both of the parties had Welsh as their first language or spoke it on a regular basis. Others commented that the officiant and witnesses would also need to speak Welsh in order to understand the document they were signing.

7.43 A few consultees suggested extending the proposal so that registration could take place in other recognised minority languages, such as Gaelic or Cornish, or the main language of the couple. The National Commission on Forced Marriage also suggested that a party to the marriage who does not speak English or Welsh should have a translated copy of the document. By contrast, a few consultees contended that all records should be in English.

7.44 The Reverend Professor Thomas Glyn Watkin QC also commented that:

> Organizations should be required to make it clear in which languages their officiants can officiate, and there should be an obligation upon civil registrars to provide a service in the couple's language or languages of choice (English and/or Welsh) within Wales. It should be open to the Welsh Language Commissioner to set language standards regarding the provision of wedding services by other bodies or individuals.

Language Commissioner, *Freedom to Use Welsh*, https://www.welshlanguagecommissioner.wales/your-rights/freedom-to-use-welsh (last visited 1 July 2022).

[50] Consultation Paper, para 8.30, Consultation Question 55.

Discussion and conclusions

7.45 Our proposal reflected the fact that Welsh is an official language in Wales and there is a legal right to use the Welsh language in certain contexts.[51] In our view, couples should be able to complete the documentation for their wedding in Welsh alone where the wedding is taking place in Wales.

7.46 Developments since we published the Consultation Paper necessitate some rephrasing of our recommendation. Previously, "registration" took place when the marriage register was signed by the couple. With the introduction of the schedule system, signing and registering the marriage are now distinct stages. In our view the language(s) of the marriage register is an operational matter for the Registrar General; what is important is that couples are able to complete a marriage document or schedule that is in Welsh alone and can be given a marriage certificate that is in Welsh alone.

7.47 As explained above, marriage documents and schedules are created by information given during the preliminaries process. We note that local authorities in Wales are already subject to Welsh-language standards that require them to produce documents for public use in Welsh.[52] Couples giving notice in person in a Welsh registration district should therefore have the option of doing so in Welsh. Those living in Wales should also have the option of giving notice in Welsh when they do so online.[53] Whether other couples should have an option to complete a Welsh-only form when giving notice online is an operational issue for the General Register Office to decide. But it should be possible for any schedule issued to authorise a wedding taking place in Wales to be in Welsh alone.

7.48 Similarly, the language of any forms used by the Church in Wales as part of its preliminaries will be for it to determine; however, it should be possible for any marriage document issued to authorise an Anglican wedding taking place in Wales to be in Welsh alone. The Church in Wales has confirmed that it would welcome the possibility of all documents being in Welsh alone and that such a change would be in accordance with its own policy as an organisation.

7.49 We note that local authorities are subject to Welsh language standards under the Welsh Language (Wales) Measure 2011,[54] and so must make provision for meetings in Welsh. This requirement would apply to in-person interviews taking place in Welsh registration districts. Local authorities in Wales are also obliged to display public notices in Welsh. Whether and how Welsh language standards apply to local authorities in Wales in relation to other aspects of the process – such as the conduct of the ceremony – should be left to the Welsh Government, the Welsh Language Commissioner, and local authorities to determine. Similarly, whether and how Welsh language standards apply to other officiants, as The Reverend Professor Thomas

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51 Welsh Language (Wales) Measure 2011.

52 The Welsh Language Standards (No 1) Regulations 2015 (SI 2015 No 996).

53 See Home Office, *The Home Office Welsh Language Scheme: Prepared under the Welsh Language Act 1993* (February 2018) para 3.12.

54 The Welsh Language Standards (No 1) Regulations 2015 (SI 2015 No 996).

Glyn Watkin QC suggested, should be a matter for the Welsh Language Commissioner to determine.[55]

7.50 Our proposal did not extend to other spoken or minority languages used in England and Wales, since no language other than English or Welsh has official status. However, as we explain in Chapter 5, couples will be able to use the language of their choice during the ceremony itself, so long as they, the officiant and witnesses understand it.

Electronic registration

7.51 In the Consultation Paper we discussed the options for the use of electronic documents and the potential move to a system of electronic registration. We provisionally proposed that an option for electronic registration should be introduced at a later date when the infrastructure was in place to provide a high level of security.[56]

7.52 However, when introducing the schedule system, Government already made many of the policy decisions that we were contemplating in this question. As we explain above, registration now takes place on the return of the schedule or marriage document and the marriage register is also an electronic register; in addition, provision is made for schedules and marriage document to be returned via "an approved electronic form".[57] There is no reason we should revisit these recent policy decisions of Government.

7.53 The only question which appears to remain is whether the schedule could, in the future, be an electronic document which the parties sign electronically (together with the removal of any need for the paper copy to be stored). But as we noted in the Consultation Paper, under the current law any statutory requirements for signatures and documents can generally be satisfied electronically.[58] As such, it would not be necessary to confer any legislative power on the Registrar General to introduce electronic registration, including to allow schedules (or marriage documents) to be issued in electronic form.

7.54 As our provisional proposal is now redundant, we do not make any recommendation about electronic registration. It may nonetheless be useful for Government to know that a significant majority of consultees agreed with our provisional proposal, should it wish to move to a fully electronic system in the future. A number did express a lack of confidence in Government IT systems or noted the value, both evidential and ceremonial, of having a paper marriage certificate. Overall, however, consultees did not offer persuasive reasons why fully electronic registration – including electronic schedules and marriage documents that would be signed electronically at wedding ceremonies – should not be introduced when the necessary infrastructure is in place.

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55 See eg Comisiynydd y Gymraeg / Welsh Language Commissioner, *What do organisations have to do?*, https://www.welshlanguagecommissioner.wales/your-rights/what-organisations-have-to-do (last visited 1 July 2022).

56 Consultation Paper, para 8.31, Consultation Question 56.

57 Marriage Act 1949, s 53D(4).

58 Consultation Paper, paras 8.26 to 8.27. See further Electronic Execution of Documents (2019) Law Com No 386.

RECOMMENDATIONS

Recommendation 35.

7.55 We recommend that at the ceremony (and in advance of being signed), the schedule or marriage document should have added to it:

(1) the date of the wedding;

(2) the location of the wedding;

(3) the identity and authorising or nominating body of the officiant; and

(4) the identity of the witnesses.

7.56 We recommend that at the ceremony (and in advance of being signed), the schedule or marriage document should be able to have added to it:

(1) the names and occupations of the parties' parents, with each party able to include up to four each persons who may be identified as "mother", "father", or "parent"; and

(2) the name of any person conducting or solemnizing the wedding, and any religious (or non-religious belief) organisation with which they are affiliated, where relevant.

Recommendation 36.

7.57 We recommend that, where the wedding ceremony takes place in Wales, couples should be able to have their schedules and marriage documents issued and completed in Welsh alone.

Chapter 8: Equality law and religious weddings

INTRODUCTION

8.1 The current law contains special provisions for religious groups in relation to same-sex weddings and weddings involving transgender people. We described these provisions, which we referred to as "special provisions", in Chapter 9 of the Consultation Paper. In that chapter, we considered how they would be maintained under our provisionally proposed scheme. However, unlike other chapters within the Consultation Paper, we did not ask any consultation questions in Chapter 9. Under the Terms of Reference of our project,[1] we are required to uphold the existing special provisions for religious groups, and to ensure that any new groups enabled to conduct weddings would not be able to discriminate between opposite- and same-sex couples. Because the effect of the law will remain the same, it is not an area of policy on which it was appropriate to seek consultees' views; instead, the task is to determine how the special provisions must be amended to fit with our recommended scheme.

8.2 We recognise that some consultees will disagree that the law should make special provisions for religious groups in relation to same-sex weddings. Consultees' responses evidenced the range of views on this issue. But our Terms of Reference are clear that the policy question is beyond the scope of our review. Therefore, our recommended scheme, like the current law, will not oblige religious groups to conduct same-sex weddings. It will require that, in order to conduct same-sex weddings, religious groups will first have to opt into doing so. Moreover, our recommended scheme will not make provision for the Anglican churches to be able to conduct same-sex weddings.

8.3 In this chapter, we first review the policy background and the Terms of Reference for this project. As part of this review, we explain the position of registration officers and other types of officiant that might be able to conduct weddings under a reformed law: non-religious belief organisations and their officiants and independent officiants (as well as maritime officiants).[2] As we explain, the special provisions will not apply to them.

8.4 We then provide a summary of the special provisions for religious organisations in the current law, reiterating our explanation in the Consultation Paper.[3]

8.5 Finally, we outline how the special provisions will apply under our recommended scheme. We did not consult on the application of the special provisions within our

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1 The full Terms of Reference for the project are included in Appendix 1.

2 Maritime officiants are a category of officiant which we discuss in detail in Ch 10. As we recommend in Recommendation 25 at para 4.337 and following and Recommendation 26 at para 4.342 above, the same general rules that apply to independent officiants will apply to maritime officiants which, for the purposes of this chapter, include the treatment under equality law and in relation to the special provisions. For ease of reference, we do not refer to maritime officiants further in this chapter, but any reference to independent officiant can be understood to apply them.

3 Consultation Paper, paras 9.12 to 9.24.

scheme; however, in their responses to other consultation questions, some consultees raised concerns about the ability of religious groups that have not opted into conducting same-sex weddings to ensure that buildings owned or controlled by them were not used for same-sex weddings.[4] We respond to those concerns in this chapter.

THE POLICY BACKGROUND AND OUR TERMS OF REFERENCE

Religious organisations

8.6 Our Terms of Reference provide that the project

> will not consider the question of whether or not religious groups should be obliged to solemnize marriages of same sex couples, which was decided by Parliament following wide public debate.

8.7 We are therefore not considering any change to the policy, enacted by Parliament in the Marriage (Same Sex Couples) Act 2013, that religious groups are not obliged to conduct same-sex weddings, and that the Church of England and Church in Wales are not included within the legal scheme that enables religious groups to opt into doing so. Our objective is to maintain the special provisions for religious groups and their officials under our new scheme.

8.8 Parliament also enacted special provisions in 2004 and 2010 that except religious organisations and their officials from obligations to conduct weddings involving people who have an acquired gender under the Gender Recognition Act 2004.[5] We take the view that those exceptions are equally matters of social policy, which we are not equipped to revisit. Our objective is therefore to maintain those exceptions under our new scheme.

Non-religious belief organisations and independent officiants

8.9 Our Terms of Reference also provide that the project will proceed on the policy assumption

> that any non-religious belief organisations or independent celebrants given the right to conduct marriage ceremonies cannot discriminate between opposite and same-sex couples.

8.10 This assumption means that if Government enables non-religious belief organisations or independent officiants to conduct legally binding weddings, the special provisions in relation to same-sex weddings would not extend to officiants nominated by non-religious belief organisations or independent officiants under our recommended scheme. We do not think that, in practice, this assumption will create problems, given that Humanists UK and most independent celebrants already carry out non-legally binding ceremonies for same-sex couples.

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4 See paras 6.105 and 6.117 above.

5 In the Gender Recognition Act 2004 and the Equality Act 2010. See paras 8.26 to 8.29 below for further detail.

8.11 Like sexual orientation, gender reassignment is a protected characteristic in equality law.[6] The existing special provisions that apply to religious organisations in relation to weddings involving transgender people would not extend to non-religious belief organisations or their nominated officiants, or independent officiants. The question of whether to extend those special provisions would be a matter of social policy, appropriately addressed by Government rather than by an independent law reform body. For that reason, we will not be considering whether any special provisions should apply to non-religious belief organisations or their officiants, or to independent officiants, in relation to weddings involving transgender people. Again, however, we think that in practice there will not be a demand for any such special provision.

Registration officers

8.12 It will remain the case under our recommended scheme that registration officers will not be permitted to refuse to conduct same-sex weddings or weddings involving transgender people. That rule reflects the fact that registration officers are appointed by the state to provide a public service.[7] It is important that civil weddings conducted by registration officers should be available to everyone with legal capacity to marry.

8.13 We acknowledge that, as private individuals, some registration officers may have strongly held religious beliefs that are inconsistent with conducting same-sex weddings or weddings involving transgender people. However, the state has a legitimate interest in protecting the rights of same-sex couples and transgender people. It is for that reason that the European Court of Human Rights has held that it is legitimate for the state to require registration officers to conduct same-sex civil partnerships, even if doing so is contrary to the religious beliefs held by some registration officers.[8] For the same reason, it is also lawful to require registration officers to conduct same-sex weddings and weddings involving transgender people.

SPECIAL PROVISIONS UNDER THE CURRENT LAW

Same-sex weddings

8.14 The Marriage (Same Sex Couples) Act 2013 enables same-sex couples to get married in a civil wedding or in a religious wedding other than an Anglican wedding. It also contains special provisions which ensure that religious organisations and their officials are not obliged to conduct same-sex weddings.

8.15 Government has described the special provisions in the 2013 Act as a quadruple lock.[9] The four parts of the quadruple lock are:

(1) provisions specific to the Church of England and the Church in Wales;

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6 Equality Act 2010, s 4.

7 The Registration Service Act 1953, ss 5(2) to 6, requires the appointment of superintendent registrars and registrars in each district, who are then officers of the council.

8 *Eweida v United Kingdom* (2013) 57 EHRR 8 (App Nos 48420/10, 59842/10, 51671/10 and 36516/10).

9 *Hansard* (HC), 5 Feb 2013, vol 558, col 129; *Hansard* (HL), 3 June 2013, vol 745, col 939.

(2) the requirement that religious organisations must formally opt in if they wish to conduct same-sex weddings;

(3) provisions that protect religious organisations, religious leaders who conduct wedding ceremonies, and people appointed to register religious weddings from being compelled to conduct same-sex weddings or to permit same-sex weddings on their premises; and

(4) exceptions to equality law.[10]

8.16 We discuss how the special provisions apply to different types of wedding, below.

Anglican weddings

8.17 There is no provision in the law for same-sex Anglican weddings. The Church of England and the Church in Wales are not included in rules about opting into conducting same-sex weddings and so cannot do so.[11]

8.18 Moreover, the special provisions provide that any duty of the clergy of the Church of England and Church in Wales to solemnize marriage, and any corresponding right to have an Anglican wedding, does not extend to same-sex weddings.[12] They further provide that Church of England canon law is not illegal in providing that marriage is between one man and one woman.[13]

Other religious weddings

8.19 Other religious organisations are able to conduct same-sex weddings, but only if they formally opt into doing so. To opt in, the relevant governing authority of the religious organisation must give its written consent to same-sex marriage.[14] Relevant governing authorities are identified either by name or by description in the legislation.

(1) For weddings in registered places of worship, the relevant governing authority is the person or persons recognised as competent to give consent to same-sex

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10 *Hansard* (HL), 3 June 2013, vol 745, cols 939 to 949; Government Equalities Office, *Marriage (Same Sex Couples) Act: A factsheet* (April 2014) p 2.

11 However, Marriage (Same Sex Couples) Act 2013, s 8 contains a power for the Lord Chancellor by order to make provision for the marriage of same-sex couples according to the rites of the Church in Wales, which may amend primary legislation. The Lord Chancellor can only exercise this power if satisfied that the Governing Body of the Church in Wales has resolved that the law should be changed to allow for same-sex weddings according to the rites of the Church in Wales.

12 Marriage (Same Sex Couples) Act 2013, s 1(4).

13 Marriage (Same Sex Couples) Act 2013, s 1(3).

14 Marriage Act 1949, ss 26A(3) and 26B(2)(b), (4)(b) and 6(d); Marriage (Registrar General's Licence) Act 1970, s 1(3). Weddings in armed forces chapels are an exception: before the Secretary of State applies for an armed forces chapel to be registered for same-sex weddings, they must consult with the relevant governing authority of any religious organisation which makes significant regular use of the chapel, but the Secretary of State need not obtain the authority's consent: Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2014 (SI 2014 No 815), reg 3.

weddings by the religious organisation for whose religious purposes the building is used.[15]

(2) For weddings according to Quaker and Jewish usages,[16] the relevant governing authority is either named in legislation, or identified as the person or persons recognised by various named synagogues.[17]

(3) For weddings of people who are terminally ill, detained or housebound,[18] the relevant governing authority is the person or persons recognised as competent to give consent to same-sex weddings by the religious organisation according to whose rites or usages the marriage is solemnized.[19]

8.20 In addition to the consent of the relevant governing authority, the owners or trustees of the certified places of worship must formally opt into same-sex marriage. They do so by applying for the building to be registered for same-sex weddings separately from registration for opposite-sex weddings.[20]

8.21 We explained in the Consultation Paper that the current law does not regulate who conducts wedding ceremonies, other than Anglican ceremonies, but rather who registers the marriage.[21] With the introduction of the new schedule system, the focus remains on who is responsible for returning the schedule or marriage document for the marriage to be registered.[22] Accordingly, there is no requirement for individuals to formally opt into conducting religious same-sex wedding ceremonies. Instead, a person who is authorised to be responsible for returning the schedule in relation to marriages solemnized in registered places of worship opts in by agreeing to be authorised for same-sex weddings.[23] There is no formal action needed for the people who are responsible in relation to Quaker and Jewish marriages to opt into same-sex weddings, but those people can nevertheless refuse to act at same-sex weddings.[24]

8.22 There is no comprehensive public record of which religious organisations have opted into conducting same-sex weddings. However, the data available on registered places of worship suggests that few have. The most recent data, from December 2021, shows that only 292 of the 22,334 places of worship registered for marriage were

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15 Marriage Act 1949, s 26A(4).

16 Other than weddings authorised by Registrar General's licence, involving people who are terminally ill.

17 Marriage Act 1949, s 26B(3) and (5).

18 Other than weddings involving detained or housebound parties according to Quaker or Jewish usages, and excluding Anglican weddings.

19 Marriage Act 1949, s 26B(6) to (7); Marriage (Registrar General's Licence) Act 1970, s 1(4).

20 Marriage Act 1949, s 43A.

21 Consultation Paper, para 5.12 and following.

22 The schedule system included the introduction of a new creation, called the marriage register, maintained by the Registrar General. A marriage is not registered until the details are entered into the marriage register, by a registrar. The person the law regulates in relation to weddings is the person responsible for signing the schedule or marriage document (in addition to the couple and witnesses) and returning it for registration: Marriage Act 1949, ss 53B to 53D.

23 Marriage Act 1949, s 43B.

24 See further para 8.24 below.

registered for same-sex weddings, or 1.3%. Buildings whose congregations identified as belonging to the Unitarian (88), United Reformed (82), and Spiritualist (56) denominations made up the majority of those registered for same-sex weddings.[25] The Religious Society of Friends, whose places of worship do not need to be registered, has opted into same-sex weddings,[26] as have Liberal and Reform Jewish groups.[27]

8.23 The low number of places of worship that are registered for same-sex weddings is reflected in the fact that in 2019, only about 0.7% of same-sex weddings were religious ceremonies, compared to about 18.7% of opposite-sex weddings.[28]

8.24 In addition to the provisions for opting into conducting same-sex weddings, the Marriage (Same Sex Couples) Act 2013 contains non-compulsion provisions. First, under the 2013 Act, relevant governing authorities or owners of certified places of worship cannot be compelled to opt into same-sex marriage.[29] Moreover, no person may "be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement)" to conduct, be present at, carry out, otherwise participate in, or consent to a religious same-sex wedding, where the reason is that the wedding is of a same-sex couple.[30] This provision covers religious leaders who conduct wedding ceremonies, individuals who are responsible under the legislation for returning the schedule to be registered, and other people involved in the religious element of weddings, such as church organists.[31]

8.25 In addition to the general non-compulsion provisions, the Equality Act 2010 clarifies that a person does not violate equality law by refusing to conduct, be present at, carry out, otherwise participate in, or consent to a religious same-sex marriage.[32]

Weddings of transgender people

8.26 There is no formal opt-in process in relation to weddings of transgender people. Instead, there are provisions allowing religious groups to refuse to conduct a wedding of a transgender person.

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25 HM Passport Office, *Places of worship registered for marriage* (December 2021), https://www.gov.uk/government/publications/places-of-worship-registered-for-marriage (last visited 1 July 2022).

26 Britain Yearly Meeting of the Religious Society of Friends, *Quaker same sex weddings: letter to superintendent registrars* (July 2015), https://quaker-prod.s3-eu-west-1.amazonaws.com/store/208204d083996fa7d55c29708ce07a1bde73e40f59d5965dfb90c75a64ff (last visited 1 July 2022).

27 For synagogues affiliated to Liberal Judaism, the relevant governing authority is the marriage secretary of the Liberal Jewish Synagogue, St John's Wood or those certified by it; for synagogues affiliated to the Movement for Reform Judaism the relevant governing authority is the marriage secretary of the West London Synagogue of British Jews or those certified by it: Marriage Act 1949, s 26B(5).

28 Office for National Statistics, Marriages in England and Wales: 2019 (19 May 2022). 2019 is the latest year for which data are available.

29 Marriage (Same Sex Couples) Act 2013, s 2(1).

30 Marriage (Same Sex Couples) Act 2013, s 2(2).

31 See the Explanatory Note to the Marriage (Same Sex Couples) Act 2013.

32 Equality Act 2010, sch 3 para 25A.

8.27 The Marriage Act 1949 provides that Anglican clergy are not obliged to conduct weddings of people reasonably believed to have an acquired gender under the Gender Recognition Act 2004.[33] That provision is an exception to the generally accepted duty of the Church of England and Church in Wales to conduct the marriages of any eligible couple.

8.28 There is no equivalent provision for other religious organisations, nor any requirement for religious organisations to formally opt into conducting weddings of transgender people. The general rule is that religious organisations are free to refuse to conduct weddings of any people, including transgender people, unless there is a specific legal obligation to do so. For weddings in registered places of worship, that freedom is bolstered by the rule requiring the consent of "the minister or one of the trustees, owners, deacons or managers thereof".[34]

8.29 That freedom to refuse to conduct weddings is supported by exceptions to the Equality Act 2010. They provide that a person does not violate equality law by refusing to conduct a wedding of a person reasonably believed to have an acquired gender under the Gender Recognition Act 2004.[35]

SPECIAL PROVISIONS UNDER OUR RECOMMENDED SCHEME

Same-sex weddings

Anglican weddings

8.30 Our recommended scheme will preserve the existing law as it relates to Anglican weddings. That is, there will continue to be no provision for Anglican clergy to conduct same-sex weddings under the new Act, making it impossible for them to do so. Any duty of clergy of the Church of England and the Church in Wales to solemnize marriage, and any corresponding right to have an Anglican wedding, will not be extended to same-sex weddings. And Church of England canons will not be illegal on account of providing that marriage is between a man and a woman.

Other religious weddings

8.31 Religious organisations other than the Church of England and the Church in Wales will continue to be able to conduct same-sex weddings if they wish, but will have to formally opt into doing so by giving their consent. If a religious organisation did not opt in, the religious officiants nominated by the organisation could not be authorised to officiate at same-sex weddings. Moreover, even if a religious organisation opted in, individual religious officiants nominated by that organisation would not be authorised to officiate at same-sex weddings unless they themselves opted in.

8.32 In Recommendation 21, we recommend that that the General Register Office should maintain a publicly available list of nominated officiants.[36] For religious officiants, that

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33 Marriage Act 1949, s 5B.

34 Marriage Act 1949, s 44(1). In the case of a building of the Roman Catholic Church, the "officiating minister" must consent.

35 Equality Act 2010, sch 3 para 24.

36 See para 4.260 above.

list will be divided into religious officiants who had opted into officiating at same-sex weddings, and those who had not.

8.33 Having a divided list will ensure that a couple would know whether a particular officiant was authorised, and so willing, to officiate at same-sex weddings. This approach will address one barrier that same-sex couples encounter within the current scheme, identified by a recent study as a possible deterrent to same-sex couples seeking a religious wedding.[37] Respondents to the study detailed that registration officers could not provide them with lists of places of worship registered for same-sex marriage, instead advising couples to contact places of worship directly to ask for permission to marry there. The authors reported that "several respondents described the fear they felt of being rejected by someone in a place of worship if they contacted them to discuss the possibility of getting married there", a process some respondents to the study described as "really distressing", "horrible" and "painful".[38] Same-sex couples will be spared this experience under our scheme, as they will be able to find the organisations and officiants who have opted in to officiating at same-sex weddings on one central Government website.

8.34 For religious organisations, the decision whether to opt in will be taken by their relevant governing authorities, as under the current law. We describe at paragraphs 4.178 and following above how, under our recommended scheme, relevant governing authorities will also be responsible for nominating religious officiants (other than Anglican clergy). As currently, religious organisations will self-identify their relevant governing authorities. This approach reflects the view of Government, expressed at the time of the debates on the 2013 Act, that it is not "desirable to specify in legislation the governing authority for any particular religious organisation", which is "properly a matter for members of the religious organisation themselves".[39]

8.35 The relevant governing authorities for the Religious Society of Friends and for Jewish organisations will no longer be named in legislation that implements our recommendations. Instead, those organisations will self-identify their relevant governing authority, putting them on an equal footing with other religious organisations. This change will address the unique treatment of Jewish organisations and the Religious Society of Friends, and again reflect Government's view that religious organisations should "be free to decide, and indeed change, their decision-making arrangements for themselves".[40]

8.36 These rules on opting into conducting same-sex weddings will remain bolstered by non-compulsion provisions and exceptions under equality law.

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37 S Falcetta, P Johnson, and R M Vanderbeck, "The Experience of Religious Same-Sex Marriage in England and Wales: Understanding the Opportunities and Limits Created by the Marriage (Same Sex Couples) Act 2013" (2021) 35 *International Journal of Law, Policy and The Family* 1.

38 S Falcetta, P Johnson, and R M Vanderbeck, "The Experience of Religious Same-Sex Marriage in England and Wales: Understanding the Opportunities and Limits Created by the Marriage (Same Sex Couples) Act 2013" (2021) 35 *International Journal of Law, Policy and The Family* 1, 16.

39 *Hansard* (HL), 19 June 2013, vol 746, cols 330 to 331.

40 *Hansard* (HL), 19 June 2013, vol 746, col 331.

8.37 Under our recommended scheme, the law will continue to ensure that no person could be compelled to conduct, be present at, carry out, otherwise participate in, or consent to a religious same-sex wedding, where the reason was that the wedding was of a same-sex couple. That provision will mean that:

(1) religious organisations and their relevant governing authorities could not be compelled to opt into same-sex weddings;

(2) religious officiants could not be compelled to opt into officiating at, or (even if they have opted in) to officiate at, same-sex weddings, even if the relevant governing authority by which they had been nominated had opted into same-sex weddings;

(3) other religious leaders who conduct wedding ceremonies, but who were not authorised officiants,[41] could not be compelled to conduct same-sex weddings; and

(4) other people involved in the religious element of a wedding will continue to be protected against having to participate in same-sex weddings.[42]

8.38 Additionally, there will continue to be exceptions to equality law to allow religious organisations, authorised religious officiants, other religious leaders who conduct wedding ceremonies, and other people involved in the religious element of a wedding to refuse to conduct or participate in same-sex weddings. There will also be exceptions to ensure that the owners or trustees of religious buildings would be able to refuse to allow those buildings to be used for same-sex weddings (which we discuss in more detail below).[43]

8.39 This system will be similar to the system in Scotland, where religious organisations are able to choose whether to nominate celebrants to conduct same-sex weddings.[44] Our discussions with stakeholders in Scotland have not revealed any problems with the law there. Religious organisations in Scotland are free to choose whether or not they wish for their celebrants to be able to conduct same-sex weddings. And individual celebrants are free to choose whether to refuse to conduct same-sex weddings when their religious organisation has opted into doing so.

Owners of religious buildings

8.40 Under our recommended scheme, venues for religious weddings will no longer be registered. Therefore, no formal legal action will be necessary for the owners or trustees of religious buildings to opt into same-sex weddings. That will be a change

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41 For example, where the authorised officiant was only acting as the officiant, but another person was conducting or solemnizing the ceremony in their presence. For more detail on the role of the officiant under our scheme, see para 4.23 and following above.

42 Consequential amendments will be necessary to the Marriage (Same Sex Couples) Act 2013, s 2, to reflect the new scheme.

43 Consequential amendments to Equality Act 2010, sch 3 para 25A, might be necessary to reflect the shift from a buildings-based scheme to an officiant-based scheme.

44 Marriage (Scotland) Act 1977, ss 8(1B)(a)(ii) and (1D)(b), and 9(1A).

from the current law for most religious groups, who must currently conduct weddings in registered buildings.

8.41 We explained in the Consultation Paper that, under general provisions of law, the owners of religious buildings will remain free to refuse to allow their buildings to be used for same-sex weddings, even if the relevant governing authority had opted into conducting same-sex weddings.[45] However, some consultees expressed concerns that, without any requirement to register a place of worship for weddings, religious organisations would be compelled to allow, or be unable to prevent, same-sex weddings from taking place on their premises. This concern was particularly apparent in relation to Consultation Question 50, where we considered whether there should be restrictions on the use of religious venues for non-religious weddings.[46] For example, Swanfield Chapel stated that "mixing civil, religious and non-religious belief weddings risks the quadruple lock which is very important to us". Similarly, Christian Concern emphasised that "religious organisations should be allowed to insist that only religious ceremonies are carried out in their venues", worrying about churches being "placed at risk of being sued for discrimination for refusing a non-religious ceremony in the venue". It argued that protection "can only be achieved by prohibiting the practice in law".

8.42 As we explain in Chapter 6, we recommend that all types of wedding should be legally permitted to take place in any location, and, in particular, that there should be no legal prohibitions in weddings law on the use of religious (or non-religious belief) locations. We have made this recommendation confident in the conclusion that it does not pose any risk that religious groups would be compelled by the law to permit same-sex weddings (or civil weddings) on their premises.

8.43 An existing exception to equality law, plus an additional exception that will be added as a consequential amendment under our scheme, will provide protection to religious organisations about the use of their premises.

(1) Under the general provisions of the law, owners of buildings are free to decide who has permission to enter and use their premises. Generally speaking, however, if services are offered to the public, they cannot be offered in a way that discriminates on the basis of certain protected characteristics, of which sexual orientation is one.[47] But there is a general exception in equality law that permits religious and belief organisations to impose restrictions on membership, participation in activities of their organisation, and the use of their facilities and premises, on the basis of religion or belief, or sexual orientation.[48] A religious organisation would therefore not be prevented by equality law from refusing to allow civil weddings, weddings according to beliefs which it does not share, or same-sex weddings, from taking place on its premises. This general exception to discrimination rules will remain unaltered under our scheme.

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45 Consultation Paper, para 9.32.

46 See Consultation Paper, para 7.161. We also considered whether there should be restrictions on the use of non-religious belief premises. See para 6.99 and following above.

47 Equality Act 2010, ss 4 and 29.

48 Equality Act 2010, s 10 and sch 23 para 2.

(2) We think that the introduction of an officiant-based scheme does require the addition of a further protection in relation to the use of religious premises. Legislation that implements our recommendations should include the creation of a specific exception in equality law to protect owners of religious premises by ensuring that they could refuse to allow their premises to be used for a same-sex wedding.[49]

8.44 Despite these provisions, it is nevertheless possible to imagine a situation where a religious building is used for a same-sex wedding without the owner's consent, a possibility we noted in the Consultation Paper.[50] For example, a religious building hired out for community events might be used for a same-sex wedding without the owner knowing.

8.45 However, we continue to be of the view that this theoretical risk does not justify maintaining a requirement for owners of religious buildings formally to opt into same-sex weddings, in a system that does not require religious wedding venues to be registered. It is already the case that there is no scheme by which owners of Quaker and Jewish religious buildings can formally opt into same-sex weddings. We have not been told of any problems with the buildings of Jewish groups who have not opted into conducting same-sex weddings being used for same-sex weddings against their owners' wishes.[51] Nor are we aware of problems in jurisdictions like Scotland, Ontario and Australia, where there is no requirement for the owners of religious buildings to opt into same-sex weddings. We are also not aware of this concern arising in relation to events other than weddings; for example, we are not aware of religious buildings being used without the owners' or trustees' consent for blessing ceremonies of same-sex relationships or other community events which with the trustees disagree. In short, we do not think that it is a concern that will materialise in practice, or one that could not be mitigated against by, for example, owners of religious buildings making explicit any restrictions on the use of the building within hire agreements.

Weddings of transgender people

8.46 Under our recommended scheme, it will remain clear that Anglican clergy are not obliged to conduct weddings of people reasonably believed to have an acquired gender under the Gender Recognition Act 2004. There will continue to be no requirement for religious organisations to opt into conducting weddings of transgender people. And there will also continue to be exceptions to equality law, ensuring that religious organisations and their officiants will not be acting illegally by refusing to officiate at weddings of people reasonably believed to have an acquired gender under the Gender Recognition Act 2004.

Secular venues and other services

8.47 As we have explained above, the current law contains special provisions for people who do not wish to be involved in the religious element of a religious same-sex

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49 Similar to the provision made for religious premises in relation to weddings in Scotland: see Equality Act 2010, sch 23 para 2(9A) to (9B).

50 Consultation Paper, para 9.33.

51 The Religious Society of Friends and some Jewish groups have opted into conducting same-sex weddings: see para 8.22 above.

wedding, which includes exceptions to equality law. We have outlined how these provisions would be adapted to fit our officiant-based scheme.

8.48 These special provisions only apply to certain categories of people and organisations. That is, these special provisions do not extend to people who provide secular venues for weddings, including for religious weddings. Nor do they extend to people who provide services that are not part of the religious element of a wedding, like photography. The Equality Act 2010 makes it illegal for people who provide services to the public to discriminate in the provision of services on the grounds of certain protected characteristics, including sexual orientation and gender reassignment.[52] So, for example, it would be illegal for the owner of a country house to hire out the venue for opposite-sex weddings, but not for same-sex weddings, even if the owner was motivated by their religious beliefs.[53]

8.49 The law in relation to secular venues and services will not change under our scheme. That law applies not only in relation to weddings, but in relation to premises and services generally. These important protections against discrimination will remain under our new scheme.

[52] Equality Act 2010, ss 4 and 29.

[53] See, for example, *Preddy v Bull* [2013] UKSC 73, [2013] 1 WLR 3741, where it was illegal for the owners of a hotel who were motivated by their religious beliefs to discriminate against same-sex couples.

Chapter 9: Validity and offences

INTRODUCTION

9.1 Where a wedding takes place without the legal requirements being complied with, a variety of consequences may follow.[1] In some instances, the marriage will be valid, despite the failure to comply with a particular requirement. In others, the marriage will be void, or the result will be a non-qualifying ceremony. Under the current law, a marriage will only be void if there has been some engagement with the Marriage Act 1949 but both parties have "knowingly and wilfully" failed to comply with one or more of a limited range of key formalities.[2] The result will be a non-qualifying ceremony if the ceremony falls outside the scope of the legislation altogether, regardless of whether the couple's non-compliance was deliberate or innocent.[3]

9.2 Whether a ceremony results in a valid or void marriage or is non-qualifying has significant consequences. A valid marriage brings a range of legal rights and responsibilities. If a marriage is void, a court has the same powers to reallocate assets between the couple as upon divorce; in other contexts, however, a void marriage does not have the same consequences as a valid marriage. If the ceremony is non-qualifying, the couple are simply treated as cohabitants; in such cases a court has no power to reallocate assets between the couple on separation and couples have fewer rights overall than if they had a void marriage.[4]

9.3 In the Consultation Paper we set out how our key principles guided our proposals on how the law should treat weddings that do not comply with all the requirements of our scheme. We noted the importance of the law being certain and consistent across all types of weddings. We also noted that a balance needs to be struck between respecting the wishes of the couple and the interests of the state, meaning that not every ceremony can or should be recognised as having legal consequences. In this chapter we first look at how the validity of a marriage will be determined under our scheme and the circumstances in which it may be presumed that the couple have complied with what is required. We then consider a specific point in relation to the time limit for bringing proceedings for nullity on the basis of lack of consent.

9.4 Our recommendations in this chapter reflect the long-standing policy of the law that a marriage should not be lightly set aside. The law has always sought to strike a balance between channelling marriages into a particular form and invalidating marriages that do not comply with that form: there have always been some requirements that are "directory" rather than "mandatory", in the sense that a failure to

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1 Our focus is on the formalities required for a valid marriage; see Matrimonial Causes Act 1973 for the other grounds on which a marriage may be void (s 11) or voidable (s 12).

2 Marriage Act 1949, ss 25 and 49.

3 *Attorney General v Akhter* [2020] EWCA Civ 122, [2020] 2 WLR 1183.

4 For a summary of the implications of this see J Miles, "'Cohabitants' in the Law of England and Wales: a Brief Introduction" in RC Akhtar, P Nash and R Probert (eds) *Cohabitation and Religious Marriage: Status, Similarities and Solutions* (2020).

comply with them has no impact on the validity of the marriage. One example of a directory requirement is that relating to witnesses: while successive statutes have required the presence of witnesses, their absence has never rendered a marriage void. The question of when non-compliance should have an impact on validity is one that goes to the heart of what the law regards as fundamental to the process of getting married.

9.5 In recent years there has been considerable concern about couples entering into religious-only marriages that comply with none of the requirements for a legal marriage.[5] The resulting lack of recognition can leave individuals vulnerable, particularly where they did not realise that the ceremony they went through would not be legally recognised, expected that a legal wedding would follow, or agreed to a non-legally binding wedding with some reluctance. In 2018, The Independent Review into the Application of Sharia Law in England and Wales recommended criminalising those who conduct ceremonies outside the legal framework.[6] We are not considering this specific recommendation as part of our review, as it is a matter for Government to determine.[7] We do however recommend two new criminal offences focussed on officiants (or persons purporting to be officiants or leading the ceremony) who mislead couples as to whether their ceremony will result in a legally recognised marriage.

9.6 At the end of this chapter, we consider the issue of religious-only weddings. Drawing together our discussions throughout the chapter in relation to validity and offences, we set out how our recommendations would reduce the likelihood of a couple having a religious-only wedding. We also consider the types of cases in which non-legally binding ceremonies may still take place.

FAILURES TO COMPLY: THE IMPACT ON VALIDITY

9.7 In the Consultation Paper we set out how our proposed scheme envisages a simple structure within which couples give notice, exchange consent to be married in the presence of an officiant and two witnesses, and sign the schedule (or marriage document) as evidence of that consent. This simpler structure would also simplify the rules governing validity. Even so, as we explained above, decisions still have to be made as to which formalities are essential to the validity of a marriage.

9.8 Before we set out our specific recommendations on when a ceremony should result in a valid or void marriage or be non-qualifying, we should explain why it is important to address such issues as part of this review. In its consultation response, the Law Society suggested that we should defer dealing with the question of validity until after changes to the general law governing weddings are agreed. In our view, it is not viable to implement a new set of requirements without specifying what the impact of non-compliance with those requirements would be.

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5 For discussion see R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final Report* (2022) ch 1.

6 The Independent Review into the application of Sharia Law in England and Wales (2018) Cm 9560.

7 See HM Government, *Integrated Communities Strategy Green Paper* (March 2018).

9.9 We also note that a few consultees suggested that a marriage should be voidable[8] rather than void in the event of the couple failing to comply with certain requirements. However, we think that this suggestion may have been made under a misapprehension as to the nature of a voidable marriage. A voidable marriage can only be challenged by the parties themselves. It has never been up to the parties to decide whether procedural requirements can be omitted with impunity. In our view, it would be inappropriate for the parties themselves to be able to choose whether or not to annul their marriage on the basis of their failure to comply with the formal requirements, and so we have not considered this suggestion in our discussion of consultees' responses below.

When non-compliance would result in the marriage being void

9.10 Under the current law, a marriage is void if both parties "knowingly and wilfully" fail to comply with certain key formalities.[9] In broad terms, these key formalities relate to the preliminaries, the location of the wedding, and the presence of the person(s) tasked with conducting the marriage or ensuring that the relevant documentation is completed. However, what is regarded as key is not the same for each type of wedding, with subtly different provisions as to the necessity of a wedding being in a particular place or in the presence of a particular person applying to each.[10] In addition, a same-sex wedding will also be void if both parties "knowingly and wilfully" marry in a registered place of worship or according to Jewish or Quaker usages without the necessary consents having been given.

9.11 In the Consultation Paper we set out our view as to which formalities were key to our scheme. We took the view that there should be a simple and clear set of rules that – as far as possible – apply to all weddings equally. In the interests of certainty, we also sought to minimise the extent to which the status of the marriage would depend on the knowledge of the parties, while recognising that there were circumstances in which the parties' knowledge would remain an important protection. We provisionally proposed that a marriage would be void if any one of four factors applied.[11]

(1) A marriage would automatically be void if either or both of the parties had not given notice to the civil authorities or, in the case of Anglican weddings, the relevant Church authority. We explained how this approach would provide greater clarity and reflect the importance of the preliminaries within our scheme.[12] In our view, the "knowing and wilful" criterion was an essential protection in the past when only one of the couple had to give notice, but is no longer necessary now that both parties are required to do so.

(2) A marriage would automatically be void if the wedding took place after the authority to marry had lapsed. We noted that the schedule or marriage

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8 A voidable marriage is one that is capable of being annulled but which is valid up until such time as the decree is granted, whereas a void marriage is automatically void without the need for any decree. The grounds on which a marriage may be voidable are set out in Matrimonial Causes Act 1973, s 12.

9 Marriage Act 1949, ss 25 and 49.

10 Consultation Paper, para 10.17.

11 Consultation Paper, para 10.128, Consultation Question 57(1).

12 Consultation Paper, paras 10.58 to 10.71.

document would clearly state the period for which it would be valid and took the view that the couple should be responsible for ensuring that they married within that period.[13]

(3) A marriage would be void if both parties were aware that the ceremony was not officiated at by an authorised officiant. As we noted, whether the person officiating has the authority to do so is not necessarily within the couple's knowledge, even if they have taken steps to check.[14]

(4) In the case of same-sex weddings, the marriage would be void if both parties knew that the necessary opt-in to same sex-marriage had not been given by the relevant religious governing authority. In line with our Terms of Reference, this proposal followed the approach of the current law but adapted it to reflect our scheme's focus on the officiant rather than the location of the wedding.[15]

Consultation

9.12 This proposal attracted a very high level of support, partly because many consultees assumed that a marriage would inevitably be void if the parties had not complied with the legal requirements. Since each factor raises different issues, we consider each separately.

Failing to give notice

9.13 Most consultees agreed that a failure to give notice should render the marriage void. The few who gave reasons cited the importance of the preliminaries, for example in ensuring that the couple were free to marry each other.

9.14 However, Yasin Mohammed Din (a barrister) noted that if notice could be given remotely a couple might believe they had given notice even if that notice had not been received. He gave the examples of a technical glitch in the online system or a letter going astray. In his view only a failure of both parties to give notice should render the marriage void.

9.15 A few consultees also disageed as to the impact of a failure to give notice. The Law Society thought that "this would be more in the arena of a non-qualifying marriage", while Cornwall Council Registration Service argued that a marriage should be non-qualifying if notice was not given, as "otherwise this step will be avoided".

Authority to marry expired

9.16 Most consultees simply agreed that a marriage should be void if the ceremony took place after the authority to marry had expired. Some justified this consequence on the basis that validity should not be open-ended, as the circumstances of the couple might change after notice had been given.

9.17 However, a few consultees questioned whether marrying after the authority to do so had expired was sufficiently serious to justify the marriage being void. Some

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13 Consultation Paper, para 10.67.

14 Consultation Paper, para 10.73.

15 Consultation Paper, para 10.84.

suggested that the marriage should only be void if the couple were aware that the authority had expired. Dr Rehana Parveen (an academic) also suggested that the period of validity could be extended retrospectively.

Officiant not authorised

9.18 Most consultees also agreed that the non-authorisation of the officiant should only result in the marriage being void if both parties were aware of this fact. However, a number specifically disagreed with certain aspects of our proposal.

9.19 Some consultees took the view that a marriage should automatically be void if the ceremony was not officiated at by an authorised officiant, regardless of whether either of the parties were aware of this. Most did not give any reason for this view, but a few noted that it was the responsibility of the couple to ensure that the officiant was authorised. In addition, Mishcon de Reya LLP objected to reintroducing "a subjective element", which it suggested would undermine our aim of greater certainty. It also expressed concerns about one of the couple claiming that they had not known the officiant was not authorised "as leverage upon the breakdown of their relationship".

9.20 Other consultees suggested that the knowledge of either party that the officiant was not authorised to act should be sufficient to invalidate the marriage. Some justified this approach by noting that other factors referred to "either or both" without engaging with the different reasons that might apply to the issue of non-authorisation. Others raised concerns about deception. Among them were the Church of England, which commented that "the implication of the proposal is that, if one party is not aware that the celebrant is not authorised, the marriage would not be void". It added that it failed to see the logic of requiring both of the couple to be aware "when the awareness of one party strongly implies deception". Humanists UK also suggested that a marriage should be voidable (rather than valid) if "one party was aware that the ceremony is not being officiated by an authorised officiant but the other is not".

9.21 A few consultees also suggested that if both parties knew that the ceremony was not officiated at by an authorised officiant the marriage should be non-qualifying rather than void. The Churches' Legislation Advisory Service asked whether our intention was to reverse the decision of the Court of Appeal in *Attorney General v Akhter*, as regards the circumstances in which a wedding is a non-qualifying ceremony.[16] Mishcon de Reya LLP also argued that "where both parties are aware that the ceremony is not being officiated by an authorised officiant, then it cannot be presumed that they intended to have a legal marriage". In its view, a couple should not "gain the protections of a marriage if they have both knowingly not complied with the most critical regulation".

Relevant governing body not opted in

9.22 Although this proposal attracted the most discussion, much of that discussion related to broader issues around same-sex weddings that lie outside our Terms of Reference.

9.23 A few consultees took the view that the marriage should automatically be void if the relevant religious group had not opted in, regardless of whether the couple were

[16] [2020] EWCA Civ 122, [2020] 2 WLR 1183.

aware of this fact. Others argued that the knowledge of *either* party that the necessary opt-in had not been given should be sufficient to invalidate the marriage.

9.24 The Church Growth Trust also suggested that further safeguards might be needed in relation to the buildings in which same-sex weddings could take place. It suggested that owners of religious buildings who did not want their buildings to be used for same-sex weddings should be able to register an opt-out with the General Register Office. It further suggested that an officiant should have a duty to check whether the building had been registered.

9.25 A few consultees suggested that if both parties knew that the necessary opt-in had not been given the marriage should be non-qualifying rather than void. By contrast, Dr Augur Pearce (an academic) commented that he thought that the appropriate sanction would be "a proportionate ecclesiastical penalty on the officiant", although he acknowledged that our Terms of Reference did not allow us to propose a change from the current law.

Other factors

9.26 A few consultees argued that other factors should also render a marriage void. In some cases these were factors that related to whether the parties are free to marry each other, such as a pre-existing marriage. The Justice for Joan campaign suggested that a marriage should be void "if the required preliminaries (such as separate interviews) have not been correctly followed", and another consultee suggested that a predatory marriage should render a marriage void. In addition, Southall Black Sisters proposed an additional ground of "deception and coercion rendering a marriage void".

Discussion and conclusions

9.27 As we explained in the Consultation Paper, the "knowingly and wilfully" criterion plays an important protective function in the current law. It reduces the possibility of either of the couple being tricked into a ceremony that has no legal consequences and ensures that a marriage will not be void on account of an accidental failure to comply.[17] However, it also adds a subjective element into the law and raises the possibility of a marriage being held to be valid despite important formal requirements having been omitted.

Failing to give notice

9.28 As noted above, there was widespread agreement that a failure to give notice should result in the marriage being void. However, one consultee identified the risk of a couple thinking that they had given notice when in fact the notice had not been received. We have therefore given further thought as to which steps should be a pre-requisite for validity. We have also given further thought as to how to accommodate our recommendations regarding Anglican preliminaries.[18]

9.29 Under the current system of civil preliminaries, both of the couple are required to give notice in person. Under our scheme, it will be possible for initial notice to be given

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17 Consultation Paper, para 10.19.

18 See Ch 3.

online but it must be followed by an in-person interview. We are no longer recommending that it should be possible to give notice by post, which removes the risk of a couple believing that they have given notice when in fact the letter has gone astray. Even so, in our view, a couple should not be regarded as having complied with the requirement to give notice if they had only given initial notice. The online system for giving initial notice should make it clear to the couple that they need to do more than simply submit an online form in order to complete the process. Making the in-person interview a pre-requisite for validity will reinforce the importance of the interview and provide clarity as to what a couple are expected to do.

9.30 This approach would also allow for consistency between civil preliminaries and Anglican banns and common licences.[19] As set out in Chapter 3, we are recommending that couples marrying by banns should each have an in-person meeting with the incumbent of their parish before the marriage document is issued. We are also recommending that both of the couple should be required to attend and make separate declarations that there is no impediment to their marriage in order for a common licence to be granted.[20] Again, making these meetings or declarations a pre-requisite for validity reinforces their importance and provides clarity. This approach would also have the advantage of reassuring Anglican clergy that mistakes in publishing banns would not impact on the validity of the marriage.

9.31 We emphasise that the requirement for the couple to give notice of their intention to marry to a registration officer is a specific legal act. Religions may have their own customs and practices around the giving of notice to marry, but (with the exception of Anglican preliminaries) no other religious preliminaries are recognised by law. This point is worth clarifying given that the National Commission on Forced Marriage referred to notice being given by family members. Since there is no option for notice to be given by anyone other than the couple themselves, we assume that they were referring to family members informing the religious authorities of the intended wedding.

9.32 We have considered whether there is any risk of a wedding going ahead with one of the couple pretending to the other that they have complied with the required preliminaries. However, we think that there are sufficient safeguards against this risk. Except where the couple are marrying on the authority of a special licence,[21] the schedule or marriage document authorising the wedding will only be issued once both of the couple have had their in-person interview or meeting or made their separate declarations. The absence of the relevant documentation would therefore provide a warning that the required preliminaries had not been completed.[22] Further, an officiant who went ahead with a wedding without a schedule or marriage document would be in breach of their duties and risk deauthorisation.

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19 As we explain in Ch 3, Anglican special licences would continue to operate as an exception to the legislative requirements.

20 See Recommendation 14 at para 3.296 and Recommendation 15 at para 3.307 above.

21 As we explain in Ch 3, special licences, which are not currently regulated by the Marriage Act 1949, remain outside the scope of our scheme.

22 Under the current law, the schedule is issued to one or both of the couple, except where a registrar is to be present at the ceremony: Marriage Act 1949, s 31(4).

9.33 As a result, we do not think that it is necessary to make the issue of a schedule or marriage document a pre-requisite for the marriage to be valid. We regard the issue of such documents as an administrative matter that is not within the control of the couple. We discuss below our recommendation that mistakes in issuing the schedule or marriage document should not result in a marriage being void.

9.34 We therefore recommend that the failure of either or both parties to comply with the in-person stage of the preliminaries (whether as a part of civil or Anglican preliminaries, otherwise than by special licence) would result in a void marriage. How the in-person stage is conducted would not affect the validity of the marriage. For example, a failure by a registration officer or member of the clergy to ensure that each of the couple had a separate interview or meeting or made separate declarations would not affect the validity of the marriage as these matters are outside the control of the couple.

Authority to marry expired

9.35 There are clearly certain exceptional situations in which the authority to marry should be extended. In Chapter 11, we recommend that weddings legislation should contain a power for secondary legislation to make emergency provision to permit the validity of schedules and marriage documents to be extended.

9.36 Such exceptional cases apart, we think it is important for the wedding to take place within the specified period. The longer the lapse of time since the authority to marry was issued, the greater the risk that things will have changed since notice was given. We therefore see no reason for departing from our provisional proposal.

9.37 In our view, it is reasonable to expect couples to know the period for which the authority to marry is valid. Under our scheme, that period will begin when the schedule is issued or, in the case of Anglican preliminaries, when the banns have been published or a common or special licence granted. A common or special licence, and in many cases the schedule, will be issued to the couple and they will therefore be able to check the date. Further, the schedule will need to be produced at the wedding itself and it is hard to imagine the wedding going ahead without anyone, and in particular the officiant, noticing that it has lapsed. Similarly, the member of the Anglican clergy officiating at the wedding will have a certificate confirming when the banns were called and should not proceed if they have expired.

9.38 We do not think that it should be possible for the authority to marry to be extended retrospectively, after the wedding has taken place. If there were to be a procedure for granting an extension retrospectively, difficult questions would arise as to whether both parties would need to apply and whether they would need to give reasons to justify an extension being granted. It would add an unnecessary layer of complexity.

Officiant not authorised

9.39 As noted above, some consultees argued that a marriage should automatically be void if the officiant was not authorised. However, none of those who made this argument acknowledged that a lack of authorisation does not invalidate a marriage under the current law. At present, if a person purports to be a Clerk in Holy Orders for the purpose of conducting an Anglican wedding, the fact that they are not ordained does not invalidate the marriage unless both of the couple are aware of that fact. Similarly, a marriage in a register office or on approved premises is only void if both of

the couple "knowingly and wilfully" marry in the absence of a superintendent registrar and registrar.[23] To adapt the example given by one consultee of two cleaners sitting in the registrar's office and conducting a marriage, if the parties had given notice and at least one of them genuinely believed that the cleaners were the superintendent registrar and registrar, then under the current law the marriage would be valid.

9.40 In our view this important (and long-standing) protection against a marriage being void should remain. We think that the subjective element promotes rather than undermines our aim of certainty. A rule that a marriage is automatically invalid if the officiant is not authorised might appear to be clear and certain, but the resulting risk of invalidity would create uncertainty. It is also important to consider certainty from the perspective of the couple, in terms of what they can be certain about. That distinguishes giving notice and the duration of the schedule (facts that are within the knowledge of the parties) from the authority of the officiant (a fact that is not necessarily within their knowledge).

9.41 We also note that, where notice has been given, the risk of the officiant not being authorised is very small. Where necessary, the authorisation of the intended officiant will be checked when notice is given.[24] It is however possible that an officiant may have ceased to be authorised[25] between the schedule being issued and the wedding, without the couple being informed. Even if the couple re-checked the online list of officiants before the wedding went ahead, the list may not have been updated immediately.

9.42 We think the same objections apply to the arguments that a marriage should be void if only one of the couple knew that the officiant was not authorised. We note that some consultees were concerned about the risk of deception, but in our view that is a reason for our proposal. In the absence of any other invalidating factor, we think that the marriage should be valid if at least one of the couple believed the officiant to be authorised. The law should protect a person who has good reason to believe that they are entering into a valid marriage. Although a void marriage offers some protection, it does not give the same rights as a valid marriage. Holding the marriage to be void would only benefit the deceiving party.

9.43 We note that some consultees thought that the ceremony should be classified as non-qualifying if both parties knew that the officiant was not authorised. However, we think that this would be a disproportionate response where other formalities had been completed. It would mark a change from the current law, under which a ceremony is only classified as non-qualifying if it is conducted entirely outside the Marriage Act 1949.[26] We think it unlikely that a couple who have engaged with the legal process by giving notice would deliberately choose a person who was not authorised to officiate

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23 Marriage Act 1949, s 49(g) to (gg). An equivalent provision applies to weddings in registered buildings: s 49(f).

24 See Recommendation 8 at para 3.201, Recommendation 21 at para 4.260, and Recommendation 23 at para 4.328 above.

25 For example, if the officiant's authorisation has been withdrawn or if an independent officiant's authorisation has lapsed on account of their failure to engage in continuing professional development: see Recommendation 21 at para 4.261 and Recommendation 23 at para 4.329 above.

26 *Attorney General v Akhter* [2020] EWCA Civ 122, [2020] 2 WLR 1183.

at their wedding. It might however happen that the original officiant is unable to attend at the last minute, no substitute can be found, and an unauthorised person steps in rather than the ceremony being cancelled. Less plausibly, a couple might choose to go ahead with an officiant whose authority has been withdrawn since they gave notice. In cases such as these we think that it would be sufficient to hold the marriage to be void if both parties knew that the person officiating was not authorised to do so.

9.44 Again, we see no reason for departing from our provisional proposal and therefore recommend that a marriage will be void if both parties know that the ceremony was not officiated by an authorised officiant.

Relevant governing body not opted in

9.45 In our view, the same objections apply to suggestions that a marriage should be void even if neither party, or only one of them, was aware that the relevant religious group had not opted in to conducting same-sex weddings. No consultees explained why they thought this harsher approach was justified. As we explained above, our proposal simply adapted the current provision on when a marriage will be void to an officiant-based system. Similarly, we think that classifying a ceremony as non-qualifying if both parties knew that the relevant opt-in had not been given would be a disproportionate response where all other formalities have been observed.

9.46 We explain elsewhere in this Report that both a religious organisation and its nominated officiants would need to opt into conducting same-sex weddings. There would therefore be no need for nominated officiants to check whether their relevant governing authority had opted in; if it had not, none of its officiants could be authorised to conduct same-sex weddings. We also explain the mechanisms that will exist for religious groups to refuse to allow same-sex weddings in the buildings that they own. We do not think that a specific register of buildings that have opted out of conducting same-sex weddings is either necessary or desirable.[27]

Other factors

9.47 Our focus is on when non-compliance with the procedural requirements should affect the validity of the marriage. The question of what other factors (such as age, prohibited degrees, or a pre-existing marriage) may render a marriage void fall outside our Terms of Reference and our new scheme will not change the existing law on these points.

9.48 We think that it would be disproportionate to hold a marriage to be void if the parties' in-person interviews were not conducted separately, as suggested by the Justice for Joan campaign. Our general approach has been to restrict the factors that might render a marriage void to those that are within the control of the couple, and the parties are not responsible for how registration officers or Anglican clergy discharge their responsibilities. Nonetheless, our scheme does ensure that it will be a precondition of a valid marriage that every person (unless married by special licence) will have completed an in-person stage as part of the preliminaries.

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[27] See para 8.31 and following above.

9.49 The suggestion by Southall Black Sisters that "deception and coercion" should render a marriage void has particular relevance to the issue of religious-only marriages, and we consider it below.

Recommendation 37.

9.50 We recommend that any one of the following factors on its own should render a marriage void:

(1) the failure of either or both parties to complete the in-person stage of the civil or Anglican preliminaries, other than where the marriage is by special licence (although a failure on the part of the registrar or Anglican clergy to interview each of the couple separately would not render a marriage void);

(2) the wedding taking place after authority to marry had lapsed;

(3) the knowledge of both parties that the ceremony was not officiated at by an authorised officiant; or

(4) the knowledge of both parties that the necessary opt into same-sex marriage had not been given by the relevant religious governing authority, in the case of same-sex marriages.

When non-compliance would not affect validity

9.51 It follows that under our scheme, a failure to comply with any requirements except those listed in Recommendation 37 will not render a marriage void. From one perspective there is no need to stipulate when non-compliance does not affect validity. However, as discussed above, the Marriage Act 1949 specifically lists the situations in which a failure to comply with certain legal requirements may result in a void marriage. It also specifically states that a failure to comply with certain other requirements will have no impact on the validity of the marriage. There are also some legal requirements that appear in neither group. The assumption has always been that non-compliance will only result in a void marriage if that is expressly stated in the legislation. Nonetheless, as we explained in the Consultation Paper, in our view the legislation should be clear as to which factors do or do not affect the validity of a marriage, rather than leaving so important a point to be inferred from the absence of explicit provision and potentially be subject to unexpected interpretation by the courts.

9.52 We therefore provisionally proposed that any future legislation should make it clear that neither the absence of witnesses, nor a failure to sign or return the schedule or marriage document, should render the marriage void. In doing so, the legislation would simply be clarifying what is already understood to be law.[28]

9.53 As we explained in the Consultation Paper, we have not heard anything to suggest that there is a problem with couples not complying with those requirements that are

[28] On the absence of witnesses not affecting the validity of the marriage, see *Wing v Taylor* (1861) 2 Sw & Tr 278, (1861) 164 ER 1002.

listed as not affecting validity. Further, as we explain below, our scheme contains other mechanisms to ensure that ceremonies are only conducted with witnesses present and that the relevant documentation is subsequently signed and returned.

9.54 We also took the view that a couple should be able to rely on the fact that a schedule or marriage document had been issued to them even if it had been issued before the waiting period had expired or after an objection had been made.[29] At present, a marriage will be void if the couple have "knowingly and wilfully" married without a schedule having been "duly" issued by the superintendent registrar of the district in which the marriage is to be solemnized.[30] Our view was that a couple should not face any consequences as a result of a schedule being issued "unduly". Similarly, in the case of Anglican weddings, the marriage will be void if it goes ahead without banns being "duly" published or a licence granted.[31] Again, our view was that a couple should be able to rely on the fact that a marriage document had been issued, regardless of whether there had been mistakes in the calling of the banns. We therefore provisionally proposed that mistakes in the issuance of the schedule or marriage document should not render a marriage void.[32]

Consultation

9.55 Overall, only a minority of consultees agreed with this proposal. As many consultees differentiated between these three factors in their responses, we consider each separately.

Mistakes in issuing the schedule or marriage document

9.56 Many consultees agreed that mistakes in issuing the schedule or marriage document should not make a marriage void. However, some qualified their response by commenting that mistakes could (or should) be rectified, or that only minor or genuine mistakes should not affect validity.

9.57 Some who disagreed with our proposal simply stated that mistakes should not be made. Others thought that giving false information about the names or ages of the couple or the date of the wedding should render a marriage void. Dr Augur Pearce (an academic) noted that under the current law, "deliberately misleading information from the parties … might well render a publication of banns 'undue' and so void", and questioned whether our proposal covered that possibility.

9.58 Others argued that the effect of a mistake should depend on whether the couple were aware of it. The Faculty Office of the Archbishop of Canterbury, for example, noted that registration officers had authorised Anglican weddings involving non-relevant nationals to go ahead in churches in which the couple did not have the legal right to marry. In its view the document authorising such a wedding would have been "issued unlawfully" and the marriage ought to be void or voidable if the couple "proceeded with the wedding in the knowledge that the preliminary was invalid". It also suggested that

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29 Consultation Paper, para 10.129, Consultation Question 57(2).

30 Marriage Act 1949, s 49(b).

31 Marriage Act 1949, s 25(2)(b).

32 Consultation Paper, para 10.129, Consultation Question 57(2).

the marriage should be void or voidable if the officiant was aware that the preliminary was invalid.

Absence of witnesses

9.59 Few consultees noted that the absence of witnesses does not invalidate a marriage under the current law. Most interpreted the question as asking whether witnesses were necessary, not what the effect of their absence should be.

9.60 Some consultees saw the requirement for witnesses to be present as symbolising the public nature of marriage. Other consultees drew analogies with other legal acts that had to be witnessed in order to be valid (such as a will) or noted that witnesses would be able to give evidence if the validity of the marriage was subsequently challenged.

9.61 Many consultees saw witnesses as a safeguard against fraudulent, sham, or forced marriages. Among them, Humanists UK argued that the absence of witnesses should result in a void marriage, suggesting that the additional protection against forced marriages would "outweigh any risks of occasional marriages being rendered void for failing to comply with the requirements". Some consultees also suggested that witnesses could ensure that the parties had capacity, spot issues that the officiant had not, or empower individuals to speak out.

9.62 Although many consultees expected witnesses to play an active role, few considered whether this meant that witnesses should themselves need to meet any specific conditions. Of those who did, Register Our Marriage suggested that "there must be at least two reliable witnesses (over 18 and under 80) of sound mental and physical health, who can testify to the marriage in the future". One local authority suggested that witnesses should be at least 16 years old.

Failing to sign or return the schedule or marriage document

9.63 The consultation question referred to the signing of the schedule or marriage document and the registration of the marriage as separate requirements, anticipating how these elements would be split with the introduction of the schedule system. However, only a few consultees clearly differentiated between these stages in their response, probably because at the time of the consultation there was still one single stage of signing the register, and most focussed primarily on the issue of signing.

9.64 Some consultees agreed with our proposal that a failure to sign or return the schedule or marriage document should not invalidate a marriage on the basis that the documentation could be signed at a later date. Relatedly, consultees also noted that there might have been some reason preventing one or both of the couple from signing the documentation immediately.

9.65 A few consultees disagreed with our proposal because they saw signing as necessary to constitute the marriage. Some noted our earlier proposal that signing might be an expression of consent in the absence of any expression of consent in the ceremony. Others were concerned that our proposal would render a marriage void if there had been no earlier expression of consent and the schedule had not been signed.

9.66 Other consultees saw signing the documentation as an intrinsic part of marriage as a legal or public act. Some drew parallels with other legal documents that have to be

signed or noted the importance of records for genealogical purposes. A few consultees also identified signing as a potential safeguard against abuse, fraud or forced marriages. Some consultees were also concerned about what would happen in the case of any future legal dispute, suggesting that there would be no evidence of the marriage unless the documentation had been signed or the marriage registered.

9.67 Very few consultees provided reasons why the marriage should be void if the documentation was not signed. One registration officer saw it as a means of ensuring compliance. A few consultees suggested that the marriage should only be void if both of the couple had failed to sign or if the officiant had failed to sign. Other consultees drew a distinction between a deliberate refusal to sign and an oversight.

9.68 As noted above, few consultees specifically addressed the issue of what would be required after the schedule or marriage document had been signed. Most who did took the view that a failure to register the relevant documentation should not affect the validity of the marriage. However, Mishcon de Reya LLP took the view that if the couple was responsible for returning the documentation, the marriage should be void if they failed to do so, as they would "have failed to comply with a step that has been required of them".

Discussion and conclusions

9.69 It was clear that most consultees did not appreciate that a marriage might be valid even if the parties had not complied with all the requirements of our scheme. Yet there have always been certain requirements that are merely "directory" and have no impact on the validity of the marriage. As we noted in the Consultation Paper, the law has always tried to uphold marriages wherever possible. Adding new grounds on which a marriage might be void would run counter to that policy.

Mistakes in issuing the schedule or marriage document

9.70 We agree with the many consultees who commented that minor typographical errors should not invalidate a marriage and that it should be possible for corrections to be made. That said, these types of mistakes were not what we had in mind.

9.71 As we explained above, our view was that a couple should be able to rely on the fact that a schedule has been issued. We are not aware of any case in which a marriage has been held to be void because the parties "knowingly and wilfully" married without the authority to do so having been "duly" issued. Nor do we think it likely that such a case would arise. First, it is unlikely that a superintendent registrar would issue a schedule if the conditions for doing so had not been met. Second, it is even more unlikely that a couple would realise that the conditions had not been met, so they would not be "knowingly and wilfully" flouting the law if they married. In our view, stating that a mistake in issuing the schedule would not invalidate the marriage would achieve the same result as well as being simpler and clearer.

9.72 We also thought that the same approach should apply to Anglican weddings and that couples should be able to rely on the fact that a marriage document has been issued to demonstrate that the banns had been duly published or the common licence duly issued. We note that there are some 19th-century cases in which marriages have been held to be void because the parties "knowingly and wilfully" married without

banns being called but we are not aware of any recent examples.[33] Further, these cases tended to involve misrepresentations by the parties as to their names. Once couples have a duty to provide documentary evidence of their names, the scope for such misrepresentations is materially reduced.

9.73 As noted above, some consultees asked about the consequences of the parties making a deliberate misstatement when giving notice. Under the current law, the fact that the parties have lied about their name, age, or marital status when giving notice to the registration service does not of itself invalidate a marriage.[34] If they are in fact under age, or already married, the marriage will be void, but that is a different matter. A different rule has always applied to banns, but as noted above the scope for misrepresentations is now considerably reduced. Overall, we think that the need to produce documentary evidence as part of both civil and Anglican preliminaries,[35] along with the risk of prosecution for perjury, provides a sufficient safeguard against deliberate misstatements.

9.74 We note the concern of the Faculty Office of the Archbishop of Canterbury that a schedule might be issued authorising a wedding in a parish in which the couple are not entitled to get married. As at present, no member of the clergy would be required to conduct the wedding of a couple in such a case. Under our scheme, any religious organisation, including the Anglican churches, will be able to set its own rules as to where it will conduct weddings.

9.75 If the marriage did go ahead, we think that it would be unduly harsh for it to be void simply because the couple were not entitled to be married in the parish. Such an outcome would be inconsistent with our recommendation that the location of the wedding should cease to have any relevance to its validity. It would also be harsher than the current law. The Marriage Act 1949 explicitly states that, if banns are called, or a licence obtained, the parties' lack of entitlement to be married in a particular church or chapel does not affect the validity of a marriage there.[36] Although there is no equivalent provision for Anglican weddings authorised by a schedule, there is also nothing expressly stating that a schedule can only be granted to authorise an Anglican wedding in a parish in which the couple are entitled to be married.[37]

Witnesses

9.76 We agree that witnesses have an important role to play, both practically and symbolically. As noted above, our proposal was not that a wedding should be

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33 *Tongue v Allen* (1835) 163 ER 13; *Brealy v Reed* (1841) 163 ER 601; *Wormald v Neale* (1868) 19 LT 93.

34 *Holmes v Simmons* (1865-69) LR 1 P&D 523; *In re Rutter* [1907] 2 Ch 592; *Plummer v Plummer* [1917] P 163.

35 See para 3.247 and following above.

36 Marriage Act 1949, ss 24 and 72(3); Church of England Marriage Measure 2008, s 4(2); Marriage (Wales) Act 2010, s 5.

37 The issue of whether a superintendent registrar could grant a certificate to a couple to marry in a church that lay within their district but not their parish of residence was raised as early as 1840, with *The Episcopal Magazine,* 15(2), March 1840, p 168 reporting that the Registrar General had confirmed that the certificate should always be granted subject to the provision that the marriage be solemnized in the church of the parish in which one of the parties resided. However, no such provision was ever included in the legislation.

permitted to take place without witnesses but simply that the absence of witnesses should not invalidate a marriage.

9.77 To justify introducing a new rule that the absence of witnesses would invalidate a marriage, there would need to be evidence that such a rule would have clear advantages. The question is whether invalidating a marriage that is not attended by witnesses is necessary to secure the presence of witnesses.

9.78 Under our scheme, an officiant will be under a duty to ensure that witnesses are present at the ceremony. Conducting a ceremony without witnesses will be a breach of their duties as an officiant and potentially lead to their deauthorisation. In our view that will be sufficient to ensure that witnesses are present. It is a more proportionate response than invalidating the marriage, particularly if one or both of the couple is unaware of the requirement that witnesses should be present or is persuaded to go ahead in the absence of witnesses.

9.79 We also note that the assumption that witnesses would act as a safeguard assumes that witnesses are independent observers who would ensure that the ceremony is carried out properly. However, few witnesses will have sufficient knowledge of the legal requirements to make that assessment. Very few consultees suggested that any requirements as to age or capacity should apply to witnesses; of those who did, none argued that a marriage should be void if witnesses did not satisfy those requirements.

9.80 Moreover, it is a criminal offence for anyone to force one person to marry another.[38] We do not think it is likely that a person seeking to bring about a forced marriage would run the risk of allowing independent witnesses to attend. It is also unlikely that the fact of a forced marriage would be apparent to witnesses: coercion can take many forms, and certainly need not be exerted during the ceremony in a way that would be obvious to an observer. Nor does the victim need to be visibly distressed to have been forced – victims of many crimes hide the crimes done to them for obvious reasons, such as trying to protect themselves from physical harm.

Failing to sign the schedule or marriage document

9.81 Making a marriage void where the documentation has not been signed by the couple would be a significant change from the current law. It would make signing the documentation a constitutive part of the marriage rather than, as at present, merely evidence of the marriage. It would also create a disjunction between when a couple are regarded as married in their eyes or the eyes of their religion and when they are regarded as married in the eyes of the law. It would therefore undermine our recommendation that a marriage should come into being once the couple have expressed their consent to be married.[39] Moreover, making the signature of the *officiant* essential to the validity of the marriage – as some consultees suggested – would run counter to our view that the factors invalidating a marriage should be within the knowledge and control of the couple.

9.82 No consultees suggested that the current law had caused any difficulties or led to failures to sign. Further, under our scheme, an officiant will be under a specific duty to

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38 Anti-social Behaviour, Crime and Policing Act 2014, s 12.

39 See Recommendation 29 at para 5.81 above.

ensure that the documentation is signed. A failure to do so will be a breach of their duties as an officiant and potentially lead to their de-authorisation. In our view that will ensure that the documentation is signed.

9.83 We do not think that invalidating a marriage if the documentation has not been signed could be an additional safeguard against forced marriage. A person who is forced to go through a marriage may also be forced to sign the documentation. Nor is it clear how holding a marriage to be void in the absence of a signature would offer any real protection against forced marriages. At present, a marriage is voidable if the parties' consent was vitiated by duress or lack of capacity, and that would continue to be the case under our scheme. We are also recommending that if no consent was given and the relevant documentation was not signed the marriage would be non-qualifying. We do not think that there is a need for a further category to be created to cover those cases where consent had been expressed (under duress) but the relevant documentation had not been signed.

Failing to return the schedule or marriage document to be registered

9.84 In our view, it would be illogical to hold that a marriage came into being when the couple expressed their consent to be married but could be invalidated because of a subsequent failure to return the relevant documentation.

9.85 Moreover, under the new schedule system it is not the responsibility of the couple to return the schedule or marriage document to be registered. Instead, it is the responsibility of the person who would previously have been tasked with registering the marriage. Given our general view that only non-compliance by the couple should have consequences for the validity of the marriage, we think it would be inappropriate for a marriage to be void where a third party had failed to return the documentation. Similarly, a failure by a registration officer to enter the details into the marriage register should not result in the marriage being void.

Recommendation 38.

9.86 We recommend that failure to comply with any of the other requirements except those listed in Recommendation 37 should not render a marriage void, including:

(1) mistakes in the issuance of the schedule or marriage document (including whether the conditions for the issue of the schedule or marriage document had been fulfilled);

(2) the absence of witnesses; and

(3) a failure to sign the schedule or marriage document, or to register the marriage.

When non-compliance would result in a non-qualifying ceremony

9.87 As noted above, under the current law a ceremony conducted outside the framework of the Marriage Act 1949 will be classified as non-qualifying. The Court of Appeal in

Attorney General v Akhter[40] confirmed that there must be a minimum level of compliance with the required formalities before a ceremony has any legal recognition. In the Consultation Paper we set out what we thought that minimum should be.

9.88 First, we thought that those factors that might individually result in a void marriage should, when combined, result in a non-qualifying ceremony. We therefore provisionally proposed that a ceremony should be non-qualifying if either of the couple had failed to give notice and both knew that the ceremony was not officiated at by an authorised officiant, or, in the case of a same-sex marriage, that the necessary opt-in had not been given by the relevant governing authority.[41]

9.89 Second, we thought that the law should clarify the effect of a failure to express consent. By this we envisaged the situation where one of the couple does not provide any expression of consent, rather than that where one gives an apparent consent that was not valid for some reason.[42] In our view, under our scheme a marriage could not come into existence without an expression of consent. We provisionally proposed that in the absence of an expression of consent a ceremony should be non-qualifying.[43]

Consultation

9.90 A very substantial majority of consultees agreed with our proposal. Consultees thought that our proposed approach would clarify the law and that we had correctly identified the factors that should result in a non-qualifying ceremony. Some consultees also took the view that our proposal would help to reduce the number of non-qualifying ceremonies.

9.91 However, some consultees thought that a failure to comply with any one of the listed factors should result in a non-qualifying ceremony. A few who made this point appeared not to understand the difference between a void marriage and a non-qualifying ceremony. Mishcon de Reya LLP also disagreed with our distinction between single and cumulative failures to comply, taking the view that "there should be fixed consequences for non-compliance".

9.92 In addition, some consultees suggested that the knowledge of *either* party that the officiant was not authorised or that the necessary opt-in had not been given should result in a non-qualifying ceremony. The few consultees who gave a reason for this suggestion generally took the view that this result was justified in cases of deception. Some consultees also raised questions as to how knowledge (or lack of knowledge) would be established and where the burden of proof would lie. By contrast, Southall Black Sisters noted that there might be cases where both of the parties were aware that the officiant was not authorised but where one had been coerced into having a religious-only wedding.

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40 [2020] EWCA Civ 122, [2020] 2 WLR 1183.

41 Consultation Paper, para 10.130, Consultation Question 58.

42 If the consent was not valid due to duress, mistake or incapacity, the marriage would be voidable: Matrimonial Causes Act 1973, s 12.

43 Consultation Paper, para 10.130, Consultation Question 58.

9.93 A few consultees questioned what was meant by a failure to express consent. Some suggested that this proposal would make it necessary to be specific about how consent was expressed, for example by using set phrases or signing the schedule or marriage document. The Family Justice Council was also concerned about the implications for those who had been forced into the marriage, arguing that a failure to express consent should be treated in the same way as consent that had been vitiated by duress, mistake or incapacity and result in a voidable marriage. However, it agreed that a ceremony should be non-qualifying if both parties made it clear that they did not regard themselves as getting legally married.

Discussion and conclusions

9.94 In our view, there are two types of situations in which a ceremony should be non-qualifying.

9.95 First, we think that there is a fundamental difference between a ceremony that fails to comply with one of the requirements for a valid marriage and a ceremony that fails to comply with any of those requirements. That difference lies at the heart of the current distinction between a void marriage and a non-qualifying ceremony. We think that this approach should be carried over into our new scheme, and the majority of consultees agreed. Under our scheme, the failures that would individually result in a void marriage will, when combined, result in a non-qualifying ceremony. As a result, a ceremony will be non-qualifying if:

(1) one or both of the couple had not had their in-person interview; *and*

(2) both knew that the ceremony was not officiated at by an authorised officiant or, in the case of a same-sex marriage, both knew that the necessary opt-in had not been given by the officiant's relevant religious governing authority.

9.96 Second, we also think that there is a fundamental difference between an expression of consent that is vitiated by duress or lack of capacity and a failure to express consent at all. A marriage is voidable if "either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise".[44] The reference to a "valid" consent implies that there has been at least an apparent consent to the marriage.

9.97 In our view, there can be no marriage, not even a voidable one, if there is no expression of consent in the first place. That does not, as some consultees suggested, mean that there have to be prescribed words to create a marriage. It simply means that in the absence of some words or actions signifying consent the result is a non-qualifying ceremony. In other words, if an individual has refused to say or do anything to signify their consent, including signing the schedule or marriage document, there is no marriage to annul.

9.98 We acknowledge the concerns of the Family Justice Council that the victim of a forced marriage who had refused to express consent would not be entitled to any financial remedy if the ceremony was classified as non-qualifying. Against this we note the expense of obtaining a decree of nullity if such a ceremony were to be regarded as

[44] Matrimonial Causes Act 1973, s 12(c).

giving rise to a voidable marriage and the unlikelihood of a court exercising its powers to make financial orders where a marriage had never subsisted as a matter of fact. While it is possible that a person who had refused to express consent might subsequently be forced to live with the person they had refused to marry (for example, through family pressure), we have not heard of this happening in practice. If such cases do occur, we think that any remedy as regards financial relief at the end of the relationship lies in according rights to cohabiting couples, as we discuss further below.

9.99 In conclusion, our view remains that both cumulative non-compliance and a failure to express consent should result in a non-qualifying ceremony. We consider the implications for religious-only marriages below.

Recommendation 39.

9.100 We recommend that the following factors should result in a non-qualifying ceremony:

(1) both

(a) the failure of either or both parties to complete the in-person stage of the civil or Anglican preliminaries, other than where the marriage is by special licence (excluding a failure on the part of the registrar or Anglican clergy to interview each of the couple separately); and

(b) either

(i) the knowledge of both parties that the ceremony was not officiated at by an authorised officiant, or

(ii) in the case of same-sex marriage, the knowledge of both parties that the necessary opt into same-sex marriage had not been given by the relevant religious governing authority; or

(2) failure of one or both parties to express consent to the marriage.

PRESUMING COMPLIANCE: CLARIFYING THE ROLE OF PRESUMPTIONS

9.101 There are currently two presumptions in favour of marriage. If a couple have gone through a ceremony of marriage and subsequently lived together, it will be presumed that the ceremony in question was a valid one. In the absence of evidence of a ceremony, the fact that a couple have lived together and been reputed to be married will also raise a presumption that they are married.

9.102 As we noted in the Consultation Paper, there has been considerable confusion in the case law as to when these presumptions apply, and why.[45] Properly understood, these presumptions are about the most likely inference to be drawn from the facts

[45] Consultation Paper, paras 10.40 to 10.44.

available. It is not the role of these presumptions to validate ceremonies that did not comply with the legal requirements, or to treat cohabiting couples as if they were married.

9.103 In our view, the current confusion about the scope of these presumptions requires their role to be clarified by statute. We consider each in more detail below.

When a presumption in favour of the validity of a known ceremony should arise

9.104 If a couple go through a ceremony of marriage and subsequently cohabit, it will be presumed that the ceremony resulted in a valid marriage.[46] Such a presumption arises because it is the most likely inference from the facts. No presumption can arise where the ceremony was obviously conducted outside the legal framework.

9.105 As we explained in the Consultation Paper,[47] the decision of the Court of Appeal in *Chief Adjudication Officer v Bath*[48] gave the impression that this presumption could validate a ceremony that did not comply with the law if the relationship of the parties had subsisted for a considerable period of time. The Court of Appeal in *Attorney General v Akhter*[49] has now made it clear that the passage of time does not validate a non-qualifying ceremony. Despite this welcome clarification, in our view it would still be helpful for legislation to set out the specific facts that will give rise to a presumption in favour of the validity of a marriage.

9.106 We therefore provisionally proposed that a presumption in favour of the validity of a marriage should arise where the couple had signed the schedule or marriage document.[50] As we explained, the very existence of a schedule or marriage document would indicate that notice must have been given, and signing it would be an indication of consent. Given that signing the schedule or marriage document is not a requirement for the marriage to be valid, we also proposed that a presumption should arise if the couple had given notice and gone through a ceremony with a person acting as officiant. In both cases it would be possible for the presumption in favour of validity to be rebutted by evidence that the schedule or marriage document had in fact lapsed, that both of the couple were aware that the person officiating had no authority to do so, or, in the case of a same-sex marriage, that the necessary opt-in had not been given.

9.107 A further legacy of *Chief Adjudication Officer v Bath*[51] was the assumption that the presumption would only apply if there had been a long period of cohabitation after the ceremony. Limiting the presumption in that way makes little sense. The presumption in favour of the validity of the ceremony arises because the likelihood is that the ceremony was valid, not because lengthy cohabitation corrects an invalid ceremony. We therefore provisionally proposed that the presumption in favour of the validity of a

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46 See R Probert, "The Presumptions in Favour of Marriage" (2018) 77(2) *Cambridge Law Journal* 375.

47 Consultation Paper, para 10.42.

48 [2000] 1 FLR 8, [2000] 1 FCR 419.

49 [2020] EWCA Civ 122, [2020] 2 WLR 1183.

50 Consultation Paper, para 10.131, Consultation Question 59(1).

51 [2000] 1 FLR 8, [2000] 1 FCR 419.

marriage should not require the couple to have cohabited for any period after its celebration.

Consultation

9.108 A significant majority of consultees agreed with the proposal that signing the schedule or marriage document, or giving notice and going through a ceremony with a person acting as officiant, should raise a presumption that the required formalities had been fulfilled. Some consultees suggested reasons why a couple might not cohabit, such as undertaking military service, working in separate locations (or on a remote location such as an oil rig), being in hospital or being in prison, not having the means to set up home together, or simply personal choice.

9.109 However, many consultees seemed to assume that the question was asking what requirements should be necessary for a marriage to be valid, rather than what facts should raise a (rebuttable) presumption in favour of validity. These consultees either disagreed because they thought that a marriage should only be valid if all formal requirements had been completed or qualified their agreement by suggesting that other formal requirements would need to be fulfilled.

9.110 Similarly, many consultees who commented on the necessity of cohabitation assumed that the question was asking whether a marriage should be valid if the parties had not cohabited. This misunderstanding was compounded by the fact that some consultees interpreted "cohabitation" as a euphemism for consummation. Some consultees noted that a sexual relationship is not a prerequisite for a valid marriage under the current law. Others were concerned that our proposal would abolish the possibility of annulling a marriage on the basis of non-consummation.

9.111 Many consultees who opposed our proposal stated that cohabitation was a key part of marriage or asked what the point of marrying would be if the parties did not cohabit. Some consultees further noted that a failure to live together might raise questions about the intentions of the parties or suggested that a failure to cohabit should require explanation. Relatedly, consultees were concerned that our proposal would facilitate sham or forced marriages.

Discussion and conclusions

9.112 As explained above, there is a legal presumption in favour of the validity of a known ceremony of marriage. However, under the current law it is not entirely clear as to when the fact of the ceremony will have been sufficiently established for that presumption to arise.[52] Our provisional proposals were intended to bring clarity to this area of the law by setting out the facts that would raise a presumption that a valid ceremony had taken place. It would then be for the person challenging the validity of the marriage to show that other requirements necessary to validity had not been completed.

9.113 The facts that raise the presumption should be ones from which it can reasonably be inferred that a valid wedding has taken place. In our view, there should therefore be some evidence of compliance with the legal framework before the presumption arises.

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[52] See R Probert, "The Presumptions in Favour of Marriage" (2018) 77(2) *Cambridge Law Journal* 375.

The majority of consultees agreed with our proposal that a presumption should arise where the couple had signed the schedule or marriage document, or had given notice and gone through a ceremony with a person acting as officiant. Those who disagreed largely did so because they had understood this question as asking what was necessary for a valid marriage, rather than what would raise a *presumption* of validity.

9.114 The presumption arises because the couple have gone through a ceremony that is potentially capable of creating a valid marriage, not because they have cohabited for a period of time after a ceremony that would not be capable of creating a valid marriage. Clarifying that it is not necessary for the couple to have cohabited for any period of time after the ceremony in order for the presumption to arise will remove the confusion that has arisen about a lengthy period of cohabitation being necessary.

9.115 In recommending that there should be no need for the couple to have cohabited for any period after the ceremony, we do not mean to imply that their subsequent cohabitation is irrelevant to the operation of the presumption. While we recognise that there may be many reasons why a couple do not set up home together immediately after a ceremony, one reason might be that they realised that they had not complied with what was required for a valid marriage. In other words, while cohabitation is not a requirement for a valid marriage, a failure of the parties to cohabit may well be relevant to the inferences that should be drawn about the validity of the ceremony. A judge could quite legitimately take a failure to cohabit into account when assessing whether the couple (or one of them) had genuinely believed that they had gone through a ceremony officiated by a person who was authorised to do so or in assessing the likelihood that other requirements for a valid wedding had been observed.

9.116 We also note, in response to the concerns raised by consultees, that clarifying that cohabitation is not a condition for the presumption to arise has no impact on the current non-consummation grounds. Nor would it have any impact on the investigations that are carried out into potentially sham marriages to ascertain whether a couple have established a genuine relationship.

Abolishing the presumption that a couple who have cohabited and been reputed to be married have in fact married

9.117 We also provisionally proposed that the presumption that a couple must have gone through a ceremony of marriage if they cohabited for a long period of time and were believed to be married by family and friends should be abolished.[53] As we explained, the social conditions that made it both necessary and appropriate to presume that such a couple had in fact gone through a ceremony of marriage have long vanished. First, with cohabitation now widespread and widely accepted, its value as evidence that the couple are likely to have gone through a valid ceremony of marriage is much diminished. Second, the need to rely on the presumption has been virtually removed by improved record-keeping, not to mention increased longevity and larger-scale weddings increasing the likelihood of individuals being able to give evidence that a wedding took place.

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[53] Consultation Paper, para 10.132, Consultation Question 59(2).

9.118 Quite apart from the difficulty in drawing any inferences from cohabitation now that many couples who live together are not married, the systematic registration of marriages has largely removed the need for any presumption based on cohabitation and reputation. The only situation in which cohabitation and reputation might be the only evidence of a marriage available to the court would be where the couple and all those present at the ceremony are now dead and unable to give evidence, there is no external evidence of the ceremony such as photos or videos, and the wedding took place in a jurisdiction without reliable registration. Our view was that such cases were likely to be rare and could be dealt with on their facts with the court assessing the weight to be given to the evidence of cohabitation and reputation in determining the likelihood of a valid marriage having taken place.[54]

Consultation

9.119 A substantial majority of consultees agreed with the proposal to abolish the presumption that a couple who had cohabited and been reputed to be married had in fact married. Many consultees suggested that the abolition of the presumption would lead to greater clarity or help to remove misunderstandings about "common law marriage".[55] In addition, the majority of those who suggested that they disagreed gave answers that in fact appeared to oppose the presumption, rather than oppose its abolition.

9.120 However, some consultees thought that the question was asking whether cohabitants should be treated as if they were married. Among them, many consultees noted that a formal process is necessary for a couple to be married. A few, however, were under the impression that our proposal would remove rights from cohabitants.

9.121 A few consultees took the view that a couple who had cohabited for a long period of time and were believed to be married by friends and family should be regarded as married. Some consultees were concerned that the abolition of the presumption would remove legal protections for those who had been living together and holding themselves out as married. Nazia Rashid (a solicitor) commented that there might be couples who would only have lived together if they had had a religious ceremony and that it could be "offensive and distressing" for them to be classified as cohabitants "perhaps after many years of living together and being known as a married couple". Southall Black Sisters similarly assumed that the presumption afforded protection to those who had a religious ceremony and suggested that the circumstances we had described as prevailing in the 18th century[56] "is precisely the reality that continues to exist for many minority women who have entered into a religious-only marriage".

9.122 A few consultees also asked whether the presumption might still have a role to play if a couple had married overseas and there was no documentary evidence of their ceremony. Examples here included refugees or asylum seekers who were married

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54 Consultation Paper, paras 10.122 to 10.125.

55 Recent research shows that almost half of the population still mistakenly believe that cohabitation results in a common-law marriage conferring the same rights as a legal marriage: A Barlow, "Modern Marriage Myths – the Dichotomy Between Expectations of Legal Rationality and Lived Law" in RC Akhtar, P Nash and R Probert (eds), *Cohabitation and Religious Marriages: Status, Similarities and Solutions* (2020).

56 Consultation Paper, para 10.122.

overseas, or a ceremony that took place in a country where the records were destroyed by a civil war.

Discussion and conclusions

9.123 We explained in the Consultation Paper that the presumption that a couple who had been cohabiting were married was distinct from treating known cohabitants as if they were married. The presumption is that the couple in question have gone through a valid ceremony of marriage. It is therefore rebuttable by evidence that they had not in fact gone through a valid ceremony of marriage.

9.124 The abolition of the presumption would therefore not be taking any rights away from cohabiting couples. Such rights as cohabiting couples do have do not depend on them being presumed to be married. Further, a couple do not become married by holding themselves out to be married. As consultees noted, abolishing the presumption would remove one source of confusion about the rights of cohabitants and help to make it clear that cohabiting couples do not have a "common law marriage".

9.125 The current presumption does not protect those who are living together following a religious ceremony of marriage. In such cases, any presumption arising as a result of cohabitation and reputation would be rebutted by evidence that the ceremony they had gone through was not one that was recognised by the law.

9.126 Nor does the presumption offer any protection to those who have married overseas but lack documentary proof of the ceremony. In the event of any dispute, such couples would be expected to give evidence that a ceremony had in fact taken place, and the credibility of that evidence would need to be assessed.

9.127 As we explained in the Consultation Paper, there are few cases in which it would be necessary to rely on cohabitation and reputation. The need would only arise if someone was claiming that a ceremony had taken place in a jurisdiction without reliable registration, if the couple and all those present at the ceremony were dead, and there was no other external evidence such as photos or videos of the ceremony. In such cases, cohabitation and reputation could still be taken into account in assessing the likelihood of a valid ceremony having taken place. Doing so would not require the retention of the presumption.

9.128 In conclusion, consultees' responses illustrated how the presumption can all too easily be misinterpreted as offering protection in situations that do not fall within its scope. None of the situations in which it was suggested that the presumption could play a role were ones in which a marriage would in fact be presumed. In other words, the abolition of the presumption would bring clarity without any real reduction in protection.

Recommendation

Recommendation 40.

9.129 We recommend that a presumption in favour of the validity of a marriage should arise where:

(1) the couple have signed the schedule or marriage document, or

(2) the couple have given notice and gone through a ceremony with a person acting as officiant

but should not require the couple to have cohabited for any period after its celebration.

9.130 We recommend that the presumption that a couple is married if they have cohabited for a long period of time and are believed to be married by friends and family should be abolished.

VITIATED CONSENT

The abolition of the three-year limit on petitioning for nullity

9.131 The current law recognises that a person may appear to be consenting to a marriage when they do not in fact have capacity to do so or are doing so as a result of threats. A marriage is held to be voidable where either of the parties did not validly consent to it.[57] However, any petition to annul the marriage must generally be brought within three years of the ceremony.[58] There is also a general bar that applies if:

(1) the petitioner, with knowledge that it was open to them to have the marriage avoided, so conducted themselves in relation to the respondent as to lead the respondent reasonably to believe that they would not seek to do so; and

(2) it would be unjust to the respondent to grant the decree.[59]

9.132 As we explained in the Consultation Paper, a person who is forced into a marriage may have no realistic means of bringing a petition within that three-year period, whether on account of physical confinement or ongoing abuse and coercion. In *B v I (Forced Marriage)*,[60] the court recognised the injustice of holding such a marriage to be valid and avoided the three-year limit by simply declaring that the marriage never existed. However, there are both conceptual and practical differences between a decree of nullity and a declaration that no marriage ever existed. We therefore

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57 Matrimonial Causes Act 1973, s 12.

58 Matrimonial Causes Act 1973, s 13. The only exception is where the person seeking the annulment was suffering from a mental disorder during those three years and satisfies the court that it would be just to grant leave for proceedings to be brought despite the period having elapsed.

59 Matrimonial Causes Act 1973, s 13(1).

60 [2010] 1 FLR 1721, [2010] Fam Law 348.

provisionally proposed that the three-year limit should be abolished, allowing a person whose consent was vitiated by factors such as duress or lack of capacity to bring a petition at any time.[61]

Consultation

9.133 A significant majority of consultees agreed that there should be no time limit on petitioning for nullity on the basis of vitiated consent. Some consultees took the view that a marriage could not come into existence without consent. Other consultees highlighted the difficulties facing those who had been coerced into a marriage, giving similar examples to those identified in the Consultation Paper. As Southall Black Sisters explained:

> Extensive delays often occur because women are both unaware of the forms of redress available to them and/or are isolated and subject to severe forms of coercive control which hinders their ability to seek advice and support… . BME women also face immense multiple and overlapping internal and external barriers to accessing specialist legal advice due to their sex, race, caste, class and/or socio-economic status and cultural and religious constraints.

9.134 In addition, a few consultees noted the additional challenges that might arise in the case of those who had lacked the capacity to consent to the marriage. Dr Rachael Clawson (an academic responding on behalf of her research project team) noted that such marriages "may not come to light for a number of years". One member of the public reported that his family had only discovered his grandmother's marriage after her death as she was suffering from dementia and did not know that she was married.

9.135 Some consultees also highlighted the importance of annulment as a remedy. The Church in Wales noted the significance of being able to petition for nullity rather than obtaining a divorce. Professor David Hodson (a legal professional) commented on the "artificiality" in the law created by judges re-categorising marriages outside the time limit as never having existed.

9.136 Consultees who disagreed with the proposed abolition of the time limit mainly argued that three years was sufficient for an individual to bring the petition. Some consultees expressed concerns about the quality of evidence that would be available to the court if a petition could be brought more than three years after the ceremony and about the uncertainty as to the status of the marriage in the meantime. A few also expressed the fear that removing the time limit would make it too easy to escape from an unwanted marriage or suggested that a time limit was necessary to encourage a couple to stay together.

9.137 Others suggested that the time period should be shorter, or either stated that consent should have been given at the time of the marriage or that issues about lack of consent should not arise if all due safeguards had been observed. The Faculty Office of the Archbishop of Canterbury was also concerned about the implications of not having a cut-off point, suggesting that

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[61] Consultation Paper, para 10.143, Consultation Question 60.

there comes a time, if a couple have been living in a supposed marriage and may have had children in the marriage, where it would be inappropriate for a court to determine that, in fact, there had never been a marriage all along.

Discussion and conclusions

9.138 Very few of those who disagreed with our proposal recognised that it related to the remedies available to those persons who had never validly consented to be married. Those who thought that the current time limit was too long did not engage with the reasons we gave in the Consultation Paper explaining why coerced persons might be unable to bring a petition within three years.

9.139 As the President of the Family Division explained in *Re K (Forced Marriage: Passport Order)*:

> The abusive nature of a forced marriage does not begin and end on the day of the marriage ceremony. Rather the marriage forms the start of a potentially unending period in the victim's life where much of her daily experience will occur without their consent and against their will, or will otherwise be abusive… . Life for an unwilling participant in a forced marriage is likely to be characterised by serial rape, deprivation of liberty and physical abuse experienced over an extended period. It may also lead to forced pregnancy and childbearing.[62]

9.140 We do not think that the issues we identified in the Consultation Paper could be addressed simply by extending the time limit. Any time limit is essentially arbitrary. Extending it could have a negative impact if steps are taken to prevent the coerced person from challenging the marriage before time is up (for example by preventing them from returning to England and Wales during that time).

9.141 Nor do we think that there is any risk of an annulment on the basis of lack of consent being used as an easy means of exit from a marriage. Obtaining a divorce is far easier than obtaining an annulment. A person seeking a divorce now simply needs to file a statement of marital breakdown and the process can be completed online. By contrast, a person seeking to annul their marriage has to satisfy a court that that their consent was vitiated by some factor such as duress, mistake, or lack of capacity. Further, a court has the same power to make financial orders when granting a decree of nullity as it has upon divorce.

9.142 Although the passage of time may make it harder to evidence a lack of consent, that is not a reason for retaining a time limit. We note that the courts had no difficulty in deciding that the plaintiff had not consented to the marriage in *B v I (Forced Marriage)*,[63] where the petition was brought four years after the marriage. Moreover, we can see no reason why the abolition of the time limit would lead to persons delaying bringing a petition unnecessarily.

9.143 We note the concerns of some consultees that a marriage should not be annulled after it has subsisted for a certain period of time. However, we think that the key issue for these consultees was not the mere passage of time but the acceptance of the

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62 [2020] EWCA Civ 190, [2020] Fam 283 at [24].

63 [2010] 1 FLR 1721, [2010] Fam Law 348.

marriage by both of the parties. To that extent those concerns are addressed by the statutory bar on a decree of nullity being granted to a person who has led the other to believe that they would not seek an annulment. By contrast, if someone has been forced into a marriage and is too scared to seek help, we do not think that they can be regarded as having accepted the marriage, even if they have had children together or others suppose them to be married. We also note that no time limit applies to the non-consummation grounds.

9.144 In our view, abolishing the current time limit on petitioning for nullity on the basis of lack of consent will offer more protection to those who have been coerced into a marriage. Sufficient protections will still exist to uphold marriages that have been accepted by the parties.

Recommendation 41.

9.145 We recommend that the three-year time limit on petitioning for nullity on the basis of lack of consent should be abolished.

OFFENCES

9.146 The current law governing weddings is underpinned by a range of offences of varying levels of severity.[64] These offences are highly inconsistent in their application to different types of weddings in terms of whose actions may constitute an offence, which actions will constitute an offence, and what the penalty will be. There is no general offence of conducting a wedding outside the Marriage Act 1949 or (except for Anglican weddings) without notice having been given. Nor is there any general offence of misleading the couple as to the effect of the ceremony, although there is a specific offence of falsely pretending to be in Holy Orders for the purpose of conducting an Anglican wedding.[65]

9.147 We explained in the Consultation Paper that some of the existing offences would be redundant under our scheme, while others would be more appropriately classified as a failure of duty potentially resulting in the officiant's authorisation being withdrawn. We also explained that because of the separate work being carried out by Government it was not within the scope of our review to consider whether it should be an offence to conduct a wedding outside our proposed scheme. We did however take the view that criminal sanctions could have a role to play within our scheme in order to deter individuals – whether officiants or persons purporting to be officiants – from engaging in conduct that would result in a void marriage rather than a valid one.[66]

9.148 We therefore provisionally proposed that it should be an offence for any person to purport to be an officiant and deliberately or recklessly to mislead either of the couple

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64 Under the Marriage Act 1949, ss 75 to 77 create 19 distinct criminal offences of varying degrees of specificity.

65 Marriage Act 1949, s 75(1)(d).

66 Consultation Paper, para 10.158 to 10.169.

about their status or the effect of the ceremony. We also provisionally proposed that it should be an offence for an officiant deliberately or recklessly to mislead either of the couple about the effect of the ceremony.[67]

Consultation

9.149 There was near unanimous support for both parts of our proposal. Many consultees noted the key role that officiants would play under our scheme or commented that the actions in question were sufficiently serious to merit criminal sanctions. Some also commented that the offence would help to combat the issue of individuals entering into religious-only marriages in the mistaken belief that the steps they had taken would result in a legal marriage.

9.150 In a response co-signed by 31 other peers and Members of Parliament, Baroness Cox agreed that there should be consequences for misleading a couple as to the effect of a ceremony. They thought the proposed offence was well-designed but added:

> a more targeted offence may be necessary to deter against malpractice and to clarify – beyond doubt – how vulnerable women entering a religious-only marriage will be protected from ignorance or deception.

Similar concerns were voiced by Southall Black Sisters, who commented that

> the structures of many BME communities are such that the lines between family, community and religion are blurred. This means that religious persons are embedded in family, kinship and community networks and therefore frequently complicit in the deception, coercion and abuse that women experience when entering into a religious-only marriage.

9.151 A few consultees suggested that the proposed new offence was unnecessary as there were existing offences relating to misconduct in public office, fraud, coercive control or forced marriages that would cover the harm we had in mind. Professor Russell Sandberg further argued that the proposed offence might be seen as "a magic bullet solution", with a risk it would be implemented independently of other reforms. In his view any such offence would have a limited impact on religious-only marriages.

9.152 Other consultation responses raised questions about the scope of the offence. Some consultees suggested that the offence would have to be carefully defined, with a few asking for further clarification as to the meaning of "deliberately or recklessly" misleading. Others envisaged the offence as having a broad scope. The Justice for Joan campaign argued that a failure to inform a couple that a marriage revokes a will should be regarded as misleading. OneSpirit Interfaith Foundation suggested that any person leading a non-legally binding ceremony after a legal wedding should inform guests of the ceremony's lack of status. Yasin Mohammed Din (a barrister) took the view that an officiant should inform couples about the need to obtain a religious as well as a civil divorce if they had married according to religious rites.

9.153 Some consultees asked how the offences would be monitored or enforced. Neil Addison (a barrister) took the view that prosecutions should only be brought with the

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[67] Consultation Paper, para 10.170, Consultation Question 61.

consent of the Director of Public Prosecutions, to "reassure most people that we won't suddenly be seeing priests and imams in the dock". Register Our Marriage also suggested that there might need to be a period after the implementation of the new law during which individuals would not face prosecution.

9.154 A few consultees suggested additional offences that they thought should be included in our scheme. A couple of consultees thought that it should be an offence to conduct a non-qualifying ceremony. Two religious organisations suggested that it should be an offence to officiate at the wedding of a same-sex couple in a religious building if the officiant knew or should have known that the relevant governing authority had not opted in. One local authority suggested that it should also be an offence "to not have public indemnity, [the] landowner's permission and [a] risk assessment in place".

9.155 Dr Patrick Nash (an academic) suggested that further steps should be taken to ensure that a couple who wanted a non-legally binding ceremony were aware of the consequences of doing so. He proposed that the person conducting the ceremony should have a duty to satisfy themselves that both of the couple were going through the ceremony voluntarily, without undue pressure, and having had independent legal advice as to its implications from a qualified English lawyer. He further proposed that there should be "a new statutory tort of negligently conducting a non-qualifying ceremony", "punishable with a heavy fixed fine", for those who did not fulfil that duty. He also suggested that such a person would be liable for the costs of both the parties should the relationship break down, plus the amount of the financial remedies that could have been granted had the marriage been valid or void.

9.156 A couple of consultees also suggested circumstances in which the couple themselves might face criminal sanctions. Dr Augur Pearce (an academic) suggested that if one of the couple had led the person officiating, whether authorised or not, to mislead the other, they "should also be liable to prosecution as an accessory". Another consultee suggested that both of the couple should be liable to prosecution if they misled guests or witnesses about the nature of the ceremony.

Discussion and conclusions

9.157 In reflecting on consultees' responses, we have considered the basis on which they expressed agreement with our provisional proposal and in particular the importance attached to the role of the officiant. We have also given further thought to what actions merit criminal penalties and what the effect of criminalising such behaviour would be. As a result, the two offences that we recommend are slightly different from those proposed on the Consultation Paper. In summary:

(1) people who play a particular role in the ceremony will commit a criminal offence if they actively mislead one or both of the couple about the effect of the ceremony or about their status; and

(2) an authorised officiant will commit a criminal offence if they conduct a ceremony outside the legal framework and fail to disclose the legal effect of doing so.

9.158 These two offences focus on behaviour that we think is particularly culpable. We think that they are sufficiently targeted to reassure religious leaders that they will not face prosecution for conducting a ceremony outside the legal framework and to respect

their role in providing services to their faith community. We note the concerns that were raised by Baroness Cox and other peers and Members of Parliament about vulnerable women entering into a religious-only marriage on account of ignorance; in our view, such women are better protected by our recommendations on validity (under which their ignorance would in many cases result in a marriage that is void rather than non-qualifying) than they would be by criminalising a religious leader who might be equally ignorant of the legal requirements. Moreover, while our recommended offences are intended to deter deception, those who are deceived will also be protected under our scheme.[68]

9.159 We now explain the scope of each of these offences in further detail and set out the steps by which we have come to the conclusion that each is necessary. Government guidance is that the creation of any new criminal offence should be both necessary and proportionate to the intended policy objective.[69] Our discussion below is structured around the questions set out in that guidance.

The offence of misleading the couple

9.160 In the Consultation Paper we gave examples of when we thought the actions of an officiant, or a person purporting to be an officiant, should attract criminal sanctions. We suggested that misleading the couple by pretending to be authorised (or, in the case of an officiant, pretending they were not authorised) or advising the couple that they did not need a schedule or marriage document in order to marry should be a criminal offence.[70]

9.161 The most culpable conduct we seek to criminalise is actively misleading one or both of the couple about the effect of the ceremony or the status of the person involved. In the Consultation Paper we envisaged that this offence could be committed by an authorised officiant or someone who was purporting to be an authorised officiant. On reflection, however, we recognise that the reference to "purporting to be an officiant" may be too limiting. There may be other individuals involved in leading a ceremony who do not claim to be an officiant but who still mislead the couple about the effect of the ceremony.[71] We think that such persons are equally culpable and that their actions would warrant criminalisation.

9.162 We have therefore revised our recommendation to reflect this conclusion. Under our scheme it will be an offence for an officiant, someone who purports to be an officiant, or someone who is leading the ceremony, dishonestly to mislead either of the couple about their status (or about the status of the officiant or anyone purporting to be an officiant) or the effect of the ceremony. For example, it would be an offence:

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68 See para 9.39 and following above.

69 Ministry of Justice and Cabinet Office, *Advice on introducing or amending criminal offences and estimating and agreeing implications for the criminal justice system* (2015).

70 Consultation Paper, paras 10.167 to 10.169.

71 See eg Marriage (Scotland) Act 1977, s 24(1)(d), which makes it a criminal offence for a person who is not an approved celebrant or authorised registrar to conduct a marriage ceremony in such a way as to lead the parties to believe that they are solemnizing a valid marriage.

(1) for an authorised officiant dishonestly to tell the couple that he or she is not an authorised officiant or dishonestly to advise one or both of the couple that they do not need to give notice;

(2) for someone who is not an authorised officiant dishonestly to claim to be one; or

(3) for someone who is leading the ceremony dishonestly who is not an authorised officiant to mislead one or both of the couple as to its legal effect, including by dishonestly claiming that another person either is or is not an authorised officiant.

9.163 Simply failing to clarify a misunderstanding would not fall within this offence unless the prosecution could prove that the defendant did so dishonestly (for example in response to a question from one of the couple).

Are there existing offences which cover the targeted behaviour?

9.164 The only existing offence that covers the behaviour we wish to target by our recommended offence is that of "knowingly and wilfully" falsely pretending to be in Holy Orders and solemnizing a marriage according to Anglican rites.[72] There is no equivalent offence of pretending to be a superintendent registrar, Quaker officer, Jewish secretary or authorised person.

9.165 There is also a common law offence of misconduct in public office. However, this offence could not apply to those who are not authorised as officiants. Moreover, the Law Commission has separately, in our project on Misconduct in Public Office, made recommendations as regards the scope of this offence that would exclude officiants from the definition of "public office". First, in that project, our list of persons holding public office generally excluded members of the clergy or other religious leaders. Further, employees of local authorities would only be holding public office if they were performing functions of governance. These recommendations were made after the publication of our Consultation Paper on Getting Married. In making the recommendations, we noted that the offence we had provisionally proposed in relation to weddings law would ensure that the criminal law remained capable of dealing with serious misuse or abuse of the role of wedding officiant.[73]

9.166 There is also a statutory offence of fraud by false representation. However, in our view this offence is intended to deal with a different kind of situation. It has to be shown that the representation was made with intent "to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss".[74] To show that the person officiating had intended to make a gain as a result of representing themselves to be authorised, it would need to be shown that – for instance – they intended to receive a payment that the parties would not have made if the parties had been aware that they were not authorised. It would also be difficult to show that they had made a representation with the intention of causing loss to one or both of the couple. Since the marriage would be void, the parties would have the right to apply for financial

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72 Marriage Act 1949, s 75(1)(d).

73 Misconduct in Public Office (2020) Law Com No 397, para 4.58 and n 33.

74 Fraud Act 2006, s 2.

provision, so the only loss would be those benefits that are dependent on the marriage being valid. While there is evidence that some of those involved in conducting non-legally binding ceremonies are aware that one of the parties is keen to avoid financial obligations to the other, it is unlikely that they would have in mind issues relating to pensions and state benefits. It would therefore be difficult to show that any representation they had made was intended to cause the loss of such rights.

9.167 There are also existing offences relating to coercion.[75] Again, we do not think that these would cover the wrongful behaviour we have in mind. Misleading the parties is not the same as coercing them.

9.168 As a result, we do not think that any existing criminal offences adequately cover the wrongful behaviour and the harm it could cause that we have in mind.

Would civil action or sanctions be more appropriate?

9.169 We do not think that civil action or sanctions are likely to be effective. Although some consultees mentioned the possibility of an officiant being deauthorised, this was in addition to, rather than instead of, criminal sanctions. Further, the threat of deauthorisation cannot influence a person who is not authorised in the first place.

What is the public interest for criminalising this behaviour?

9.170 In our view, dishonestly misleading a person about the effect of a ceremony is a serious matter, particularly where either or both of the couple believe that ceremony to be a legal wedding. The difference in the legal and financial consequences will be starkest if the ceremony is non-qualifying, but (as noted in paragraph 9.2 above) even a void marriage does not confer precisely the same rights as a valid one. Consultees also clearly viewed the actions that would constitute an offence under our scheme as meriting criminalisation.

9.171 In addition, attaching criminal penalties to those who are not authorised removes one of the current disincentives to being authorised. Under the current law, authorised persons potentially face criminal sanctions for conducting non-legally binding ceremonies whereas those who hold no such role do not. Our scheme would redress this difference in treatment by making it an offence for any person acting as an officiant to mislead another as to the effect of the ceremony, whether they are authorised or not.

Is the proposed new offence simply for deterrent effect, and, if so, is there any evidence to support this approach?

9.172 The proposed new offence is not simply for deterrent effect. We note that Professor Russell Sandberg questioned the need to deter individuals from purporting to be officiants, suggesting that there is “no evidence to suggest that the problem of unregistered religious marriages is mainly attributable to rogue celebrants”. However, we note the comment from Southall Black Sisters that those conducting ceremonies may be complicit in deceiving individuals, particularly women, as to their legal status;

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[75] It is an offence to use violence, threats or other forms of coercion to cause another person to enter into a marriage: Anti-social Behaviour, Crime and Policing Act 2014, s 121(1). This offence applies to religious-only ceremonies as well as to legal weddings. It is also an offence to engage in controlling or coercive behaviour in an intimate or family relationship: Serious Crime Act 2015, s 76.

in the case studies they submitted, in all but one the women appear to have had no indication from the imams or maulvis conducting the religious ceremony that it would not be legally recognised. Moreover, while some imams in the Nuffield project regarded it as their role to make both of the couple aware as to the non-status of a nikah conducted outside the framework of the Marriage Act 1949, others did not. In at least one case their reason for not informing one of the parties was their knowledge that the other party's family did not want such advice to be given.[76]

Could any existing offences be repealed or consolidated?

9.173 The existing offence of "knowingly and wilfully" falsely pretending to be in Holy Orders and solemnizing a marriage according to Anglican rites[77] could be repealed as it will be covered by the new offence.

The impact of creating a new criminal offence

9.174 It is possible that the new offence would result in more prosecutions than under the current law, largely because so few prosecutions are brought at present. However, we do not anticipate that there will be a significant number of prosecutions, and so the impact on legal aid, courts, prosecuting bodies and prisons is also likely to be minor.

The offence of an officiant failing to disclose that the ceremony will not be valid

9.175 Our second new offence will apply to any authorised officiant who officiates at a ceremony that does not comply with the legal requirements for a valid marriage and who fails to disclose to the couple that the ceremony will result in either a void marriage or non-qualifying ceremony. However, an officiant will have a defence if they can prove that they had acted reasonably in the circumstances. The burden of proof for this defence will be on the defendant to establish to the civil standard, that is, on the balance of probabilities.

9.176 This second offence is not intended to prevent officiants from conducting non-legally binding ceremonies. We take the view that preventing officiants from doing so might well deter individuals from becoming officiants in the first place. However, being an officiant brings with it certain duties. We state in Chapter 4 that an officiant who is conducting a ceremony that does not comply with the legal requirements will be under a duty to explain to the couple that the ceremony will not be legally recognised. For example, if a couple presenting themselves to be married do not have the necessary documentation, an officiant should explain that the marriage will be void if they have not given notice. Similarly, if the authority to marry has expired the officiant should explain that if the ceremony goes ahead, the marriage will be void. Equally, an officiant should also explain that their presence will result in the marriage being void rather than a non-qualifying ceremony or, alternatively, that a declaration by either party that they are not consenting to a ceremony that has legal effect will result in a non-qualifying ceremony.

9.177 These duties are part of being authorised by the state to officiate at weddings. It is therefore reasonable for this offence to be one of strict liability, with no requirement for

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76 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021), para 6.51.

77 Marriage Act 1949, s 75(1)(d).

the prosecution to prove that either of the couple has been misled. However, we think it unlikely that any prosecution would be brought unless some actual harm had resulted from the officiant's non-disclosure. It would also be reasonable for the officiant not to disclose such information if he or she knew that it was already known to both of the couple.

9.178 We are aware that an officiant will not necessarily meet with both of the couple in advance of the ceremony and that there may be cultural barriers to a male officiant meeting with the bride privately. That said, we think that the importance of ensuring that couples understand the effect (or non-effect) of the ceremony they are entering into justifies an expectation that the officiant will disclose the necessary information at the ceremony itself if they have not done so before. We do not think that it would be reasonable for an officiant to rely on reassurances from one of the couple that the other is aware of the effect of the ceremony or upon statements by family members or other third parties.

9.179 However, we do not think that an officiant should be required to go beyond the statements of the couple themselves to assess their level of understanding. If one of the parties has been coerced into agreeing to go ahead with the ceremony despite being unhappy about its lack of consequences, that is an issue that needs to be dealt with separately.[78]

9.180 In a strict liability offence of non-disclosure with a defence of reasonableness, the prosecution has to prove that the defendant did not disclose, and the defendant then has to prove that it was reasonable not to disclose in the circumstances. In *Sheldrake v DPP*,[79] the House of Lords considered the compatibility of reverse burdens of proof with the European Convention for the Protection of Human Rights and Fundamental Freedoms. Although the courts have not established definite criteria as to when a reverse burden will be justified, relevant criteria include:

(1) whether other matters have to be proved by the prosecution beyond reasonable doubt before liability can attach to the accused;[80]

(2) whether the subject matter is peculiarly within the knowledge of the defendant;[81]

(3) the nature of the threat the measure is intended to combat;[82]

(4) whether the offence is "truly criminal";[83]

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78 See para 9.167 above.

79 [2004] UKHL 43, [2005] 1 AC 264.

80 *R v DPP ex parte Kebiline and Others* [2000] 2 AC 326, [1999] 3 WLR 972.

81 *R v DPP ex parte Kebiline and Others* [2000] 2 AC 326, [1999] 3 WLR 972; *R v Johnstone* [2003] UKHL 28, [2003] 1 WLR 1736 at [50].

82 *R v DPP ex parte Kebiline and Others* [2000] 2 AC 326, [1999] 3 WLR 972.

83 *Sliney v London Borough of Havering* [2002] EWCA Crim 2558, [2003] Cr App R 35 at [48(4)]; *R v Lambert* [2001] UKHL 37, [2002] 2 AC 545 at [154].

(5) whether the offence could operate sensibly if it depended on the prosecution to prove the relevant matter;[84]

(6) the severity of the sanction;[85] and

(7) the consequences for the ability to prosecute the offence if the requirement were "read down" to be an evidential rather than a persuasive burden.[86]

Are there existing offences which cover the targeted behaviour?

9.181 None of the existing offences under the Marriage Act 1949 address the issue of non-disclosure. At present, Anglican clergy and superintendent registrars will be guilty of an offence if they knowingly and wilfully solemnize a marriage otherwise than in accordance with the Marriage Act 1949, and authorised persons will be guilty of an offence if they fail to comply with any of the Act's requirements. However, our offence would focus specifically on whether the officiant made the couple aware of the nature of the ceremony. It would also apply consistently to all officiants.

9.182 We are not aware of the common law offence of misconduct in public office ever having been applied in this context. Moreover, as explained above, it is not envisaged that an officiant would meet the definition of holding "public office".[87] Similarly, the offence of fraud by false representation would not cover non-disclosure.[88]

9.183 As a result, we do not think that any existing criminal offences adequately cover the wrongful behaviour and the harm it could cause that we have in mind.

Would civil action or sanctions be more appropriate?

9.184 We do not think that sanctions such as de-authorisation would be as effective as imposing criminal sanctions.

What is the public interest for criminalising this behaviour?

9.185 In our view, the role of the officiant is an important one and the state is entitled to expect that those who undertake this responsibility will discharge it properly. A number of consultees expressed similar views in explaining why they thought criminalisation was appropriate.

Is the proposed new offence simply for deterrent effect, and, if so, is there any evidence to support this approach?

9.186 We think that this proposed new offence is more targeted than existing offences and would reduce the risk of individuals being deterred from becoming officiants. Under the current law, authorised persons potentially face criminal sanctions for conducting

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84 *Sliney v London Borough of Havering* [2002] EWCA Crim 2558, [2003] Cr App R 35 at [48(3)].

85 *Sliney v London Borough of Havering* [2002] EWCA Crim 2558, [2003] Cr App R 35 at [48(6)].

86 *Sliney v London Borough of Havering* [2002] EWCA Crim 2558, [2003] Cr App R 35 at [48(7)].

87 See para 9.165 above.

88 See para 9.166 above.

non-legally binding ceremonies. Under our scheme they would be able to do so as long as they made the parties aware of the status of the ceremony.

Could any existing offences be repealed or consolidated?

9.187 Our proposed offence will replace the existing offences that make it an offence to solemnize a marriage otherwise than in accordance with the requirements of the Marriage Act 1949.[89] Those offences can therefore be repealed.

The impact of creating a new criminal offence

9.188 Again, it is possible that this new offence will result in more prosecutions than under the current law, given how few prosecutions are brought at present. However, we do not anticipate that there will be a significant number of prosecutions, and so the impact on legal aid, courts, prosecuting bodies and prisons is also likely to be minor.

How the offences would be dealt with

9.189 In our view it would be appropriate to impose a condition that prosecutions for our recommended offences should only be brought with the consent of the Director for Public Prosecutions, in line with the Law Commission's separate recommendations on when such consent should be required.[90] Such a condition does not require the Director for Public Prosecutions to give consent personally; rather, it would be for the Crown Prosecution Service to determine whether a prosecution should be brought, excluding the possibility of private prosecutions. Persecution of religious leaders, particularly in light of the strongly held views about religious-only weddings, might result in the unwarranted institution of private prosecutions. Such allegations could cause irreparable harm to a person's reputation. Moreover, the risk of such a prosecution in relation to the strict liability offence might deter some religious officials from becoming authorised as officiants.[91]

9.190 We also think that the offence of misleading the couple should be triable either way, while the strict liability offence of non-disclosure could be dealt with summarily.

9.191 In determining what the appropriate penalty would be, the existing offences under the Marriage Act 1949 offer little guidance. Different penalties apply to similar offences, depending on who is committing that offence.[92] The offence of "knowingly and wilfully" falsely pretending to be in Holy Orders and solemnizing a marriage according to Anglican rites, which dates back to the 18th century, is punishable by imprisonment for up to 14 years.[93] We note that the types of offences that carry 14 years are generally those involving death or serious harm,[94] the exceptions being possession

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89 Marriage Act 1949, ss 75(1) and (3), and 77.

90 Consents for Prosecution (1998) Law Com No 255.

91 See Consents for Prosecution (1998) Law Com No 255, para 6.52.

92 Consultation Paper, paras 10.148 to 10.150.

93 Marriage Act 1949, s 75(1)(d).

94 For example: causing death by dangerous driving (Road Traffic Act 1988, s 1), causing or allowing the death of a child or vulnerable adult (Domestic Violence, Crime and Victims Act 2004, s 5), encouraging or assisting the suicide or attempted suicide of another person (Suicide Act 1961, s 2), female genital mutilation (Female

with intent to supply Class C drugs, blackmail, or burglary in a dwelling. Most of the other offences under the Marriage Act 1949 are punishable by imprisonment for up to five years,[95] while authorised persons may be fined or face imprisonment for up to two years for failing to comply with the requirements of the Act.[96] In Scotland the similar offence of conducting a ceremony in such a way as to lead the couple to believe that it is a valid marriage is punishable by a fine or by imprisonment for up to two years.[97] By contrast, the more recently created offence of forced marriage is punishable by imprisonment for up to seven years.[98]

9.192 We think that dishonestly misleading one or both of the couple about the effect of the ceremony or the status of the person involved is sufficiently serious to justify the possibility of a prison sentence. We think the closest analogies are the two-year sentences available in respect of authorised persons in England and Wales and for the offence in Scotland, while 14 years would clearly be excessive. However, we leave the maximum duration of such imprisonment to be determined by Government. By contrast, we think that a fine would be more appropriate for the strict liability offence that would apply to authorised officiants who fail to disclose the legal effect of the ceremony, but again we leave the appropriate level of any such fine to be determined by Government.

Are other criminal offences necessary?

9.193 We do not think that a person who is not an officiant should be under a duty to explain that the ceremony would not result in a legal marriage. First, it would be difficult to determine to whom any such responsibility should attach. Under our scheme, responsibilities attach to the officiant, who is not necessarily the person leading the ceremony. Moreover, within certain religious traditions no third party is needed to lead the ceremony. Second, a person who is not an officiant is unlikely to have the same knowledge as to what is required for a valid marriage; if an obligation were to be imposed on them, there are no regulatory channels whereby they could be informed of it.

9.194 We are aware that many religious leaders conduct religious-only ceremonies as a service to their community, reflecting the importance within such communities of couples being married in accordance with their religion before embarking on any kind of intimate relationship.[99] It would be good practice for any person officiating at a non-legally binding ceremony to ensure that the couple are aware that the ceremony does

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Genital Mutilation Act 2003, s 1), placing explosives with intent to cause bodily injury (Offences against the Person Act 1861, s 30), burglary with intent to commit grievous bodily harm on a person or do unlawful damage to a building or anything in it (dwelling) (Theft Act 1968, s 9), aggravated vehicle taking (Theft Act 1968, s 12A) and sexual offences involving children, such as facilitating child prostitution (Sexual Offences Act 2003, s 50).

95 Marriage Act 1949, ss 75(2) and (3), and 76(3).

96 Marriage Act 1949, s 77.

97 Marriage (Scotland) Act 1977, s 24(1).

98 Anti-social Behaviour, Crime and Policing Act 2014, s 121(9)(b). Once the Marriage and Civil Partnership (Minimum Age) Act 2022 is in force, this offence will encompass any conduct causing a child to enter into a marriage before their 18th birthday.

99 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final Report* (2022) p 48.

not have legal status. Many already do take steps to make it clear to the couple that the ceremony will not be regarded as a legal marriage. But we think that a failure to explain that the ceremony would not result in a legal marriage should only amount to a criminal offence under our scheme where the person is an authorised officiant.

9.195 Similarly, we do not think that officiants should be under any legal obligation to advise couples as to the legal effects of the ceremony in terms of the rights and responsibilities that flow from a valid marriage. If Government were to decide that all couples should have advice about the legal effects of getting married before doing so, the appropriate time for such advice would be during the preliminaries. An officiant will not usually have the necessary legal knowledge to advise couples as to the legal consequences of getting married (which in any case may change) and it is hard to envisage how they would fulfil that role during the ceremony. Similarly, we do not think that an officiant would be under any obligation to inform the couple as to the status and effect of the ceremony as a matter of religious law. If any religious groups wish to impose such obligations on their nominated officiants, that is a matter for them to decide.

9.196 We do not think that it should be an offence to conduct a non-legally binding ceremony without making its lack of legal status clear to guests, or for a couple to pretend that a non-legally binding ceremony is a legal wedding. In such cases the only harm would be in fostering public misunderstandings of what is required for a valid marriage.

9.197 The existing rules on secondary liability would cover any person who aids, abets, counsels or procures the officiant or purported officiant to mislead either of the couple without the need to make special provision.[100] These rules would therefore include those cases where one of the couple (or their family) asks the officiant or purported officiant to mislead the other. Further, even (unsuccessfully) encouraging an officiant or purported officiant to mislead the other party would be an offence.[101]

9.198 Under our scheme, officiants would not be under a specific duty to have public liability insurance, to conduct a formal risk assessment, or to confirm that the landowner has given permission for the wedding to take place. As we explain in Chapter 6, there are already adequate legal provisions to deal with such matters.

9.199 We do not think that it should be made an offence to officiate at the wedding of a same-sex couple in a religious building if the officiant knew or should have known that the relevant governing authority had not opted in. No equivalent offences were created by the Marriage (Same Sex Couples) Act 2013 and we do not think that it would be appropriate to create such an offence now. Under the Equality Act 2010, religious groups will be free to refuse to host same-sex weddings and control who has access to their buildings. As we explain above, the marriage would be void if both of the couple knew that the necessary opt in had not been given.

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100 Accessories and Abettors Act 1861, s 8; Magistrates' Courts Act 1980, s 44. Under the Serious Crime Act 2007, ss 44 to 46, encouraging or assistance a substantive offence is also an offence.

101 Serious Crime Act 2007, s 44.

Are other enforcement mechanisms necessary?

9.200 We do not think that there is a need for the "new statutory tort of negligently conducting a non-qualifying ceremony" suggested by Dr Patrick Nash (an academic). We agree that it would be good practice for those conducting non-legally binding ceremonies to ensure that the couple are aware that such a ceremony has no legal consequences. However, we do not think that a couple should be required to seek independent legal advice before entering into such a ceremony. Nor do we think that an unauthorised person should be under a legal obligation to inform a couple of the ceremony's lack of status. We also note that his suggestion that such a person would be liable for the amount that the claimant would have received upon a decree of nullity overlooks our recommendation that a decree of nullity should be available where at least one of the couple believed the person officiating to be authorised to do so.

Recommendation

Recommendation 42.

9.201 We recommend that it should be an offence

(1) for an officiant, someone who purports to be an officiant, or someone who is leading the ceremony, dishonestly to mislead either of the couple about their status (or the status of the officiant or anyone purporting to be an officiant) or the effect of the ceremony; or

(2) for an officiant to fail to disclose that the ceremony at which they are officiating will not give rise to a valid marriage; however, it should be a defence for the defendant to prove that they acted reasonably in the circumstances.

RELIGIOUS-ONLY WEDDINGS

9.202 Religious-only weddings are weddings which conform to the beliefs and practices of a religion but are conducted outside the legal framework. Such ceremonies are recognised as valid for the purposes of the religion, but are not recognised as a matter of law. The lack of legal recognition can result in hardship upon breakdown or death, such hardship being disproportionately (though not invariably) experienced by women.

9.203 In this part of the chapter, we consider how our scheme will apply to those who have had a religious-only wedding. While we are aware that many non-legally binding ceremonies are not religious in nature, ceremonies conducted by Humanist or independent celebrants do not raise the same issues as religious-only weddings; the very fact that such ceremonies are personalised means that there is not the same risk of a couple believing themselves to be married because the ceremony was conducted in line with certain prescribed rites. Moreover, research suggests that couples who opt

for Humanist and independent-led ceremonies are almost invariably aware that they need to go through an additional legal wedding in order to be legally married.[102]

9.204 Since the publication of the Consultation Paper, we have further information about a wide range of non-legally binding ceremonies from our consultation responses, the Nuffield project, and discussions with Southall Black Sisters and One Law For All. We have also benefitted from meeting, through Southall Black Sisters,[103] with women who have talked about the circumstances in which they entered into religious-only weddings and the consequences there have been for themselves and the children of the relationship when it has broken down. We are particularly grateful to them for discussing their circumstances with us.

9.205 In addition, the Women and Equalities Committee has been carrying out an inquiry into the rights of cohabiting partners. As part of this enquiry it has heard evidence about the lack of rights of those in religious-only marriages, which we draw on below.

Why do religious-only weddings arise?

9.206 In the Consultation Paper we discussed the factors that could result in a religious-only wedding and the extent to which such weddings represent the free and informed choice of both of the couple.[104] In order to add to our understanding of this issue, we asked consultees if they were in a marriage that was not legally recognised, whether celebrated in a religious or non-religious ceremony. If so, we further asked whether they had knowingly and willingly chosen its lack of legal recognition.[105]

9.207 Only a few consultees confirmed that they were in a marriage that was not legally recognised. They reported a range of different types of ceremonies: Muslim nikahs, handfastings, Humanist ceremonies, and ceremonies conducted by independent celebrants. One consultee had an informal celebration when their planned wedding had to be cancelled on account of the Covid-19 pandemic. In addition, a few consultees said that they had been in a non-legally recognised marriage that had since come to an end.

9.208 Almost all of those consultees who were in a marriage that was not legally recognised said that they had been aware of its lack of legal recognition at the time of entering into it. Only a few went on to explain why they had entered into a marriage that was not legally recognised. These consultees said that being married in accordance with their beliefs was more important to them than being legally married.

9.209 Only one consultee said that they had been unaware that their marriage was not legally recognised, only discovering this when it ended. However, we cannot assume that our consultees are representative of those that enter into religious-only marriages;

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102 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: Final Report* (2022).

103 To which One Law For All contributed.

104 Consultation Paper, para 10.172 and following.

105 Consultation Paper, para 1.58, Consultation Question 1.

the very fact that they are responding to a consultation on proposals for legal reform may indicate that they are more legally aware than most.

9.210 Significantly, consultees responding on behalf of organisations provided a different perspective. The National Commission on Forced Marriage stated that many young people left the legal arrangements to their parents and had no idea that they were not legally married. Register Our Marriage also noted that in most of its case studies the lack of legal recognition had only come to light upon the breakdown of the relationship or the death of one of the parties.

9.211 Southall Black Sisters also provided six detailed case studies of women who had entered into religious-only marriages either unaware that they lacked legal status or in the expectation that a legal wedding would follow. It suggested that

> unregistered religious-only marriages in minority communities constitute a harmful cultural practice against women. They amount to a form of domestic abuse, in particular financial and sexual abuse, at the heart of which lies deception, control and coercion. The intention of those who compel women to have a religious-only marriage is purely to deprive women of their marital assets and to keep them in marital captivity.

During the consultation period, Southall Black Sisters also facilitated a discussion group with five women who had been in a religious-only marriage. These five women spoke movingly of their experiences, and the hardship they had experienced.

9.212 By contrast, the Nuffield project found that most participants who were or had been in a religious marriage had been aware at the time of the ceremony that it was not legally recognised.[106] Most of these participants were Muslim but there were also Hindu, Sikh, Pagan and interfaith ceremonies. Almost all saw the religious ceremony as essential to being married, and most regarded it as more important than the legal wedding. For Muslim participants the religious ceremony had an added importance in enabling them to get to know each other better, none of them having lived together previously. Most planned to have a legal wedding at some point. Some, however, had chosen not to be legally married because of the perceived difficulty of obtaining a civil divorce or because they wanted to retain control over their finances, while a few saw no point in being legally married. However, this was a qualitative study and a high proportion of the sample had professional occupations and at least an undergraduate degree.

9.213 These different sources confirm that religious-only weddings take place for a range of reasons. Some couples will choose to have a religious-only wedding to enable them to cohabit; such a wedding may either be a short-term precursor to a legal wedding or a long-term alternative. Other couples will see being religiously married as more important than being legally married. But for some individuals a religious-only wedding will not be a choice, but the result of deception or coercion.

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[106] R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding marriage ceremonies* (2022): 16 participants were in a religious-only marriage at the time of the interview and a further 12 had a religious ceremony more than a month before the legal wedding.

The consequences of being in a religious-only marriage

9.214 As part of the consultation, we also asked consultees if they had experienced any consequences from not being in a legally recognised marriage.[107] Almost all of those consultees who were in a marriage that was not legally recognised said that they had not experienced any consequences as a result of not being legally married. However, notably, consultees whose marriage had since come to an end were more likely to report adverse consequences. These consequences included the absence of any claim to financial support on relationship breakdown, not being recognised as the next of kin when medical issues had arisen, and complications with death in service benefits. These differences in experience suggest that difficulties arising from religious-only marriages may particularly be manifested at the end of the relationship (whether through separation or death). However, the lack of rights may also have an impact on the relationship between the couple where that the lack of legal protection is used as a coercive tool.

9.215 In addition, Register Our Marriage listed a number of consequences reported to it, including:

(1) “Being evicted/made homeless overnight by 'husband'; or after his death, by in-laws”;

(2) “Destitution and reliance on family/benefits system”;

(3) “Lost life savings by investing in ‘matrimonial’ home/business, then high legal fees”;

(4) “‘Husband’ remarries in a registered marriage, abandoning first ‘wife’ and children”; and

(5) “Recent rise in polygamy, part-time and clandestine marriages”.

9.216 Southall Black Sisters commented that the lack of protection afforded to women in religious-only marriages

> makes women dependent on profoundly discriminatory and misogynistic religious arbitration forums for a resolution in the event of a marriage breakdown, even though such forums are highly gender discriminatory, work against women’s rights and expose them to the risk of serious and escalating abuse.

9.217 In the discussion group facilitated by Southall Black Sisters, the women repeatedly spoke about being misinformed, deceived and coerced into a relationship that they thought was legally binding. The lack of recognition also created additional vulnerability to domestic abuse including financial abuse and the deprivation of rights flowing from such deception and coercion.

9.218 The joint response of Rights of Women and Southall Black Sisters to the Women and Equalities Committee’s inquiry into the rights of cohabiting partners also highlighted

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[107] Consultation Paper, para 1.58, Consultation Question 1.

the links between the lack of protection of cohabiting couples and the lack of recognition of religious-only marriages. It noted that the result is to leave

> many women from specific cultural backgrounds who are primarily from Black and minoritised communities without any legal protection despite them being married and being treated as married by society and many institutions such as the Department for Work and Pensions (DWP). The fact that cohabitees have no rights is used as a tool to control and disempower Black and minoritized women who are forced or coerced into religious only marriages.[108]

The effect of our recommendations on religious-only weddings

9.219 As we have explained elsewhere in this Report, the scheme that we recommend should make it easier for couples to have a religious wedding that is also a valid and legally binding wedding.

9.220 Making it more convenient to give notice will enable more couples to have their legal wedding at the same time as their religious ceremony if they so wish. It will also make it harder for one of the couple to make excuses as to why a legal wedding cannot take place.

9.221 Moving away from the strict restrictions of the current law, legal religious weddings will not be confined to taking place in registered places of worship. They will be able to take place anywhere that any other wedding could take place (subject to the agreement of the officiant, who will need to take account of any limitations imposed by the religious organisation that nominated them). Allowing couples to express their consent to be married in accordance with their own religious traditions will also remove the perceived need for two separate ceremonies. The Nuffield project similarly concluded that "there would be fewer non-legally binding ceremonies if the Commission's scheme were to be implemented".[109]

9.222 The new offences that we recommend should also ensure that individuals are not misled into entering into a religious-only marriage rather than a legal one. We note the view of the National Secular Society that our recommendation that it should be an offence to mislead either of the couple about the status or effect of the ceremony is "one of the best ways to protect people from entering into unions they believe have legal significance, when in fact they do not".

9.223 We think our scheme will also provide more protection for those whose ceremonies do not comply with all of the legal requirements.

9.224 As under the current law, the validity of the marriage will not depend on all of the legal requirements being fulfilled. In most cases, as long as the couple have completed the in-person stage of the civil or Anglican preliminaries,[110] and at least one of them

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108 Written evidence from Rights of Women and Southall Black Sisters, HAB0293, p 7 https://committees.parliament.uk/writtenevidence/37609/pdf/ (last visited 1 July 2022).

109 R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021), para 6.69; see also paras 6.58 to 6.63 for participants' views on the provisional proposals.

110 Other than where the marriage is by special licence.

believes the person officiating is authorised by law to do so, then the marriage will be valid.[111]

9.225 Further, our recommendations make it more likely that a marriage conducted outside our scheme will be void rather than non-qualifying, thereby enabling a court to make the same financial orders as it could upon divorce. As we set out above, under our scheme a marriage will be void if:

(1) either party has not completed the in-person stage of the civil or Anglican preliminaries, other than where the marriage is by special licence;

(2) the wedding took place after authority to marry had lapsed;

(3) both parties knew that the ceremony was not officiated at by an authorised officiant; or

(4) in the case of same-sex marriages, both parties knew that the necessary opt into same-sex marriage had not been given by the relevant religious governing authority.

For present purposes, the key point is that a marriage will be void even if the couple have not given notice as long as at least one of them believes that the person officiating at the ceremony is authorised by law to do so. This marks a significant change from the current law.

9.226 We think that this change will give protection to those who believed that their religious ceremonies would result in a marriage which the law recognises. This protection would include the situation where one of the couple has been deceived about the validity of the ceremony, including when their belief has been encouraged by the other to avoid having the legal obligations of marriage.

9.227 The detailed case studies submitted by Southall Black Sisters provide a means of evaluating how this element of our scheme would work. One woman explicitly noted how the presence of an imam at the ceremony had influenced her assumptions about the status of the marriage:

> I presumed that if the wedding was conducted by the Mosque, it would be legal – I saw that an imam was there, he was a well-known person too, and it didn't occur to me that I wouldn't have any rights or financial security.

Another noted that her husband had informed her that the mosque in which the ceremony took place was registered for weddings and that their ceremony would therefore be legally recognised:

> He made me believe that so it didn't make me think we need to go to the council or court as well … . I didn't know all this time I wasn't safe and secure.

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[111] The marriage may still be void if it took place after the authority to marry had expired or, in the case of a same-sex couple, both knew that the necessary opt into same-sex marriage had not been given by the relevant religious governing authority.

Three others, who had married at home in the presence of a maulvi or imam, similarly thought that they were entering into legally recognised marriages. One of them, who was just 16 at the time of the ceremony, later discovered that there had been an agreement between her family and that of her husband's family that she would also have a "registered marriage", but at the time there was nothing to indicate to her that anything more needed to be done.

9.228 Applying our scheme, we think that these marriages would be classified as void rather than non-qualifying. We do not think that establishing a belief that the person officiating is authorised by law to do so should require a person to be aware of what being authorised means, since this would require an understanding of the law that many people, including some in religious-only marriages, understandably lack. Nor do we think that it should require the person officiating to have made any claim about their status. If someone believes that their ceremony will be legally recognised it may be inferred that they believe that the person officiating is authorised to do so. For these purposes, "officiating" would cover actions such as leading the ceremony, making a formal pronouncement as part of the ceremony that the couple are married, or dealing with the paperwork, for example asking the couple to sign a piece of paper or presenting them with a certificate.

9.229 Our scheme will therefore provide protection to many of those who have been deceived into thinking that the ceremony they went through was a legally recognised marriage. In our view, focussing on whether a person believed the ceremony to be legally recognised will offer more protection than the alternative suggested by Southall Black Sisters of making deception a ground on which a marriage could be held to be void. There may well be cases where there has been no active deception but one of the couple simply assumes that the ceremony will be legally recognised or where both of the couple believe that the ceremony will be legally recognised. To limit the remedy to cases of deception would be to unduly narrow its scope and potentially exclude cases where a remedy is merited.

9.230 As noted above, Mishcon de Reya LLP expressed concerns about one of the couple claiming that they had believed the officiant was authorised "as leverage upon the breakdown of their relationship". In our view it is unlikely that such claims would be made without foundation. The onus would be on the person making this claim to show that any ceremony had taken place, as well as establishing that they had believed the officiant to be authorised.[112]

9.231 Their reference to "leverage" does however provide a useful reminder of the possibility that such cases may be settled without expensive court proceedings. Where a marriage is void, there is no need to obtain a decree of nullity from the court. The only advantage in doing so is the fact that the court has same the power to make orders for financial provision in such cases as it does upon divorce. But most divorcing couples agree between themselves how their assets will be divided, rather than seeking an order from the court. Similarly, the possibility of one of the couple obtaining a decree

[112] Assuming that there was no other compliance with the formal requirements. See further Recommendation 40 at para 9.129 above on the circumstances in which a presumption in favour of the validity of the ceremony would arise.

of nullity and accompanying financial orders from a court may be sufficient to convince the other to agree to a fair division of the assets.

9.232 However, as we explained in the Consultation Paper, our scheme would not result in every ceremony, including every religious ceremony, being legally recognised.[113]

9.233 We explained in the Consultation Paper why the law could not recognise all ceremonies that conformed to religious beliefs as legal weddings.[114] The Nuffield project provides further evidence of the difficulties that such an approach would bring. Those involved in conducting religious ceremonies often had different views as to what was essential for those ceremonies to be valid in religious terms. Some interviewees had ceremonies that reflected their own personal religious beliefs but were not conducted according to a religiously prescribed form. In one case a ceremony took place with just the couple present. As we noted, holding that a simple exchange of consent could generate legal consequences without any other formalities being completed would risk deregulating marriage entirely and lead to considerable uncertainty. Nor did consultees advocate that the law should attach legal consequences to a simple exchange of consent.

9.234 Applying our recommendation on when a ceremony would be non-qualifying to these kinds of cases, the circumstances in which a ceremony would be non-qualifying[115] would be limited to:

(1) the couple had not completed the in-person stage of the preliminaries, and neither of them believed that the person officiating was legally authorised to do so;

(2) the couple had not completed the in-person stage of the preliminaries and no third party was purporting to officiate; or

(3) in the absence of at least one of the couple expressing consent, where there is no expression of consent at all or where either of the couple are expressly only consenting to a ceremony that would not be legally recognised.

9.235 Consultees' responses confirmed our view that it would be difficult to justify such ceremonies giving rise to a valid or even a void marriage. As we discussed above, a very substantial majority of consultees agreed with our provisional proposals as to when a ceremony should be classified as non-qualifying. Further, very few of those consultees who disagreed advocated conferring recognition on such ceremonies.

Alternative proposals for reform

9.236 The Family Justice Council expressed the view that we should have gone further in seeking to prevent non-legally binding ceremonies from taking place. It suggested that

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113 Consultation Paper, paras 10.190 to 10.195.

114 Consultation Paper, paras 10.196 to 10.199.

115 Recommendation 39 at para 9.100 above.

the proposal made by the Independent Review to impose obligations on celebrants to ensure that the marriages they celebrate are legally recognised is easily adaptable to the scheme proposed in the Consultation Paper.

9.237 We have taken their view into account in strengthening the duties of officiants under our scheme. As we explained above, an officiant will be under a legal duty to ensure that the parties consent to the marriage, that any other requirements of the ceremony are met and that the schedule or marriage document is signed. If they are conducting a ceremony other than in accordance with those requirements, they must make this clear to the couple, and will be guilty of an offence if they do not.

9.238 However, as we explain above, we do not think that we can impose a similar obligation on those who are not officiants. Nor do we think that doing so would resolve the problem of some couples entering into marriages that are not legally recognised, given that within a number of religious traditions there may be no celebrant at all.[116] We think that our combination of ensuring that couples are, so far as possible, informed about the effect of the ceremony they are entering into, and protecting those who believe that the person officiating at the ceremony is authorised by law to do so offers more protection.

9.239 Southall Black Sisters called for "a universal civil registration scheme for all marriages irrespective of background". In a similar vein, Register Our Marriage suggested that "a modern marriage law must ensure that all faiths also protect their marriages by registering them under civil law". The difficulty with such suggestions is that a marriage can only be registered if it is conducted in accordance with the law in the first place. All marriages that are so conducted must be registered, and no marriage that is not so conducted can be registered. That is the case under the current law, and will also be the case under our scheme. Registration is not a means of conferring validity on a marriage. We therefore do not think that this is a suggestion that we can pursue.

9.240 As we noted above, Southall Black Sisters also suggested that our scheme should recognise a marriage as void if one of the parties has been coerced into not having a legal wedding. The difficulty with this suggestion is that it would mean attaching legal consequences to a ceremony that complied with none of the formalities for a legally recognised wedding and which both of the parties knew was not legally recognised.

9.241 We also think that there are difficult questions about when such coercion would have to be applied in order for a remedy to arise. Logically, for coercion to be a ground for a ceremony to result in a void marriage, the coercion would have to relate to the ceremony, meaning that an individual would have to show that they were coerced into having a religious-only ceremony rather than a legal wedding. Just as a marriage does not become valid over time, so too we do not think that a marriage could become void over time, so any coercion subsequent to the ceremony could not affect its status.

9.242 One of the case studies provided by Southall Black Sisters illustrates the difficulty in focussing on coercion. In this case, there was an agreement between the couple that the religious ceremony would be followed by a legal wedding; only later did the husband refuse to go through with the legal wedding. This woman's story indicated

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[116] A Bone, "Islamic Marriage and Divorce in the United Kingdom: The Case for a New Paradigm" (2020) 40 *Journal of Muslim Minority Affairs* 163.

that her husband's abusive and controlling behaviour only began after the ceremony. It would be difficult to classify such a case as one where she was coerced into having a religious-only ceremony rather than a legal wedding.

9.243 A further problem with the suggestion that a marriage should be void on the basis of coercion relates to the remedies that would be available. As we note above, a void marriage does not have the same consequences as a valid marriage. A party to a void marriage has no automatic entitlement under the intestacy rules. In addition, although a party to a subsisting void marriage does have the right to apply for reasonable provision from the estate under the Inheritance (Provision for Family and Dependants) Act 1975, they can only do so if they entered into the marriage in good faith, that is, without being aware that it was void.[117] A person who knowingly enters into a religious-only marriage, however reluctantly, would not be able to satisfy that condition.

9.244 In our view, the position of those who have knowingly entered into a ceremony that does not have legal recognition is not a matter that can be properly addressed by weddings law. Weddings law is focussed on the issue of how and whether a ceremony creates a marriage that is valid, void or non-qualifying. What happens after that ceremony cannot affect its status. We recognise that there will be women who know that their ceremony is not legally recognised and are deeply unhappy at not having a legally recognised wedding, but agree to it because they feel under family or cultural pressure to do so. We agree that it is a matter of great concern that people, often vulnerable women, are being compelled to have a wedding that is not legally recognised, rather than one that is, or are being told that a legal wedding will follow, when it does not. We appreciate the extreme distress as well as financial disadvantages that can result. While we have approached reforming the law in this area with a particular focus on the real problems faced by women who have had a religious-only marriage, there is a limit to how far weddings law can provide a complete solution. We believe that our recommendations go as far as weddings law legitimately can.

9.245 In our Consultation Paper, we commented on how other reform might work in tandem with a reformed weddings law to address these issues. Our earlier recommendations for conferring rights on cohabitants – to provide a mechanism for redressing advantages gained and disadvantages suffered as a result of the relationship – provide a more direct and appropriate remedy for such couples.[118]

9.246 We recognise that there are important differences between religious-only marriages and cohabiting relationships and appreciate that discussion that appears entirely to equate cohabitation and religious marriage has the potential to cause offence. Nevertheless, we also think that there are important commonalities. There will be cohabitants in "uneven" relationships who would prefer to be married and who may equally have been deceived into believing that a marriage will take place at some

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117 Inheritance (Provision for Family and Dependants) Act 1975, s 25(4).

118 See our recommendations in Cohabitation: the Financial Consequences of Relationship Breakdown (2007) Law Com No 307. In 2011, Government announced that it did not intend to take forward our recommendations for reform during that Parliamentary term. For more information, see https://www.lawcom.gov.uk/project/cohabitation/.

point. Moreover, we think that extending remedies beyond those in religious-only marriages will remove the scope for individuals to evade responsibility by refusing to go through a ceremony or by ensuring that the ceremony in question is not one that would be recognised as a marriage by their religion or by the law.

9.247 As the joint response of Rights of Women and Southall Black Sisters to the Women and Equalities Committee's inquiry into the rights of cohabiting partners concluded, in the absence of specific rights for those who had been coerced into having a religious-only marriage

> increasing the rights of all cohabiting couples would address the gaps in the law for those who have been coerced into a religious only marriage, and go further to protect all women from Black and minoritised communities no matter how and why they cohabit.[119]

[119] Written evidence from Rights of Women and Southall Black Sisters, HAB0293, p 7 https://committees.parliament.uk/writtenevidence/37609/pdf/ (last visited 1 July 2022).

Chapter 10: Weddings in specific circumstances or locations

INTRODUCTION

10.1 This chapter focuses on weddings that take place in specific circumstances or in specific types of location. Those specific circumstances are weddings involving people who are terminally ill, housebound or detained; and those specific types of location are Ministry of Defence sites, the territorial sea and other coastal waters, and international waters. This chapter explains how our recommended scheme will apply to weddings in these specific circumstances or locations, and considers where specific provision is needed.

10.2 First, we consider weddings involving people who are terminally ill, detained, or housebound. As we explain, our recommended scheme makes most of the specific provisions that currently govern these types of wedding unnecessary. However, some specific provisions will need to remain to ensure that these people can give notice under the civil preliminaries process. We recommend that weddings involving people who are terminally ill continue to be exempted from the regular waiting period, although we also recommend that each of the couple should still give notice and have an in-person interview. We also make recommendations to ensure that registration officers travel to people who are terminally ill, detained or housebound to enable their in-person interviews to take place. Finally, we make recommendations to align the provisions governing weddings involving people who are terminally ill, detained or housebound with the requirements under our general scheme where we think exceptional treatment is unnecessary: a schedule will authorise weddings involving people who are terminally ill, and schedules authorising marriages for those who are terminally ill, detained or housebound will be valid for 12 months, as they are in all other cases.

10.3 Next, we briefly explain how our general scheme will apply to weddings on military sites, and recommend that weddings should be permitted to take place in the territorial sea, bays and other coastal waters. Weddings in these locations will take place according to the general rules governing where weddings can take place, which we explain in Chapter 6, and will not require any specific provision.

10.4 Finally, we consider the issue of weddings in international waters. We make recommendations to permit weddings to take place under the law of England and Wales in international waters on board cruise ships registered in the United Kingdom with a port of choice in England or Wales. Although the scheme that we generally recommend will apply to weddings at sea, including the rules governing the ceremony itself, further specific provision is necessary both to facilitate weddings in international waters and to ensure that they are appropriately regulated. Much of this specific provision focusses on the creation of a unique category of officiant, called a maritime officiant, who will be authorised exclusively to conduct weddings in international waters.

WEDDINGS INVOLVING PEOPLE WHO ARE TERMINALLY ILL, DETAINED OR HOUSEBOUND

10.5 As we explained in the Consultation Paper, the current law governing how couples give notice and where they can marry poses difficulties for people who have a terminal illness, are detained in prison, or are housebound. Generally, such people are unable to travel either to a register office to give notice, or to the locations where weddings are permitted to take place to be married. Accordingly, there are specific rules to facilitate weddings involving such people.[1]

The application of our general scheme

10.6 Our recommendations will make the law simpler and will allow weddings to take place in any type of location. As a result, many of the existing specific rules will not be necessary under our scheme. The application of our general scheme will resolve some of the issues that consultees raised in response to our open question as to whether there were any problems with the current law governing weddings of people who have a terminal illness, are detained in prison or hospital, or are housebound.[2]

Location

10.7 The primary function of many of the specific provisions which facilitate weddings involving people who are terminally ill, detained or housebound is to permit their weddings to take place in locations where weddings are otherwise not permitted under the current law: generally, in a hospital, hospice, private residence, or prison. A wedding involving a person who is terminally ill, which takes place on the authority of a Registrar General's licence, can take place anywhere;[3] and the wedding of a person who is detained or housebound, often called a residential wedding, can take place where the person usually resides.[4] These rules do not apply to Quaker and Jewish weddings, or Anglican weddings authorised by special licence,[5] as these weddings can already take place anywhere.

10.8 Under our recommendations, all weddings will, as a matter of weddings law, be able to take place in any type of location, including in hospitals, hospices, private residences and prisons. Accordingly, special rules about the locations where weddings of people who are terminally ill, detained or housebound can take place are unnecessary.

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1 See Consultation Paper, paras 2.162 to 2.180, and 11.8 to 11.13.

2 Consultation Paper, para 11.17, Consultation Question 62. Responses to this question have been integrated into our discussion of specific issues in this chapter.

3 Marriage (Registrar General's Licence) Act 1970, s 1(1).

4 Marriage Act 1949, ss 26(1)(dd) and (2), and 26B(2); Marriage Act 1983, s 1(1).

5 Marriage (Registrar General's Licence) Act 1970, s 1(1); Marriage Act 1949, s 26(2)(a) and 26B(8). As we explain below, an Anglican wedding involving a person who is detained or housebound can take place as authorised by the civil preliminaries under these provisions (and the Faculty Office of the Archbishop of Canterbury advises that civil preliminaries should be used in preference to a special licence where possible); however, an Anglican wedding involving a person who is terminally ill cannot be authorised by civil preliminaries. The latter must be authorised by special licence under the current law: see para 10.62 below.

10.9 In responses to our open question on problems caused by the current law,[6] consultees raised a specific difficulty arising through the inability to change the location where the wedding will take place after authority for the wedding has been granted; the schedule or Registrar General's licence will state the location where the wedding must take place and a change in location requires notice to be given afresh. One local authority referred to the possibility of detained people being moved to a different location. Similarly, the London Strategic Registration Board referred to the need for a further application of notice to be made if a person who is terminally ill is "moved from home to hospital to hospice". One venue recounted a situation in which the wedding could not go ahead because the groom's illness prevented him from being able to leave the vehicle when it arrived outside the wedding venue.

10.10 Under our recommended scheme, a last-minute change of location will not prevent a wedding from going ahead, or require notice to be given afresh. The location of the wedding will not be identified on the schedule or marriage document when it is issued, so the wedding will be able to take place in a different location than the couple initially planned if necessary.[7]

Officiants

10.11 Under the current law, registration officers are required to attend all weddings involving people who are terminally ill, detained and housebound except for weddings that take place according to Anglican, Jewish and Quaker rites or usages. Although weddings can take place according to the rites of a group with a registered place of worship, there is no provision for an authorised person associated with that place of worship to be responsible for ensuring that the marriage is registered; instead, a registrar must attend.[8]

10.12 Under our scheme, all types of officiant will be permitted to officiate at a wedding in any type of location.[9] The nature of the ceremony – and the rules which apply to it – will be based on the type of officiant in attendance. Accordingly, registration officers will only be permitted to officiate where a person is terminally ill, detained or housebound if the couple is having a civil wedding.[10] All belief officiants will be able to officiate at weddings involving people who are terminally ill, detained or housebound, just as Anglican clergy, secretaries of synagogues and Quaker officers can under the current law. Our general scheme will bring parity and fairness to this area of law.

10.13 How these general rules would apply to weddings involving people who are terminally ill, detained or housebound was not something that we expressly outlined in the Consultation Paper, so it might not have been appreciated by many consultees. Nevertheless, some consultees would appear to welcome these changes. In response

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6 Consultation Paper, para 11.17, Consultation Question 62.

7 See Recommendation 8 at para 3.201 above.

8 Marriage Act 1949, s 45A; Marriage (Registrar General's Licence) Act 1970, s 10(2).

9 Excluding maritime officiants, who will only be authorised to officiate at weddings on cruise ships in international waters: see paras 10.97 and 10.156 below.

10 If enabled by Government, independent officiants will also be able to officiate at civil weddings involving people who are terminally ill, detained or housebound.

to our open question about the problems with the current provisions,[11] OneSpirit Interfaith Foundation and two celebrancy organisations, among others, suggested that the law should permit officiants other than registration officers to officiate at weddings in these circumstances. The two celebrancy organisations specifically supported allowing belief officiants who provide pastoral care in hospitals and prisons to officiate at weddings as a part of their provision of service.

Specific provision for those who are detained and housebound

10.14 Under our general scheme, there will be no need to make specific provision about where residential weddings can take place, or who can officiate at them. Our general scheme will allow weddings to take place where the person who is detained or housebound usually resides; and, like all other couples, they will be able to decide whether to have a civil or belief wedding, and choose their officiant accordingly. However, some specific provision will be necessary, not about the wedding ceremony itself, but to ensure that people who cannot travel to the register office can give notice. We recommend that there should be a provision obliging registration officers to travel to the person for their in-person interview.[12]

10.15 There will therefore need to be eligibility criteria to determine in which circumstances the registration officer is obliged to travel to the person giving notice.

10.16 There are eligibility criteria under the current law, which must be proved with evidence, but those criteria are focussed on exceptionally permitting the wedding to take place where the person is housebound or detained.

(1) In the case of a person who is housebound, each of the couple must provide a statement from a registered medical practitioner, made in a prescribed form no more than 14 days before notice is given. The statement must confirm that the person in question ought not to move or be moved from their current place of residence as a result of their illness or disability, and that this is likely to be the case for at least the following three months.

(2) In the case of a person who is detained, each of the couple must provide a statement by either the managers of the hospital or the governor or other official in charge of the prison, made in a prescribed form no more than 21 days before notice is given. Their statement must identify the establishment where the person is detained and confirm that they have no objection to the wedding taking place there.[13]

10.17 We think that the categories of people who are detained and housebound should remain under our scheme in order to identify the situations where it will be necessary for registration officers to travel to the person so that they can give notice. However, we do not think the current evidence requirements would be proportionate to the function that they will be serving under our recommended scheme. In response to our

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11 Consultation Paper, para 11.17, Consultation Question 62.

12 We do not think any specific provision will be necessary to require a registration officer to travel to the person's regular place of residence if they are officiating at the wedding, because under our scheme registration officers will generally be obliged to travel to officiate at civil weddings in a variety of locations.

13 Marriage Act 1949, s 27A.

open question about problems in this area of the law,[14] four local authorities referred to the difficulty or delays some couples experience in obtaining the prescribed documentation or suggested that the forms are unduly complex.

10.18 Accordingly, we recommend that the Registrar General should determine what evidence a person should be required to provide to establish that they are housebound or detained. But we think that the requirements should be proportionate, reflecting that its only purpose will be to establish the need for the registration officer to travel to the person for their in-person interview. Only the person to whom the registration officer must travel should be required to give this evidence, not the other party to the wedding.

10.19 We do not think it is strictly necessary, under our recommended scheme, for weddings law specifically to require people who are detained to provide a statement from the manager or governor of the place where they are detained confirming that they have no objection to the wedding taking place as a part of the preliminaries process. Whether or not there is a specific requirement in weddings legislation, a person who is detained will need permission in relation to the location of their intended wedding in the same way that all couples will.[15] Prison governors could still require prisoners to apply for permission using a standard form even if weddings law did not impose that requirement as part of the notice process. We therefore do not think that removing the requirement for this statement would in practice change the law in relation to the ability of a person who is detained to get married, or allow them to be married without the permission of the prison authorities. However, we did not specifically consult on the point about the role of the governors of prisons or (where a person is detained in a hospital) managers of hospitals in providing a statement of agreement as a part of the preliminaries process. We recognise that this point may interact with wider policy considerations in relation to prisons and prisoners. Government may therefore wish to retain a requirement that people who are detained provide a statement of agreement as a part of the civil preliminaries process.

Specific provision for those who are terminally ill

10.20 The original intention of the Registrar General's licence was to allow non-Anglican weddings of people who are terminally ill to take place in locations other than those which are generally authorised for weddings. It did not need to apply to Anglican weddings, because they could already be authorised to take place in any location under the Archbishop's special licence.

10.21 Under our scheme, it will be unnecessary to make specific provision for the location of weddings involving those who are terminally ill. However, specific provision will continue to be necessary to authorise such weddings without the regular 28-day waiting period. There is a general discretion given to the Registrar General to shorten the notice period for compelling reasons, which will remain under our scheme;[16] however, under the current Registrar General's licence, the exemption from the waiting period is not discretionary, but as of right. As we explained in the Consultation

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14 Consultation Paper, para 11.17, Consultation Question 62.

15 See paras 6.183 to 6.185 above.

16 Marriage Act 1949, s 31(5A).

Paper, we think that it should continue to be the case that, where a registration officer is satisfied that a person has a terminal illness, the waiting period should not apply.[17] As many consultees emphasised in their responses to the questions about weddings in these circumstances, it is important to ensure that couples can marry quickly where there is a risk that one of them may die soon.

Definition and evidence

10.22 In order to qualify for the exemption from the waiting period, a person will have to establish that they are terminally ill. However, we recommend some amendments to the current definition.

10.23 Under the current law, the Registrar General's licence is serving two functions: to allow the wedding to take place anywhere, and without a waiting period. However, the current eligibility criteria for a Registrar General's licence only relates to the former – namely, where the wedding can take place.

10.24 In particular, the couple must satisfy the Registrar General that one of the parties "is seriously ill and is not expected to recover" and cannot be moved to a place where the wedding could take place under the ordinary rules.[18] No particular form of evidence is required, but a doctor's certificate is sufficient proof, and we understand that a doctor's certificate will usually be provided. The doctor's certificate must also state that the seriously ill person is able to and does understand "the nature and purport of the marriage ceremony".[19]

10.25 The couple is not required to provide any evidence that the person is at risk of dying soon; that is, the current law does not require any evidence to justify that the couple could not reasonably be required to wait for the waiting period to pass, as other couples must do.

10.26 This lacuna can be explained by the fact that, at the time the Marriage (Registrar General's Licence) Act 1970 was passed, it was possible for all couples to obtain authority to marry with just one day's notice.[20] With no waiting period, it was not necessary to exempt a person with a terminal illness from it. Since then, the waiting period has increased for all other weddings preceded by civil preliminaries to at least 28 days.[21] But the definition of terminal illness remains focussed on whether the person can be moved to a place where they can get married, rather than the imminence of their death.

10.27 It is unsurprising that responses to our open question as to whether there were any problems with the law in this area[22] show that the current definition is not well-adapted

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17 Consultation Paper, paras 11.27 to 11.30.

18 Marriage (Registrar General's Licence) Act 1970, s 1(2).

19 Marriage (Registrar General's Licence) Act 1970, s 3(d).

20 See Family Law: Report on the Solemnisation of Marriage in England and Wales (1973) Law Com No 53, paras 8 and 13.

21 Some couples are subject to having their notice period extended to 70 days, as we explain at para 3.34 above.

22 Consultation Paper, para 11.17, Consultation Question 62.

to the purpose the Registrar General's licence now serves. In particular, North Yorkshire County Council commented that the definition of terminal illness has occasionally caused problems because a person suffering from a terminal illness is not necessarily facing an immediate risk of death. Buckinghamshire Registration Service made similar comments, advocating for a simplified process so that it is clear to doctors that the licence "is very much an 'end of life' option and not for anyone with a terminal diagnosis". The Faculty Office of the Archbishop of Canterbury explained that it does not apply to a person facing a potentially life-threatening emergency surgery, in contrast to the Archbishop's special licence, which can be granted in a broader range of circumstances. Similarly, Dorset Council commented that the definition does not appear to apply to a person who may die from an accident or injury.

10.28 Under our scheme, the purpose of having separate provision for those who are terminally ill is to ensure that a couple can get married as quickly as possible when the life expectancy of one or both of them is short. There is no need to make specific provision for where the wedding can take place, as all weddings will be permitted to take place in any type of location. Therefore, the meaning of terminal illness, and any evidence necessary to establish it, must be rethought: it needs to ensure the right to be exempted from the waiting period applies, and only applies, to couples who cannot fairly or compassionately be expected to wait 28 days to get married.

10.29 We therefore recommend that to obtain authority to marry with no waiting period, it should be established that at least one of the parties to the marriage is terminally ill, by which we mean that they have a serious medical condition and it is unreasonable to expect them to comply with the waiting period before getting married.

10.30 It is important that the considerable resources that local authorities expend to prioritise authorising weddings in these circumstances are appropriately directed to only those cases that require them. So we think that evidence should be provided to establish that the person does have a serious medical condition and it would be unreasonable to require them to wait 28 days before being able to get married. The precise meaning of this requirement will need to be considered before this policy can be enacted in legislation. Moreover, how the requirement of evidence can be met is, we think, a matter for the Registrar General to determine. However, we repeat our suggestion above that any evidential requirement should be proportionate, as well as simple and clear. In particular, given the challenging nature of making a precise end of life prognosis, we do not think the requirements for evidence should be too prescriptive.

10.31 Whether or not someone is capable of travelling to the register office to give notice is a separate issue to their need to be exempted from the waiting period, so it will no longer be necessary to establish that the person cannot be moved. It will often (but not invariably) be the case that a person who is terminally ill is, as a result of their illness, also unable travel to the register office to give notice. Where that is the case, the registration officer should travel to them so that notice can be given, a point we cover in more detail below.

10.32 We also think that, as under the current law, evidence should continue to be provided to establish that the person has mental capacity to marry, that they understand "the

nature and purport of the marriage ceremony".[23] We think this requirement plays an important safeguarding role and so should remain. However, as we discuss below, we think more should be done in advance of the ceremony to ensure that a person who is terminally ill has the mental capacity required to marry, and wants the wedding to go ahead.

The process of giving notice

10.33 Under the current law governing the Registrar General's licence, the person who is terminally ill is not required to give notice of their intention to marry. Instead, only one of the couple needs to give notice to the superintendent registrar of the district in which the wedding will take place.[24] Although evidence is required that the seriously ill person understands "the nature and purport of the marriage ceremony", registration officers will have no contact with that person before the ceremony.[25]

10.34 We explained in the Consultation Paper that registration officers had raised with us concerns about the fact that the terminally ill person does not have to give notice. They said that registration officers should have an opportunity to ensure that the person who is terminally ill has capacity to marry and wants the wedding to go ahead, in advance of the day of the wedding when the person is likely to be surrounded by friends and family. We agreed: because a person with a terminal illness might be particularly vulnerable to coercion, a robust preliminaries process is all the more important. We therefore provisionally proposed that parties who have a terminal illness should be required to give notice of their intention to marry and be interviewed by a registration officer prior to the authority to marry being issued.[26]

Consultation

10.35 A substantial majority of consultees agreed with this provisional proposal. Many of those agreeing thought it would provide a safeguard, including to protect against forced marriage, coercion, and predatory marriages or marriages where the person lacks the mental capacity to marry. For example, the Church of England explained that

> whilst the vast majority of such cases will be legitimate and should be approached with the deepest pastoral care, an interview with a registration officer is entirely appropriate both as a safeguard and as a way of supporting the parties discreetly.

Other consultees also emphasised the need for the registration officer to conduct the interview with compassion and sensitivity.

10.36 Three local authorities suggested that concerns might arise because, under the current law, authorisation for the wedding can be issued without the knowledge or consent of the person who is ill. The local authorities explained that they were

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23 Marriage (Registrar General's Licence) Act 1970, s 3(d).

24 Marriage (Registrar General's Licence) Act 1970, s 2(1).

25 Marriage (Registrar General's Licence) Act 1970, s 3(d).

26 Consultation Paper, para 11.26, Consultation Question 63.

anecdotally aware of cases in which the person was unaware of the application for a Registrar General's licence.

10.37 Many consultees who disagreed with the proposal were motivated by practical concerns about how the requirement for an in-person interview could be met in advance of authority to marry being granted. Consultees were concerned that a requirement for an interview could delay the wedding in situations of extreme urgency, which some noted could be such that the wedding must take place within hours. Based on its own experience with issuing special licences in such cases, the Faculty Office of the Archbishop of Canterbury explained that

> any imposition that might extend the time between that first request and the wedding taking place can only serve to increase the number of occasions when time runs out for the patient, with all the implications for inheritance and pension provision that might follow for the surviving partner.

10.38 Some consultees argued that it is unnecessary to require the seriously ill person to give notice, pointing to other steps which fulfil the same protective functions. Some pointed to the requirement for a medical certificate which states that the person understands the nature and meaning of the wedding ceremony. And some identified registration officers' practice of conducting interviews immediately in advance of the ceremony, a practice they said enabled the registration officer conducting the wedding to ensure that the person wished to marry and was capable of doing so.

10.39 Other consultees proposed that, in order to ensure that a wedding was not delayed, any requirement on the person to give notice and be interviewed should be able to be met immediately in advance of the wedding. As Buckinghamshire Registration Service said, "the system should allow for notices to be taken at bedside and the ceremony to follow swiftly afterwards if required".

10.40 The Church in Wales and the Faculty Office of the Archbishop of Canterbury both disagreed that the special licence process should be replaced by civil preliminaries in the case of terminal illnesses, or that this proposal should apply to the special licence process.

Discussion and conclusion

10.41 We believe that a person who is terminally ill should be required to give notice of their intention to marry, to ensure that they have capacity but also to ensure that they are not being coerced into the marriage.

10.42 It is worth noting that, at the time when the Registrar General's licence was introduced in 1970, the general civil preliminaries process only required one of the couple to give notice.[27] Not specifically requiring that the person who was terminally ill give notice therefore simply reflected the general rule at the time. More recently, civil preliminaries have become more focussed on providing safeguards against both sham and forced marriages, including marriages involving people who lack the mental capacity to

[27] Under the Marriage Act 1949, s 27(1) and (2), as originally enacted; Family Law: Solemnization of Marriage in England and Wales (1971) Law Commission Consultation Paper No 35, p 5.

marry,[28] and require that each of the parties give notice in person.[29] The Registrar General's licence process has fallen behind.

10.43 Because we think that people who are terminally ill might be particularly vulnerable to coercion, we do not think that they should have fewer protections than other people getting married.

10.44 As we noted at paragraph 10.32 above, we agree that certification from a doctor that the person understands "the nature and purport of the marriage ceremony" provides an important safeguard to ensure that the terminally ill person will have the mental capacity required to marry.[30] We recommend that it should continue to be required. However, we do not think that it is sufficient on its own to replace the protective functions of the preliminaries process, particularly as it provides no assurance that the ill person is aware of the wedding and wants it to go ahead.

10.45 We also disagree that registration officers' practice of questioning the couple immediately in advance of the wedding, in part to confirm information on the licence or schedule, can fulfil the same protective functions as the preliminaries process. We have no doubt that registration officers do their best, under the current law, to speak to the ill person to establish that they have capacity to marry and are consenting to the wedding. But under the current law registration officers do not attend all weddings involving a person who is terminally ill.[31] And they will attend even fewer under our scheme: under our recommendations, belief officiants, meaning Anglican clergy and nominated officiants, will officiate at all belief weddings. If the terminally ill person is not required to give notice under the civil preliminaries process, there will be no opportunity for a registration officer to interview them.

10.46 Under our scheme, all officiants will have a duty to ensure that both parties are freely expressing consent to be married, which will include taking any reasonable steps to ensure that neither is being coerced and that both parties have capacity.[32] But this duty is intended to provide an additional protection to the preliminaries process, not an alternative to it.

10.47 We appreciate that speed is of the essence in many of these cases. However, where necessary, we do not see why a registration officer could not fill out and issue a schedule at the person's bedside, including inputting information onto the internal electronic marriage notice book, to allow a wedding to take place immediately afterwards.[33] We think more protection would be offered if a registration officer could speak to the person prior to the wedding day, before friends and family have gathered

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28 As we noted above, throughout this Report, our use of "forced marriage" is based on the definition of forced marriage in s 121 of the Anti-social Behaviour, Crime and Policing Act 2014.

29 For example, the Immigration and Asylum Act 1999.

30 Marriage (Registrar General's Licence) Act 1970, s 3(d).

31 Registration officers do not attend the weddings of people who are terminally ill when they take place according to Anglican, Jewish or Quaker rites or usages: see para 10.11 above.

32 See para 4.25 above.

33 At Recommendation 46 at para 10.70 below, we recommend that the Registrar General's authority should no longer routinely be necessary to authorise a wedding in these circumstances, so a registration officer would have the authority to issue the authorisation for the wedding to take place.

in anticipation. However, in circumstances where that is not feasible, the schedule should be able to be issued and the wedding to take place immediately afterwards. Even in this situation, we think that the requirement that the person must themselves first give notice and the fact that authority to marry has not yet been issued should provide a greater level of protection than the current law: it will temper the expectations of anyone gathered for the wedding, and provide the registration officer with the formal ability to refuse to proceed based on a distinct process in which they must ensure that person is capable and willing.

10.48 Like consultees, we have every sympathy for people who are marrying under such circumstances, but we do not think that the current law adequately balances the need for haste with the need for safeguards.

Alignment with our general scheme: the authority to marry

10.49 Under the current law, schedules which authorise a wedding in the place where a person who is detained or terminally ill usually resides are only valid for three months, instead of the usual 12 months.[34] And weddings involving those who are terminally ill are not authorised by a schedule, but instead by a Registrar General's licence, which is only valid for one month.[35]

10.50 In the Consultation Paper, we explained our view that we did not know of any good reason for weddings involving people who are terminally ill to require a separate form of authority, or for the authority to be issued by the Registrar General rather than a registration officer. We thought that the principle of simplicity pointed toward having a single form of civil preliminaries. Accordingly, we provisionally proposed that the Registrar General's licence should be abolished, with a single form of civil authority to marry – a schedule – issued by registration officers.[36]

10.51 Simplicity, together with providing flexibility to couples to allow them to plan their weddings in advance, also led us to provisionally propose that the schedules authorising weddings of people who are terminally ill and people who are detained or housebound should be valid for 12 months.[37]

Consultation

Abolishing the Registrar General's licence

10.52 A majority of consultees were in favour of abolishing the Registrar General's licence, and authorising weddings involving people who are terminally ill by schedule. Some thought that it would simplify or streamline the civil preliminaries process in these cases, or provide clarity to couples; others were in favour of the consistency and uniformity the proposal would bring. Six local authorities agreed that registration officers should have the power to issue the authority to marry without a waiting period,

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34 Marriage Act 1949, s 33(3).

35 Marriage (Registrar General's Licence) Act 1970, s 8.

36 Consultation Paper, para 11.35, Consultation Question 64.

37 Consultation Paper, para 11.37, Consultation Question 65; Consultation Paper, para 11.44, Consultation Question 66.

and without the need to involve the Registrar General, provided that medical evidence establishes that the person is terminally ill.

10.53 Consultees who disagreed generally offered one of three reasons against the proposal. Some argued that there was no need to abolish the Registrar General's licence as the current approach works well. Others suggested that changing the rules, including to eliminate the need for the Registrar General to be involved, would dilute the marriage formalities or fail to reflect the importance of marriage. Finally, others felt that the involvement of the Registrar General was important to authorise emergency weddings, mainly due their experience in safeguarding formalities.

Period of validity of the schedule

10.54 A substantial majority of consultees agreed with our provisional proposal that schedules issued to couples where one or both have a terminal illness should be valid for 12 months. Many supported the proposal because it would promote consistency or simplicity, or because it would give couples and others involved in their weddings greater flexibility. On the latter point, consultees noted that the unpredictable and complex nature of terminal illnesses can make it difficult to plan the date of the wedding.

10.55 Conversely, those who disagreed cited the need for the wedding to take place urgently, suggesting that couples involving a person who is terminally ill but who does not need to marry urgently could or should obtain authorisation to marry using the regular preliminaries process. Some also expressed caution against such weddings being delayed until it is too late. Others raised concerns about the person losing capacity over the 12-month period during which the schedule would remain valid.

10.56 A substantial majority of consultees also agreed with our provisional proposal that schedules issued where one or both parties are detained in prison or hospital or are housebound should be valid for 12 months. Once again, those in favour primarily thought that the proposal would foster consistency and simplicity, particularly in circumstances where, as some consultees noted, there was no urgency, or would provide couples with flexibility, as well as enabling prison and hospital to accommodate changes.

10.57 Some consultees who disagreed suggested that, if couples involving a person who is detained or housebound do not want to marry urgently, they should follow the regular preliminaries processes.

10.58 Some consultees, including some who agreed, raised the issue of the person's circumstances changing after the schedule had been issued: for example, that they no longer met the criteria for being housebound or detained, or had been transferred to another facility.

Discussion and conclusions

10.59 We believe that there is no need for a special form of authority for weddings involving people who are terminally ill. We think that it is unnecessary to require the Registrar General to issue the authority to marry without a waiting period where one or both of the couple is terminally ill. As we explained in the Consultation Paper, during the debates on the Marriage (Registrar General's Licence) Act 1970, Parliamentarians

appeared to regard the Registrar General as the natural equivalent to the Archbishop of Canterbury, whose special licences are often used to authorise Anglican weddings involving people with terminal illness.[38] We do not think that analogy requires the Registrar General to continue to be involved.[39]

10.60 As consultees noted, the Registrar General and the General Register Office have experience in ensuring that safeguards are met in emergency circumstances. The Registrar General will continue to hold the authority to reduce the waiting period for compelling reasons in exceptional circumstances.[40] However, in the vast majority of cases under the civil preliminaries process, registration officers (specifically, superintendent registrars) issue the authority to marry; we think they should also be able to do so in cases where the person is terminally ill. As we noted in the Consultation Paper, registration officers may find the assistance of the Registrar General or the General Register Office useful in the cases of people who are terminally ill.[41] But because the circumstances in which authority to marry without a waiting period will be prescribed, including any evidence that is required, we do not think that the Registrar General must be involved in every case, or must themselves issue authority for the marriage to go ahead.

10.61 This conclusion is bolstered by the fact that, under our scheme, there will be no specific rules governing the wedding ceremony itself once authority to marry is issued: accordingly, it would seem peculiar to have two different forms of authorisation, and it could cause confusion among couples and officiants. Simplicity and consistency point to having a schedule authorise all weddings which are preceded by civil preliminaries.

10.62 A consequence of our policy is that it will also be possible for a schedule to be issued without a waiting period for emergency weddings for couples who want to be married in an Anglican wedding. Currently, a Registrar General's licence cannot authorise a wedding according to Anglican rites,[42] but a schedule will be able to authorise a wedding officiated at by any type of officiant, including Anglican clergy. This will address a problem raised by a few local authorities:[43] they reported that couples are encouraged by Anglican clergy to get a Registrar General's licence rather than a special licence due to the differing requirements of each process, with the result that

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38 Consultation Paper, para 11.32.

39 The purpose of making special provision in the cases of people who are terminally ill under our scheme is to allow the wedding to take place without notice. A common licence is the more natural comparator, being issued by the diocesan registrar to allow a wedding to take place without notice; unlike the Archbishop's special licence, it does not expand the places where the wedding can take place (Marriage Act 1949, s 16(1)). In responding to Consultation Question 62 (Consultation Paper, para 11.17), Leicester Diocesan Registry commented on the use of common licences to authorise emergency weddings. It also suggested that thought should be given to allowing such weddings to take place anywhere like special licences permit; under our recommendations, once a marriage document is issued following a common licence, the wedding would be permitted by the civil law to take place anywhere, but the Anglican churches would continue to retain authority about where it permits the weddings that they conduct to take place.

40 Marriage Act 1949, s 31(5A).

41 Consultation Paper, para 11.33.

42 Marriage (Registrar General's Licence) Act 1970, s 1(1).

43 In their responses to our open question about problems in this area of the law: Consultation Paper, para 11.17, Consultation Question 62.

such couples cannot have an Anglican wedding. Under our recommendation, these couples, whether they are authorised to marry via the civil preliminaries or by a special licence, could have an Anglican wedding.

10.63 We recommend that all schedules should be valid for a period of 12 months, regardless of the circumstances of the couple. This will make the law certain and simple, and reduce the chances of couples needing to give notice again if their circumstances change.

10.64 Although many couples where a person is terminally ill will choose to marry quickly, and indeed the ability to do so is the main purpose of making specific provision for such cases, there is no reason to require the couple to do so. We think the benefits of flexibility, and preventing couples from needing to give notice again should the wedding be delayed, outweigh any risk of abuse of local authorities' resources in quickly issuing authority to marry, particularly as couples will be required to provide evidence of the person's illness. As the only advantage of the separate procedure for weddings involving a person who is terminally ill is to allow the wedding to take place without a waiting period, there is no reason why a couple would use the procedure if they did not plan to marry without delay.

10.65 We also think there is an advantage in giving couples where one or both of the couple is detained or housebound flexibility over when they can have their ceremony. Once a schedule authorising the wedding to take place is issued, it will not matter if their circumstances change, for example, that the person is no longer housebound or detained or has moved facilities; all schedules will authorise a wedding to take place in any type of location. The only purpose of having a special preliminaries process for those who are detained or housebound is to ensure that they can have their in-person interview; the circumstances in which the schedule is issued is irrelevant to the location where the wedding can take place.

Recommendations

Recommendation 43.

10.66 We recommend that, to obtain authority to marry with no waiting period, the registration officer issuing the schedule should be satisfied that at least one of the parties to the marriage is terminally ill, meaning that they have a serious medical condition and it would be unreasonable to expect them to comply with the 28-day waiting period before being given authority to marry.

Recommendation 44.

10.67 We recommend that parties who have a terminal illness should be required to give notice of their intention to marry and be interviewed by a registration officer prior to the authority to marry being issued, but that these steps can take place immediately prior to the wedding.

10.68 We recommend that, to require a registration officer to attend the location of a person to take their notice, the registration officer should be satisfied that the person is unable to attend the register office because

(1) the person is housebound or detained, or

(2) the person is terminally ill, and as a consequence is unable to attend the register office.

Recommendation 45.

10.69 We recommend that, to satisfy the registration officer that

(1) the person is terminally ill, the person should be required to provide medical evidence of their serious medical condition and risk of death and of their mental capacity to marry; and

(2) the person is housebound or detained, the person should be required to provide evidence as specified by the Registrar General.

Recommendation 46.

10.70 We recommend that the Registrar General's licence should be abolished, and that there should be a single form of civil authority to marry – a schedule – issued by registration officers.

10.71 We recommend that schedules issued in all cases should be valid for 12 months, including for couples where one or both parties

(1) have a terminal illness, or

(2) are detained in prison or hospital or are housebound.

WEDDINGS ON MILITARY SITES

10.72 As part of our Terms of Reference for the project, we were asked to consider how the law should be reformed to enable weddings to take place in a wider range of venues, which expressly included considering weddings on military sites.[44]

10.73 The current legislation contains specific provision for religious weddings to take place on military sites, by permitting weddings to take place in certified naval, military and air force chapels, collectively known as "armed forces chapels". We explained the rules governing the use of armed forces chapels in the Consultation Paper, including the requirement that one of the parties must be a "qualified person", essentially a current or former member of the armed forces, or the child of such a person.[45] Armed forces policy limits the use of armed forces chapels to Christian weddings.[46] Additionally, unless the wedding is authorised by way of special licence, for an Anglican wedding to take place in an armed forces chapel, one of the parties must be resident in the parish in which the chapel is located.[47]

10.74 Although the current law does not explicitly prohibit civil weddings on military sites, the requirements governing approved premises preclude the possibility of a military site being approved, mainly because such sites are not regularly available to the public for weddings and could not be left open to the public during any ceremony.[48]

10.75 The current law therefore precludes many couples from marrying on military sites. In particular, it is difficult for same-sex couples to marry on military sites, because weddings can only take place in armed forces chapels, and few are registered for same-sex weddings.[49]

10.76 However, under our recommendations, weddings will be able to take place in any type of location, and there will be no requirement for the wedding to take place with open doors.[50] Accordingly, civil and belief weddings will be permitted to take place on military sites. It will be a matter for the Ministry of Defence as to whether, and where, it allows weddings to go ahead on its properties (subject to any limitations on the use of the chapel). And it will be able to use its powers as a property owner to restrict who uses its facilities to get married:[51] as currently, there could be restrictions based on having a connection with the armed forces, and on being locally resident, should the Ministry of Defence wish.

10.77 But our recommendations will enable the Ministry of Defence to allow other religious weddings, civil weddings, and (if enabled by Government) non-religious belief

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44 The full Terms of Reference for the project are included in Appendix 1.

45 Consultation Paper, paras 11.87 to 11.90; Marriage Act 1949, s 68(2).

46 Consultation Paper, para 11.91.

47 Consultation Paper, para 11.93; Marriage Act 1949, s 69(1) and sch 4 pt 1.

48 Consultation Paper, para 11.94; Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168).

49 See Ministry of Defence: Weddings: Written Answer (HC) 222595 (26 February 2019) (Gavin Williamson).

50 See Recommendation 34 at paras 6.210 to 6.213 above.

51 Constrained only by public law rules against discrimination.

weddings to take place on military sites, for example, in mess rooms, ceremonial rooms, or in the grounds. In particular, the availability of civil weddings on military sites will provide an avenue for same-sex weddings involving service personnel who would like to marry at a military site that is meaningful to them. Similarly, same-sex religious weddings, conducted by officiants nominated by religious organisations which have opted into same-sex marriage, could also take place on military sites.

10.78 Accordingly, we do not think that any special rules are needed in relation to weddings on military sites.

WEDDINGS IN THE TERRITORIAL SEA AND OTHER COASTAL WATERS

10.79 In Chapter 6, we outline our general recommendations about where weddings will be permitted to take place under our scheme. We recommend that the existing rules should be abolished, and that all weddings should be legally permitted to take place in any location. Whether a wedding could take place in any specific location would be a decision of the officiant, who would be responsible for considering the location's safety and dignity.

10.80 Following these general rules, weddings under our general scheme will therefore be able to take place in inland waters, such as lakes and rivers, a point we discuss in Chapter 6.[52]

10.81 In the Consultation Paper, we suggested that the general rule should extend to the territorial sea and other coastal waters adjacent to England and Wales.[53] We thought that weddings in these waters would be a meaningful option for some couples, so permitting them would be consistent with the principles of allowing for greater choice and respecting individuals' wishes and beliefs. Given that our proposed scheme did not prohibit weddings in remote locations, together with the large body of law regulating sea-going vessels, we could see no justifiable reason to preclude the possibility of weddings in the territorial sea or coastal waters.[54]

10.82 We therefore provisionally proposed that weddings should be able to take place in the territorial sea, and in bays and other coastal waters, adjacent to England and Wales.[55]

Consultation

10.83 A bare majority of consultees agreed with this provisional proposal.

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52 See para 6.89 and following above.

53 These are areas over which states' sovereignty extends. Territorial seas are measured from a line drawn around the coast called the baseline, and extend 12 nautical miles outwards from the baseline: United Nations Convention on the Law of the Sea (1982), arts 1, 2 and 3. In this category we include coastal waters that are not part of the territorial sea but are internal waters, that is, where the baseline deviates from the low water line, such as across the mouths of some bays (for example, in England and Wales, Morecambe Bay, Cardigan Bay, the Severn Estuary, The Solent, and The Wash are all internal waters): see United Nations Convention on the Law of the Sea (1982), arts 5 and 10; Territorial Sea (Baselines) Order 2014 (SI 2014 No 1353).

54 Consultation Paper, paras 11.110 to 11.118.

55 Consultation Paper, para 11.145, Consultation Question 68.

10.84 Among consultees who agreed, some confirmed our view that weddings in the territorial sea or coastal waters would be a meaningful option for some couples or supported the proposal on the basis that it provided couples with more choice. They included Humanists UK, who considered couples for whom it would be "personally meaningful", and so "an intrinsic manifestation of their Humanism", to marry in the territorial sea, including a couple who work at sea. British Marine thought this option would create business opportunities for passenger boats who operate on the coast.

10.85 Consultees who disagreed made various arguments against the proposal. Some consultees disagreed with the idea of permitting weddings in the territorial sea and coastal waters, considering that doing so is unnecessary or undesirable or that such locations would be undignified or would trivialise marriage. Some thought that weddings in the territorial sea could be at an increased risk of fraud, abuse or forced marriages. However, some of these consultees appeared to misunderstand that weddings in the territorial sea would operate outside our general scheme; for example, some appeared to think that the preliminaries process would not apply and that people who were not authorised officiants, such as the captain of the ship, would be permitted to officiate. Consultees were also concerned that weddings in such locations could not involve the community or could not satisfy what they saw as the necessary requirement that weddings take place with open doors. Some consultees also raised concerns about safety. And some thought that the location of the wedding would be too uncertain and, in particular, that it might be difficult to ascertain the boundary between the territorial sea and international waters.

10.86 On this latter point, seven local authorities, although not disagreeing with the proposal, expressed concern about the difficulties in establishing that the wedding took place in the territorial sea of England and Wales, and not those of Scotland. Some were concerned with establishing the precise registration district where the wedding took place; on this point, the National Panel for Registration suggested that weddings which took place in the territorial sea or coastal waters should be "registered centrally".

10.87 Two cruise companies argued in favour of weddings on board cruise ships being able to take place either at port or in territorial seas by officiants on board the ship. One company in particular argued that maritime officiants – who under our recommended scheme will only be authorised to officiate at weddings in international waters[56] – should also be authorised to officiate at weddings in territorial seas. It explained that, because during a voyage a cruise ship will pass through different types of waters, limitations on the types of waters where a wedding could take place would mean that evidence would need to be kept of the time and location of the ship during a wedding; although it said keeping such evidence would be possible, it did not think this additional administrative burden was justified. It moreover explained that flexibility would be important, considering that maritime officiants will have routine and emergency duties on board which could affect the timing of the wedding.

[56] See para 10.146 and following below.

Discussion and conclusion

10.88 We believe that allowing weddings to take place in the territorial sea and other coastal waters adjacent to England and Wales would be consistent with the principles of allowing for greater choice and respecting individuals' wishes and beliefs.

10.89 It is important to emphasise that weddings taking place in the territorial sea or in other coastal waters adjacent to England and Wales would be subject to the same requirements of any other wedding under our general scheme. Just like all other couples getting married, the couple will be required to give notice in advance of the wedding, under the regular process either for civil or Anglican preliminaries,[57] and to obtain authority to marry in the usual way; as part of that, each would be required to attend an in-person meeting.[58] As for every other wedding, an authorised officiant would be required to attend, and would be subject to the same duties and responsibilities which will apply to any other wedding, including those on land.

10.90 With the same processes for preliminaries and authorisation of officiants in place as for all other weddings, we do not see why weddings in the territorial sea or coastal waters will pose particular risks in relation to forced marriages or other abuses. As we explain in Chapter 6, the rules governing preliminaries and the duties on officiants to ensure that both of the couple have the mental capacity required to marry and are freely consenting to the marriage are better and more direct safeguards against forced and predatory marriages than limiting the locations where weddings can take place.

10.91 Officiants will also be responsible for considering the safety of those attending and the dignity of a wedding location. However, we do not think that the requirement for safety and dignity precludes the possibility of weddings in the territorial sea or other coastal waters.

10.92 Weddings at sea are not riskier than any other activities at sea. There is already a significant body of law governing the safety of maritime vessels and their use.[59] We do not think weddings law needs to impose further regulation to ensure that vessels in the territorial sea or other coastal waters are safe for weddings. As we explained in the Consultation Paper, to discharge their responsibility to ensure the wedding location is safe, the officiant should ensure that the vessel on which the wedding is proposed to take place conforms with safety regulations. The officiant should act on advice from the ship's captain, who is responsible for the safety of those on board, in particular in relation to any safety considerations that arise on the day, such as changeable weather conditions.[60]

10.93 We also disagree that there is anything inherently undignified about a wedding taking place on a boat or vessel. Under the current law, civil weddings can already take

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57 Should the Church of England or the Church in Wales allow Anglican weddings to take place in the territorial sea or other coastal waters; the decision whether to do so being entirely a matter for them.

58 See Ch 3.

59 For just one example, see the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 (SI 1998 No 2771).

60 Consultation Paper, paras 11.115 to 11.116.

place on board vessels which are permanently moored, which can be approved as premises under the Approved Premises Regulations.[61]

10.94 As we explain in Chapter 6 when considering the location of weddings generally, the logistical considerations of officiants, including registration officers, attending weddings on waterborne vessels would be a matter for discussion between the officiant, the couple and the vessel operator. If the officiant would need to leave the vessel once the wedding had taken place, they could decline to officiate or suggest alternative arrangements. For example, the wedding could take place while the vessel is at or near to a port, so that the officiant could disembark shortly after the ceremony. We believe that local authorities will be able to put in place sensible processes and requirements to facilitate registration officers officiating at weddings in a wide variety of places, including on board boats and other vessels.

10.95 As we explained in the Consultation Paper, the territorial sea is measured from a line drawn around the coast called the baseline, extending 12 nautical miles outwards from the baseline.[62] As noted by some consultees, it would be important for the officiant to ensure that the wedding takes place either in internal waters[63] or in the territorial sea or coastal waters adjacent to England and Wales. Anyone officiating at a wedding outside of internal waters in England and Wales would therefore need to have some understanding of their location, to ensure that the wedding is governed by the law of England and Wales. Officiants should be able to rely on the expertise of the ship's master and its navigational officers to know the ship's location. Ensuring the wedding takes place while the vessel is close to the shore, or well within 12 nautical miles, would be a safe way to ensure that the wedding would be validly conducted under the law of England and Wales. Similarly, ensuring that the vessel is well within the boundaries of English and Welsh waters, rather than Scottish waters, would also be a sensible approach. We think that the General Register Office could produce guidance on this point.

10.96 Generally, officiants will be responsible for ensuring that the completed schedule or marriage document is delivered to a registrar in the registration district where the wedding took place. This will not be possible in the case of weddings in the territorial sea and coastal waters, as registration districts extend only to the low water mark.[64] In this case, the schedule or marriage document could either be returned centrally, to the Registrar General, or to the registration district where it was issued to the couple.

10.97 We appreciate the desire of cruise companies to be able to offer weddings on board cruise ships in the territorial sea. They will be able to do so, but not with a maritime officiant officiating. In our view, there must be a clear distinction between the general

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61 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 2(1) "built premises".

62 United Nations Convention on the Law of the Sea (1982), art 3.

63 Although the baseline generally follows the low water line, in places the baseline deviates from the low water line, for example across the mouths of some bays. This means that some bays are internal waters, rather than the territorial sea. See United Nations Convention on the Law of the Sea (1982), arts 5 and 10; Territorial Sea (Baselines) Order 2014 (SI 2014 No 1353).

64 See Registration Service Act 1953, s 5(1); Local Government Act 1972, s 72; Local Government (Democracy) (Wales) Act 2013, s 46.

scheme governing weddings under our recommendations and the specifically designed scheme that would apply exclusively to weddings in international waters. A key part of drawing this distinction is to maintain a clear difference between officiants who will be authorised under the general scheme, and maritime officiants who will be authorised under the specific scheme. As we explain in detail below, maritime officiants will be authorised under our scheme to play a distinct role. We think that a clear distinction between maritime officiants and other types of authorised officiant will ensure that every type of authorised officiant will have clarity as to where they are authorised to officiate at weddings. This clarity, in turn, will contribute to ensuring that weddings in international waters take place only in certain circumstances, that is, only on cruise ships registered in the United Kingdom with a port of choice in England or Wales.

10.98 The need for this distinction also flows from two provisions of our Terms of Reference. First, our Terms of Reference require that we consider how to enable weddings to take place in a wider range of venues, including at sea. Second, they also provide that we "will not make recommendations as to whether the groups who can solemnize marriages should be expanded". We explain in the next section of this chapter that in our view it is necessary to authorise a bespoke type of officiant based on a category of persons who will as a matter of their existing roles be on board cruise ships, in order to facilitate weddings at sea. We do not think officiants authorised under the general scheme could be expected to be available on cruise ships during a voyage, particularly not on a regular basis. Further, we consider that weddings on cruise ships need to be officiated by a person who is subject to the ship's chain of command and has access to the ship's communications equipment.

10.99 The conclusion we have reached in relation to weddings at sea creates a tension within our Terms of Reference. To achieve one – to enable weddings to take place at sea – we have to go against the other, and expand the groups who can solemnize marriages. Given this tension, we do not think we should authorise maritime officiants to officiate at weddings outside of the specific context of enabling weddings at sea. Enabling them to do so would expand the groups who can solemnize marriages beyond the extent to which we have concluded that it is necessary to enable weddings at sea. If we did, and absent Government taking a decision to enable independent celebrants to officiate at weddings, maritime officiants would be uniquely placed under our scheme as the only category of officiant who could officiate at a wedding in England and Wales on a commercial basis. Therefore, we recommend below that maritime officiants should be permitted to officiate at weddings, but only on board cruise ships in international waters.

Recommendation 47.

10.100 We recommend that weddings should be able to take place in the territorial sea, and in bays and other coastal waters, adjacent to England and Wales.

WEDDINGS IN INTERNATIONAL WATERS

10.101 As we noted above, our Terms of Reference expressly require us to consider the possibility of weddings at sea.[65] We explained in the Consultation Paper Government's ambition in increasing the number of ships registered in the United Kingdom, so that the United Kingdom register is "one of the top 10 registers in the world in terms of tonnage".[66] We explained the role that weddings law could play in achieving this ambition, in particular, by permitting cruise ships registered in the United Kingdom to conduct weddings under the law of England and Wales.[67]

10.102 Currently, the law of England and Wales does not provide for, nor even contemplate, weddings taking place at sea. In the Consultation Paper, we made provisional proposals that would allow weddings to take place in international waters in specific circumstances. Some consultees, in responding to the consultation questions in Chapter 11 of the Consultation Paper, expressed disagreement with the idea of weddings at sea, including on the basis that the benefit of attracting cruise ships to the United Kingdom register is not a proper consideration. Nevertheless, Government has recently expressed its intention to allow couples to marry at sea, as part of providing greater opportunities for the cruise industry.[68]

10.103 Although we appreciate the concerns of some consultees, we nevertheless recommend that weddings in international waters should be permitted on board cruise ships, in the presence of a specific, bespoke type of officiant, authorised exclusively in relation to those weddings. Just as making provision for weddings to take place in inland waters and the territorial sea will promote choice and respect individuals' wishes and beliefs, so too will enabling weddings to take place in international waters. We believe our project is best placed to ensure that weddings in international waters are appropriately regulated, and that the specific provisions necessary to enable such weddings work seamlessly with the more general scheme applying to all other weddings.

10.104 The law governing weddings in England and Wales cannot simply be extended, without modification, to weddings in international waters. Below, we explain the specific provisions that will be necessary in relation to where weddings in international waters will be permitted, including aboard which types of vessel; the authorisation of a specialised type of officiant to be responsible for such weddings; and how the general rules governing preliminaries and validity should be adapted to apply to weddings in international waters.

Where such weddings could take place

10.105 In the Consultation Paper, we explained that weddings in international waters could not simply be governed by the law of England and Wales: there must be a connection between the vessel and England and Wales in order for the domestic law to apply. Under our provisional proposals, weddings would be permitted on board ships

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65 The full Terms of Reference for the project are included in Appendix 1.

66 Department for Transport, *Maritime 2050: Navigating the Future* (2019) s 5.8.

67 Consultation Paper, paras 13.84 to 13.85.

68 HM Government, *The Benefits of Brexit: How the UK is taking advantage of leaving the EU* (2022) p 75.

registered in the United Kingdom with a port of choice[69] in England or Wales.[70] We also explained in the Consultation Paper that it would be necessary to limit the couples who could marry on board a United Kingdom registered ship to couples who had boarded the ship in the United Kingdom: we explained that it would undermine the rules designed to protect against sham marriages if couples were able to marry under the law of England and Wales without first entering the United Kingdom.[71]

10.106 We also provisionally proposed that weddings in international waters should be permitted on board cruise ships.[72] We explained that, as far as we were aware, weddings in international waters under the laws of other jurisdictions currently only take place on board large cruise ships, as a part of a longer international voyage. Moreover, we had not heard of any demand for weddings to take place on board any other types of vessel. However, we asked an open question, inviting consultees' views as to whether weddings should be able to take place in international waters on board vessels other than cruise ships.[73]

Consultation

10.107 A majority of consultees were in favour of our provisional proposal that weddings should be able to take place in international waters on board cruise ships registered in the United Kingdom with a port of choice in England or Wales.

10.108 Consultees who supported the proposal welcomed the greater choice it would give couples. Some also confirmed that it would make the United Kingdom register more attractive to cruise companies or would be welcomed by those ships already on the register. For example, Carnival UK said:

> at present we have ships in the fleet we are unable to conduct weddings on due to the ship's registration. Being able to conduct weddings would influence choice of registration and additionally open a huge amount of opportunity for our guests that wish to marry on certain vessels.

10.109 Consultees who disagreed expressed general opposition to weddings being permitted at sea or questioned the need to make provision for them, with some arguing against commercial considerations playing any role in the decision. Some also disagreed on the basis that weddings at sea could not be open or accessible to the general public, or that they would be undignified or would trivialise marriage. Some consultees raised concerns about forced marriages or spur-of-the-moment weddings taking place on board cruise ships.

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69 As we explained in the Consultation Paper, prior to 1994, ships were registered on registers held at individual ports around the United Kingdom, and the port at which the ship was registered was called its port of residency: Merchant Shipping Act 1894, s 13 (now repealed). The Merchant Shipping (Registration etc) Act 1993 introduced a central register of ships, but applicants for registration continue to be required to nominate a port of choice, and the ship must be marked with the name of that port: The Merchant Shipping (Registration of Ships) Regulations 1993 (SI 1993 No 3138), regs 31 and 122, and sch 3 para 3.

70 Consultation Paper, para 11.146, Consultation Question 69.

71 Consultation Paper, para 11.124.

72 Consultation Paper, para 11.146, Consultation Question 69.

73 Consultation Paper, para 11.147, Consultation Question 70.

10.110 Carnival UK suggested that weddings should be permitted on board cruise ships regardless of the port of embarkation, "so long as guests meet legal and immigration requirements and have completed their pre-ceremony documentation and meeting with a UK registrar".

10.111 Some consultees made comments that a wedding should be able to take place under the law of England and Wales in places other than international waters, including in the territorial seas of other countries.

10.112 Only a minority of consultees said that weddings should be permitted in international waters on vessels other than cruise ships. The main argument in favour of other types of vessel was to facilitate choice: some said that so long as the vessel was safe and dignified, there is no reason to impose restrictions. One local authority offered that it would prevent disputes about the validity of a marriage based on the type of ship on which the wedding took place.

10.113 In terms of the types of vessel on board which weddings in international waters should be permitted, there was no consensus among consultees in favour. Some suggested that weddings should be permitted on any type of vessel. Other suggestions included naval ships; ferries; other commercial passenger ships; pleasure vessels, including private yachts and pleasure cruisers; and lifeboats and emergency service vessels.

Discussion and conclusions

Weddings at sea generally

10.114 We explained at paragraphs 10.101 to 10.103 above that our Terms of Reference expressly require us to consider the possibility of weddings at sea, and that allowing couples greater choice in where they can marry will promote choice and respect of individuals' wishes and beliefs. Moreover, Government has stated that it intends to allow couples to marry at sea, as part of providing greater opportunities for the cruise industry.[74]

10.115 We disagree that weddings at sea pose particular challenges in terms of safeguarding against forced, predatory or sham marriages. Like responses to our question about weddings in the territorial sea, consultees who opposed weddings in international waters based on safeguarding concerns appeared to understand that weddings at sea would be exempt from the safeguards against forced and sham marriages. However, under our scheme, to marry in international waters, the couple will still be required to comply with the preliminaries, and only authorised officiants, specifically maritime officiants, will be able to officiate at weddings in international waters. Some consultees thought that the isolation of a wedding at sea, relative to the enforcement authorities in England and Wales, could heighten the feelings of pressure on a person; however, as we explain elsewhere,[75] we do not believe that preventing weddings from taking place in isolated locations is the most effective way of identifying forced or predatory marriages. The preliminaries process, and duties on officiants, together with training of officiants, will be more effective, and more direct ways of

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74 HM Government, *The Benefits of Brexit: How the UK is taking advantage of leaving the EU* (2022) p 75.

75 See para 6.70 and following above.

ensuring that such weddings are identified. In light of these better tools, we do not think it is proportionate to limit where weddings can take place.

International waters

10.116 The purpose of creating a specific scheme is to enable weddings to take place in international waters.

10.117 The specific provisions we recommend for weddings on board cruise ships will not apply to weddings in the territorial sea of the United Kingdom. Although weddings will be permitted to take place in the territorial sea adjacent to England and Wales, including on cruise ships in port, such weddings will be regulated under our general scheme. As a consequence, maritime officiants will not be able to officiate at such weddings; only officiants authorised under the general scheme[76] will be able to do so. We explain at paragraphs 10.97 and 10.99 above our reasons for this, including the need for a clear distinction between the application of the general scheme and the application of the scheme governing weddings in international waters, both for policy reasons and as a matter of our Terms of Reference.

10.118 Moreover, we disagree that weddings in the territorial seas of other jurisdictions should, or indeed could, be regulated by the law of England and Wales. Under public international law, states have sovereignty over their territorial seas;[77] insofar as comity between states underpins the rules of private international law,[78] it suggests caution over asserting the application of the domestic law of one nation in the territorial sea of another. States can apply aspects of their domestic law on board their registered ships via the flag state rule.[79] However, asserting the application of the domestic weddings law of England and Wales to weddings that take place in the territorial sea of another nation would seem to be a significant imposition into the sovereignty of other jurisdictions (some of which allow weddings at port and in their territorial seas, according to their own domestic laws[80]). It would also seem to be a significant

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76 Registration officers, Anglican clergy, nominated officiants, and (if enabled by Government) independent officiants. Whether belief officiants will be willing to do so will be a matter for their relevant governing authority, or for Anglican clergy, the Church of England and the Church in Wales to decide.

77 United Nations Convention on the Law of the Sea (1982), s 1.

78 Lord Collins of Mapesbury (ed), *Dicey, Morris and Collins on the Conflict of Laws* (15th ed 2012) paras 1–005 to 1–017.

79 United Nations Convention on the Law of the Sea (1982), art 92(1). See also Lord Mackay of Clashfern (ed), *Halsbury's Laws of England* (5th ed 2011) vol 19 para 502 n 1.

80 Scotland and the British Antarctic Territory both have specific provisions for weddings to take place in their territorial seas: see Marriage (Scotland) Act 1977, s 18(1)(ab)(iii); Foreign and Commonwealth Office, "British Antarctic Territory", https://www.gov.uk/world/organisations/british-antarctic-territory (last visited 1 July 2022), British Antarctic Territory Order 1989 (SI 1989 No 842), art 2, and The Marriage Ordinance 2016, s 6(1). Weddings also reportedly take place on board cruise ships according to the domestic laws of some Canadian provinces, New Zealand and Australia. Cruise ships also reportedly conduct weddings at port in Turks and Caicos Islands, Jamaica, in certain states and territories of the United States, Mexico, Greece, Saint Lucia and Sint Maarten: see eg P&O Cruises, "Ceremonies at Sea", https://www.pocruises.com.au/-/media/b2c/brochures/files/ceremonies-at-sea.pdf?la=en (last visited 1 July 2022); Norwegian Cruise Lines, "Dream Wedding Planner", https://ncl.eweddingcalendar.com/Wedding-Calendar-Home (last visited 1 July 2022).

amendment of the general common law rule that the formal validity of a marriage is governed by the law of the country where it is solemnized.[81]

10.119 Accordingly, weddings officiated at by maritime officiants must take place in international waters. To ensure that there can be no doubt that the wedding took place in international waters, ships on which such weddings take place should ensure a record is made about the time of the wedding, together with the location of the ship: we think this information can be included on the schedule, in the space given to record the location of the wedding. We understand this will be another administrative step; however, we have not heard from cruise companies that it would be one that they could not comply with.

The link to England and Wales

10.120 Most consultees did not directly comment on aspects of our provisional proposal that were intended to create a clear link between the ship on which a wedding could take place and the law of England and Wales. Among those who did, some expressed confusion or concern about how the link could be established with certainty.

10.121 Of course, it is of the utmost importance that a link could be created between the ship and the law of England and Wales, to ensure that the domestic law of England and Wales could apply to the wedding, a point on which the legal effect of the wedding would depend. This is why we proposed that the ship would have to be registered on the United Kingdom register, with a port of choice (formerly, a port of registration) in England or Wales. This formal registration will provide an unambiguous and direct link which will be easy to prove. As we explain at paragraph 10.165 below, to ensure that weddings only take place on such ships, the couple will be required to identify the ship on which they plan to marry when they give notice, and the schedule will record the ship's unique International Maritime Organisation SHIP registration number.

10.122 We are not, however, recommending that the couple will need to board the ship in the United Kingdom, a requirement we suggested in the Consultation Paper. We had originally considered this necessary to ensure that immigration law, and so the sham marriage provisions, could apply to the couple. However, as we are not pursuing a recommendation that preliminaries should be able to take place remotely, all couples marrying on board a cruise ship will be required to attend an in-person interview before the schedule is issued.[82] Consequently, anyone marrying in international waters according to the law of England and Wales will be required to enter the United Kingdom in order to give notice. As a result, the various provisions that apply to identify sham marriages – including the possibility of the notice period being extended to 70 days to investigate the marriage as a sham – will apply to the couple as part of the preliminaries process.[83] Although couples marrying under these provisions who are not resident in England and Wales might therefore have to travel to England and

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81 See *Scrimshire v Scrimshire* (1752) 161 ER 782; *Middleton v Janverin* (1802) 161 ER 797.

82 See Recommendation 2 at para 3.78 and Recommendation 3 at para 3.109 above. At Recommendation 48 at para 10.187 below, we recommend that only civil weddings should permitted to take place in international waters; accordingly, Anglican preliminaries will not be able to authorise a wedding in international waters.

83 We note that a consequential amendment will be necessary to the rules governing fiancé(e) visas to ensure that they are required, and apply to, someone entering the UK to give notice of a wedding that will take place under the law of England and Wales.

Wales exclusively to give notice, which will not be convenient for them,[84] this will be a necessary safeguard.

10.123 The ability of the couple to board the vessel outside the United Kingdom having completed their preliminaries provides welcome additional flexibility. It will allow a cruise ship registered in the United Kingdom with a port of choice in England or Wales, but which is not sailing to or from a port in England and Wales on a particular voyage, to conduct weddings in international waters so long as a schedule has been issued for the wedding in England and Wales. For a couple getting married it gives the possibility of travelling anywhere in the world to board the vessel for their wedding having completed the preliminaries in England and Wales.

The types of vessel on which a wedding could take place

10.124 Some consultees who supported weddings being able to take place on vessels other than cruise ships did not appear to appreciate that this question was specifically about weddings in international waters. Weddings on all types of vessel will be able to take place under our general scheme, which will permit weddings in inland waters and the territorial sea, under Recommendations 34 and 47. Couples wishing to marry on a vessel that is particularly meaningful to them, or smaller passenger ships wishing to diversify their businesses, will be able to do so: the specific question to consider here is whether they should be able to do so in international waters.

10.125 As we explain throughout this section, it will be crucial that certain requirements are strictly adhered to in these cases, including that the ship is in international waters at the time of the wedding. As we discuss at paragraph 10.186 below, failure to comply with these requirements will have serious consequences for the validity of the marriage.

10.126 We explain at paragraph 10.147 below our conclusion that maritime officiants should have operational functions on board the ship, in part to ensure that they are qualified to meet the specific requirements applying to weddings at sea. That maritime officiants will come from a class of officers with navigational responsibilities will make certain that they have the expertise necessary to determine accurately the location of the ship. We also explain our view that maritime officiants should be part of the ship's formal chain of command, so that they can contact the General Register Office during a voyage if necessary.

10.127 These factors point to restricting weddings in international waters to ships with professional crews. Accordingly, we disagree that any vessel on the United Kingdom register should be authorised to host a wedding in international waters. Nor do we agree that weddings should be able to take place on board pleasure craft or small passenger ships. These factors also point away from permitting weddings aboard ferries, which may spend very little time in international waters during a crossing.

10.128 For the same reasons we also do not recommend that weddings should be permitted to take place in international waters on board lifeboats or emergency vessels. To the extent that consultees had in mind the possibility of a wedding taking place in an

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84 A point we noted at Consultation Paper, para 11.124.

emergency on board a lifeboat or emergency vessel, we note our scheme does not seek to allow a wedding to take place in an emergency without giving notice.

10.129 We are not considering as part of this project whether weddings should be permitted on board naval ships. Whether or not there is any appetite to provide weddings on board naval ships would be a matter for the Ministry of Defence.

10.130 We therefore recommend that weddings in international waters should only be permitted to take place on board cruise ships. As we suggested in the Consultation Paper, the definition of a cruise ship can be taken from an existing definition in the law, which in a simplified form defines a cruise ship as a passenger ship certified to carry more than 200 passengers and which is engaged on international voyages of over 600 nautical miles.[85] We think this recommendation balances giving couples more choice against the importance for close and clear regulation of weddings in international waters.

Maritime officiants

10.131 It would be impractical to require weddings in international waters to be officiated at by the same types of officiants as are authorised under our general scheme. We therefore proposed that existing crew members aboard a ship on which weddings in international waters can take place could be authorised as officiants so that they could officiate at weddings at sea.

10.132 As part of this, we provisionally proposed a new category of officiant, called maritime officiants. To ensure that maritime officiants are part of the ship's chain of command and in a position of high responsibility on board the ship, we provisionally proposed that only deck officers should be able to apply to be authorised as such.[86]

10.133 Under our proposals, maritime officiants would be subject to the same rules that we proposed would apply to independent officiants, including the requirement that they would apply directly to and be authorised by the Registrar General.[87]

10.134 We also proposed that, if Government enables independent celebrants to conduct legal weddings, independent officiants who were also members of the ship's crew should also be able to officiate at weddings on board ships in international waters.[88] They would not need to be deck officers, but would still need to be crew members.

10.135 Our provisional proposals would only permit civil weddings to take place on board a ship in international waters. As we explained in the Consultation Paper, we had not heard of any demand for religious or non-religious belief weddings in international waters. However, we invited consultees to share with us whether there was any such demand.[89]

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85 Merchant Shipping (Officer Nationality) Regulations 1995 (SI 1995 No 1427).

86 Consultation Paper, para 11.149(1), Consultation Question 72(1).

87 Consultation Paper, para 11.150, Consultation Question 72(2).

88 Consultation Paper, para 11.149(2), Consultation Question 72(1).

89 Consultation Paper, para 11.152, Consultation Question 73.

Consultation

Civil officiants

10.136 A bare majority of consultees agreed with our provisional proposal that weddings in international waters should be officiated at by deck officers who had be authorised by the Registrar General as maritime officiants and (if enabled by Government) independent officiants who were also members of the ship's crew. Reasons for agreement included that the proposal was sensible or practical, including, for example, that members of the ship's crew would be conveniently available to officiate at weddings on board.

10.137 However, some consultees who appeared broadly to agree with the idea of crew members being authorised as officiants disagreed with specific aspects of the proposal.

(1) One cruise company thought that the category of maritime officiants should be expanded from deck officers to "masters and officers", a category which would include all marine personnel who are certified as qualified to perform operational and management level functions on board the ship.

(2) Conversely, another cruise company, Carnival UK, thought that only the captain and deputy captain of a ship should be authorised to officiate at weddings on board. Its reasons were twofold: to reflect the wishes of couples to be married by the captain, and to limit the number of crew capable of being a maritime officiant, which it argued would be best from an operational point of view and would mitigate "ill practice[s]". Other consultees also argued that only the captain or master of a ship should be able to conduct weddings on board, or disagreed with independent officiants conducting weddings at sea.

10.138 On the other hand, some consultees disagreed with a scheme that could authorise members of a ship's crew to act as officiants. Although some disagreed with weddings at sea more generally, others said that crew members should focus on their operational responsibilities, rather than conducting weddings, or questioned whether crew would have sufficient knowledge to conduct a wedding.

10.139 Other consultees more generally argued that all types of authorised officiants should be able to officiate at weddings on board a ship. Not all consultees agreed that anyone officiating on board a ship should be required to be a member of the ship's crew. Some argued that officiants who were passengers, rather than crew, should be able to officiate at weddings on board. Among them, Humanists UK argued that provision could be made for belief officiants to have access to communication equipment if necessary.

10.140 A substantial majority of consultees agreed that maritime officiants should be subject to the same rules that we proposed would apply to independent officiants. Some consultees saw this proposal as essential, appropriate or logical given the similarity between the two types of officiant. Others suggested that applying the same rules to both would promote clarity and consistency; for example, Carnival UK agreed that the "rules and regulation surrounding conducting weddings on board should be kept much the same as those on land to ensure rigor" and to prevent "new complexities".

10.141 The Wedding Celebrancy Commission, which agreed, asked whether maritime officiants could also be authorised as independent officiants, and vice versa, "on the basis that the same rules will apply to them".

10.142 Two local authorities commented that, like independent officiants, maritime officiants should appear on the General Register Office's public list of officiants.

Belief officiants

10.143 Some consultees touched on the authorisation of belief officiants to conduct weddings at sea in response to various questions in this chapter. However, responses to our open question about the demand for religious or non-religious belief weddings in international waters revealed little evidence of demand. Some consultees stated that there were aware of demand for belief weddings. In particular, Carnival UK said that each year a "very small number of guests" asked about it, and the United Kingdom Society of Celebrants said that they had anecdotal accounts that many of their members had conducted non-legally binding commitment and vow renewal ceremonies on board cruise ships. On the other hand, several religious organisations said they were unaware of any demand for religious weddings in international waters.

10.144 Rather than considering demand, most consultees focussed on whether provision for belief weddings in international waters should be made. Some consultees thought that fairness and consistency would demand making equal provision for belief weddings as for civil weddings. Some suggested that a belief officiant serving as the ship's chaplain should be permitted to officiate at weddings at sea.

10.145 As we note above, not all consultees agreed that an officiant should be a member of the ship's crew, and these included consultees arguing in favour of belief officiants officiating at weddings in international waters. They argued that belief officiants on board as passengers should be permitted to officiate. In particular, one cruise company said that because it would be difficult for the ship's crew to cater to the diversity of religious and non-religious beliefs, the types of officiant able to officiate should be expanded, including to nominated officiants who were guests on board.

Discussion and conclusions

10.146 The role of the officiant is central to the scheme that we recommend in this Report. Therefore, we have had to consider carefully how our officiant-based scheme could apply as simply and consistently as possible to the context of weddings in international waters, while also ensuring that it is sufficiently tailored to be workable in this particular context. In our view, facilitating weddings taking place at sea necessarily requires authorisation of a category of person who will already be on board the cruise ship, rather than expecting officiants authorised under the general scheme to be available on cruise ships during a voyage. Bearing that in mind, and together with consultees' responses, we recommend that only maritime officiants – being deck officers on board – should be authorised to officiate at weddings on board cruise ships in international waters. Maritime officiants will be subject to the same general duties and responsibilities that apply to all officiants in relation to the weddings at which they officiate. But we also recommend that they should be subject to the specific rules, including the processes for authorisation and monitoring, that apply to independent officiants.

10.147 Among the three cruise companies that responded to our proposal about maritime officiants, one agreed, one suggested the category should be expanded, and one suggested that the category should be narrowed. However, we think that our proposal that only deck officers should be able to be authorised struck the right balance. Deck officers comprise the captain, chief mate, and other officers who take charge of a navigational watch on board a ship.[90] We think this class of officer reflects the important role officiants will play, including in considering whether the location for the wedding is safe and dignified, and that the wedding only takes place when the ship is in international waters. We also think that this class of officer is not so limited as to interfere with the operation of the ship itself. It also accords with the expectations of many couples that the captain will perform weddings on board.

10.148 We recommend that, to be authorised as a maritime officiant, a deck officer should apply to the General Register Office. Like independent officiants, maritime officiants will be acting on a commercial basis, so we continue to believe, and recommend, that they should be subject to the same rules as independent officiants.

10.149 Accordingly, deck officers will be required to meet the same qualifying criteria that we recommend should apply to independent officiants. As we discuss at paragraph 4.332 and following above, they will be required to demonstrate that they are fit and proper persons to officiate at weddings. This will involve proving that they are of good character, including making a declaration about any unspent criminal convictions; that they had undertaken the training provided by the General Register Office or that was approved by the General Register Office; and that they understand the legal requirements for being an officiant and performing the role.

10.150 Of course, to be authorised as a maritime officiant, the deck officer will also be required to demonstrate that they are a deck officer on board a ship on which weddings can take place in international waters. They should also show that the cruise ship has an appropriate chain of command and policies and procedures in place to ensure that the specific requirements governing these weddings will be complied with, including the necessity that such weddings will only take place when the ship is in international waters.[91]

10.151 Maritime officiants, like independent officiants, will also be subject to the requirement to undertake ongoing training as prescribed by the General Register Office, and will appear on the public list of officiants.

10.152 We do not recommend that independent officiants (if enabled to conduct legally binding weddings), even those who are members of the ship's crew, should be authorised to officiate at weddings in international waters. Given the crucial requirements about the location of the ship when a wedding can take place, as well as the requirement that such weddings only take place on board cruise ships registered on the United Kingdom register with a port of choice in England or Wales, we think that it is safer for the responsibility to be entrusted to senior crew members who have

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90 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) (1978) (as amended), reg I/1(1.5) and ch II.

91 See paras 10.116 to 10.119 above.

a role in relation to navigation, and not to casual crew or crew with more junior levels of responsibility.

10.153 We also do not recommend that belief officiants should be authorised to officiate at weddings in international waters. We considered whether a ship's chaplain could be authorised; however, because a chaplain is not a part of the chain of command and does not have any operational responsibilities on board the ship – and may not even be an employee of the ship – we think authorising them poses the same risks as authorising other members of a ship's crew. We also note that any belief officiant who was an employee of the ship might be subject to conflicts in their roles. Such a conflict could put them in difficult situations, such as in relation to officiating at same-sex weddings, or could undermine their ability to meet the requirement that all nominated officiants must not subordinate their beliefs to commercial interests.

10.154 We also disagree that a passenger, even if authorised as an officiant under our general scheme, should be permitted to officiate at weddings in international waters. Under our recommendations, the ship itself plays an important role in linking the wedding to the law of England and Wales. The requirement for the officiant to be linked to, and subject to the chain of command of the ship, as well as to have access to the ship's communication equipment, requires that the ship's operator be directly involved in organising and overseeing the wedding. Moreover, we do not think it would be wise to entrust a guest, even if authorised to officiate at weddings generally, with ensuring that the specific requirements of weddings in international waters were met. In particular, we do not think that they could be assured of knowing, and appropriately recording, the ship's location in international waters at the time of the ceremony.

10.155 However, although only a maritime officiant could officiate at the wedding in international waters, another person – whether authorised as an officiant or not – could nevertheless play an unofficial role in the ceremony, including being the celebrant. Under our scheme, the officiant has specific legal responsibilities in relation to the wedding, but there is no requirement that he or she conducts the ceremony.

10.156 We explain at paragraph 10.97 above that maritime officiants will only be permitted to officiate at weddings in international waters. They could not officiate at weddings under our general scheme; in particular, they could not officiate at weddings in the territorial sea and coastal waters. We appreciate that it may seem like an unnecessary complication to cruise operators that a maritime officiant cannot officiate at a wedding on board in port but can do once the ship enters international waters. For a wedding in port or in territorial sea, an officiant authorised under the general scheme will have to board the ship to officiate.

10.157 However, we recommend that a maritime officiant should also be able to be authorised as an independent officiant, in the event that Government enables independent celebrants to conduct legal weddings: the same person aboard the ship would therefore be able to officiate at a wedding in the territorial sea or other coastal waters of England and Wales or international waters.[92] This exception to our general rule that a person should not be authorised under more than one category of officiant

[92] It will not be possible for a person authorised as an officiant to conduct a wedding under the law of England and Wales in the territorial seas of another jurisdiction, a point we explain at para 10.118 above.

at any one time will, in practice, act as a bridge between our generally proposed scheme and the special scheme governing weddings in international waters. We think this exception is justified because the same requirements will apply to both maritime officiants and independent officiants, so there is no risk of a person being placed in a conflict between the two roles.

Preliminaries

10.158 Under our scheme, when giving notice of their intention to marry under the civil preliminaries process, the couple will not have to identify the location of their wedding. Instead, they will identify the officiant for the wedding.

10.159 All couples getting married on board a ship in international waters will be required to give notice, complying with the regular civil preliminaries process. The ship's registration will need to be checked at the time the couple gives notice. However, it is likely that the crew roster of a ship might change ahead of a sailing (or simply not be known at the time notice is given). Accordingly, we did not think it was practical for a couple marrying in international waters to identify their officiant by name. Instead, we provisionally proposed that the couple should be required to provide the name and registration number of the ship on which they intend to marry.[93] The ship would be identified on the schedule authorising the wedding.

10.160 However, we also explained that the validity of the marriage would not be affected if the wedding took place on a ship other than the one named in the schedule, so long as the ship was one on which such a wedding could take place.[94] This approach would be in keeping with our proposals under our general scheme that the validity of the marriage would not be affected if an officiant other than the officiant named in the schedule officiated at the wedding. The ship would still need to be registered in the United Kingdom with a port of choice in England or Wales.

Consultation

10.161 There was not majority support among consultees for this provisional proposal.

10.162 Among those who did agree were two cruise companies who agreed that couples would be able to identify the ship, as they would have already booked their cruise itinerary, and agreed that it would be impractical to require the couple to name the specific officiant for the wedding. One cruise company also said that it was pragmatic that the validity of the marriage would not be affected by a change in the ship after notice had been given, provided that the ship was one which met the criteria.

10.163 Many consultees who disagreed simply disagreed with the idea of weddings at sea.

10.164 However, about half of the consultees who disagreed with this proposal and gave reasons thought that the officiant should be identified when the couple gave notice. Some suggested that the officiant should be named if they are known. Others thought that the officiant should always be named, with some stating it was necessary to ensure that the person was authorised to officiate or that it was a necessary corollary

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93 Consultation Paper, para 11.148, Consultation Question 71.

94 Consultation Paper, para 11.133.

of an officiant-based system. The Royal Caribbean Group was in favour of the couple being required to provide "the name of the vessel, IMO number and officiant name and any registration numbers".

Discussion and conclusion

10.165 Because the ship itself provides the link between the wedding and the law of England and Wales, we continue to think that the ship should be identified by the couple when they give notice to marry. Consultees appeared to agree that couples will be able to identify the ship on which they plan to marry at the time when they give notice. In particular, all three cruise companies who responded agreed with this point, with some stating that the ship's IMO (International Maritime Organisation SHIP) identification number was the registration number that couples should provide.

10.166 Although many consultees thought that the couple should name the individual maritime officiant who would act, we continue to believe that it is not necessary. Moreover, we have modified our policy in relation to the identification of officiants on the schedule in our general scheme to take into account the fact that the identity of other types of officiant may change after the schedule is issued but before the wedding takes place.[95] We continue to think that maritime officiants, like registration officers, may be particularly difficult to identify up to a year in advance of the wedding, and are particularly liable to substitution in response to operational requirements. We therefore recommend that the individual maritime officiant should not be named on the schedule.

10.167 A handful of consultees thought that there might be difficulty if the ship itself changed at the last minute. As we explained in the Consultation Paper, there would be no consequences for the validity of the marriage if a couple married on a ship other than that named in the schedule, provided the ship that was in fact used met the criteria for conducting weddings. Moreover, if the couple decided to marry in a location other than a ship in international waters – for example, in a lake or on land – there would be no consequences for the validity of the marriage so long as the wedding took place in the presence of an authorised officiant (and not a maritime officiant). However, as we recommend in Chapter 3 in relation to a change of officiants, if the couple know in advance about the change, they should be able to apply for an amended schedule.

Registration

10.168 At the time of the Consultation Paper, the schedule system had not yet been introduced by Government. However, on the basis of the information published by Government, we anticipated that the responsibility for returning the completed schedule after the wedding would lie with the couple, and that they might be required to do so within seven days of the wedding.[96] For couples marrying on board a cruise ship in international waters, this requirement could prove difficult to comply with. We therefore provisionally proposed that any fixed time limit to return the schedule should

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95 See Recommendation 8 at para 3.201 above.

96 Consultation Paper, para 8.14, citing the Explanatory Notes to the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, and Registration of Marriages Regulations (draft statutory instrument), reg 16, deposited in the House of Lords Library on 17 April 2018 by Baroness Williams of Trafford. See also *Hansard* (HL), 26 January 2018, vol 788, col 1248.

not apply to them, but instead the couple should be required to return the schedule as soon as is reasonably possible.

Consultation

10.169 A majority of consultees agreed with this provisional proposal. Consultees who agreed thought the proposal was reasonable. Those who disagreed thought there should be a maximum time period during which the schedule must be returned, for certainty and to discourage couples from forgetting to do so. There was no consensus about what that time limit should be, with suggestions ranging from 28 days to one year.

10.170 Some suggested that a process should be introduced to notify the registration service on an interim basis that the wedding had taken place, with the schedule to follow, with others further arguing that an electronic process to return schedules would make this proposal unnecessary.

Discussion and conclusion

10.171 As we note above, at the time of the Consultation Paper, we anticipated that the couple would be responsible for returning the schedule after the wedding, possibly within seven days. However, under the 2021 reforms that implemented the schedule system, the person who previously would have been responsible for registering the marriage[97] is now responsible for delivering the schedule to a registration officer in the registration district in which the wedding took place, within 21 days of the wedding.[98] The current law makes provision for this duty to be discharged by sending a copy in an "approved electronic form", meaning a form of electronic communications or storage approved by the Registrar General.[99]

10.172 In our view, it is reasonable to expect a maritime officiant to return the schedule within 21 days of the wedding. Although returning the schedule by post within 21 days should be possible in many cases, allowing maritime officiants to return the schedule via electronic methods would ensure that schedules were returned for registration without delay. Accordingly, we do not make any specific recommendations about when the schedule should be returned in relation to weddings which take place in international waters. This conclusion may satisfy many consultees who were in favour of imposing a time limit on when the schedule must be returned.

10.173 The requirement to return the schedule to a registration officer in the registration district in which the wedding took place will not work in relation to a wedding that takes place in international waters. Instead, in these cases the schedule could be returned centrally, to the Registrar General, or to the registration district where the schedule was issued.

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97 The member of the Anglican clergy, authorised person, Jewish synagogue secretary, or Quaker officer. If a registrar attends the wedding, they retain the schedule: see para 7.8 above.

98 Marriage Act 1949, s 53D(1) to (3).

99 Marriage Act 1949, ss 53D(4) and 74(2).

10.174 As we note at paragraph 10.119 above, the schedule should record the precise location of the ship at the time of the wedding.

Validity

10.175 In Chapter 9, we explain that a failure to comply with the formality requirements can have consequences as to the validity of the marriage. In particular, it can result in a void marriage or a non-qualifying ceremony.

10.176 Because of the important link between the ship and the officiant for weddings in international waters, we provisionally proposed that a void marriage should result if a wedding that took place in international waters was not officiated at by someone who was authorised to officiate at weddings in international waters. Under our provisional proposals, this would be a maritime officiant or (if enabled by Government) an independent officiant who is a member of the ship's crew.[100] Although this provision would be a safeguard, we thought that, because weddings on board cruise ships in international waters will invariably be arranged via the operator of the ship, it would be extremely rare that anyone other than an appropriately authorised officiant would act.[101]

Consultation

10.177 A substantial majority of consultees agreed. However, as in response to our general proposal about validity, which we discuss in Chapter 9, it is not apparent that many consultees appreciated what we were asking. In particular, many consultees may have agreed with this proposal because they assumed that a marriage would inevitably be void if the parties had not complied with any of the legal requirements, or were simply agreeing with the requirement for an authorised officiant to be present.

10.178 Among consultees who commented in relation to validity, Carnival UK agreed on the basis that it would ensure that "only officiants can conduct weddings on board a vessel".

10.179 Some consultees argued that the same rules should apply as those that apply to weddings on land, in effect disagreeing with the different (and stricter) treatment we had proposed in relation to the identity of the officiant. Other consultees, although not apparently commenting on the role that the type of officiant should play in relation to the validity of the marriage, argued that other types of officiant should be able to officiate at weddings at sea.

10.180 North Yorkshire County Council asked what the effect on validity would be if the wedding took place on ship that did not comply with the requirements, including that it was held on a foreign vessel.

Discussion and conclusion

10.181 In our provisional proposal, we had suggested a modification of the rules governing validity that we had proposed in relation to weddings under our general scheme. In particular, it was a modification of our proposal that a marriage should be void only if

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100 Consultation Paper, para 11.151, Consultation Question 72(3).

101 Consultation Paper, para 11.142.

both parties knew that the ceremony was not officiated by an authorised officiant.[102] Here, we provisionally proposed that the knowledge of the couple should not matter: the marriage would be void if it was not officiated at by an officiant who was specifically authorised to officiate at weddings in international waters, regardless of what the couple knew.

10.182 We did not, in this provisional proposal, outline all the circumstances in which a wedding in international waters would result in a void marriage or be non-qualifying. For the avoidance of any confusion, the other factors that would render a marriage void or result in a non-qualifying ceremony will also apply to weddings in international waters. We have drafted the recommendation to clarify this point.

10.183 We think it is justified and appropriate to recommend that a marriage should be void where the person officiating at a wedding in international waters is not someone who is capable of being authorised. Weddings in international waters will operate as a separate scheme; these weddings will have separate requirements, that we consider only deck officers on board have the expertise to fulfil. We think that this stricter approach will ensure that weddings in international waters are conducted appropriately.

10.184 However, we think the law should militate against the couple suffering consequences for circumstances in which the deck officer happened not to be authorised as a maritime officiant. This fact might not be within the knowledge of the couple, for example, where a deck officer was authorised as a maritime officiant, but their authorisation had lapsed in advance of the wedding. Accordingly, we have modified our policy. So long as the person was a category of person who could have been authorised as a maritime officiant – meaning a deck officer on board the cruise ship – the marriage will not be void. But a wedding in international waters which is not officiated at by a deck officer will be void. This will include weddings officiated at by other types of authorised officiants. Where a wedding in international waters was officiated at by a registration officer, an Anglican member of the clergy, a nominated officiant, or (if enabled) an independent officiant, in each case, the marriage will be void.

10.185 We do not think that, under our scheme, couples will be at risk of having a wedding in international waters that is inadvertently invalid. Because weddings can only take place on board cruise ships, cruise operators will be involved in organising these weddings, and will be well placed to ensure that all the requirements are met. We think that they will ensure that only authorised maritime officiants will officiate at weddings on board. Moreover, there is the further safeguard that so long as the person is a deck officer, the marriage will not be void.

10.186 It is worth repeating again that a wedding that takes place outside of England and Wales is not generally governed by the law of England and Wales, but by the law where the wedding takes place. We have recommended a scheme that will allow a wedding to take place under the law of England and Wales in international waters in specific circumstances: on board cruise ships registered in the United Kingdom with a port of choice in England or Wales. In cases where those specific circumstances are

[102] Consultation Paper, para 10.128(3), Consultation Question 57(1).

not present, the necessary link between the wedding and England and Wales would also be missing. Consequently, if a wedding took place on board a ship that was not registered in the United Kingdom, or on board a ship that was registered in the United Kingdom but did not have a port of choice in England or Wales, the scheme that we proposed would simply not apply, and the couple would not have married in accordance with it. The question of whether the couple was validly married would be determined by the rules of private international law, and might be determined in accordance with the laws of another country.

Recommendations

Recommendation 48.

10.187 We recommend that civil weddings should be able to take place in international waters under the law of England and Wales on board cruise ships that are registered in the United Kingdom with a port of choice in England or Wales.

Recommendation 49.

10.188 We recommend that weddings on board cruise ships in international waters should be officiated by deck officers who have been authorised by the General Register Office as maritime officiants.

10.189 In addition to being subject to the same rules as we have recommended should apply to independent officiants, we recommend that in an application for authorisation to the General Register Office, the deck officer should provide evidence that the cruise company for which the person acts as a deck officer:

(1) has an appropriate chain of command; and

(2) has policies and procedures in place to ensure that weddings taking place in international waters will comply with all the legal requirements, including that such weddings will only take place when the ship is in international waters.

10.190 We recommend that a person should be able to be authorised both as a maritime officiant and (if enabled by Government) an independent officiant.

Recommendation 50.

10.191 We recommend that maritime officiants should be identified on the schedule as “a maritime officiant authorised under the Marriage Act to conduct weddings on board [the name and International Maritime Organisation SHIP identification number of the ship]”.

Recommendation 51.

10.192 We recommend that any one of the following factors should render a marriage void following a wedding on board a cruise ship in international waters:

(1) the failure of both or either party to have an in-person interview in giving notice;

(2) the wedding taking place after authority to marry had lapsed; or

(3) the wedding not being officiated at by a deck officer on board.

10.193 We recommend that the following factors should result in a non-qualifying ceremony where the wedding takes place on board a cruise ship in international waters:

(1) both

(a) failure of one or both parties to the marriage to give notice of the intended marriage, and

(b) that the ceremony not being officiated by a deck officer on board; or

(2) failure of one or both parties to express consent to the marriage.

Chapter 11: Covid-19 and weddings during emergencies

INTRODUCTION

11.1 In this chapter we consider what special provisions might be needed to enable weddings to go ahead in national emergencies that make it impossible to comply with the usual requirements.

11.2 The experience of recent years has shown both when such provisions may be needed and what form they might take. In England and Wales, the emergency measures introduced to prevent the spread of Covid-19 meant that weddings were unable to take place for significant periods of time.[1] In a number of other jurisdictions, by contrast, measures were put in place to ensure that weddings could still take place remotely when no other option was possible.[2]

11.3 As we noted in the Consultation Paper, the impact of the pandemic on weddings, and the significant personal consequences it has had for couples, prompted us to consider how the law could facilitate weddings during any future national emergency, whether a similar national public health emergency or other emergency that necessitated restrictions being imposed on travel and gatherings.

11.4 When invited to share their experiences with weddings during the Covid-19 pandemic,[3] consultees' responses demonstrated just how profound the impact of the pandemic had been. Consultees detailed the difficulties that they and their friends or family had experienced as a result of weddings they were due to participate in being cancelled or restricted. Local authorities and registration officers reported the challenges of operating under pandemic conditions and the tension between ensuring the safety of staff and meeting couples' expectations. Wedding venues and independent celebrants commented on the financial impact of cancellations and postponements, including the knock-on impact on the local economy.

11.5 Religious organisations specifically highlighted the difficulties faced by couples whose beliefs did not permit them to cohabit before marriage. Several consultees, including the Board of Deputies of British Jews, the Muslim Council of Britain and Register Our Marriage, mentioned couples choosing to go through a non-legally binding wedding ceremony in circumstances where pandemic restrictions prevented them from having a legal wedding. Register Our Marriage added that it anticipated "a steep rise in the number of unregistered religious marriages" as a result.

11.6 The Nuffield project studying non-legally binding wedding ceremonies also identified an increase in religious groups – Christian, Jewish, Muslim, Hindu and Sikh –

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1 See Consultation Paper, paras 11.46 and 11.53.

2 For a review of initiatives elsewhere, see R Probert and S Pywell, "Love in the time of Covid-19: a case-study of the complex laws governing weddings" (2021) 41 *Legal Studies* 676.

3 Consultation Paper, para 1.65, Consultation Question 3.

conducting such ceremonies during the pandemic.[4] It found that individuals who would previously only have conducted a non-legally binding ceremony if a legal wedding had already taken place had made an exception in the exceptional circumstances of 2020. A Baptist minister conducted a ceremony via YouTube, imams offered online nikah ceremonies that met the conditions for a religiously valid marriage within Islam, and one Hindu priest conducted a ceremony outside with all parties in their cars. The Nuffield project also found individuals who had had a non-legally binding ceremony in 2020 who were still waiting to have their legal wedding on account of the pressure on registration services. As it noted, there was a risk that couples would not prioritise the legal wedding once they were already married in the eyes of their religion and community, and that the pandemic would result in more couples remaining in religious-only marriages.

11.7 In this chapter we consider those aspects of weddings law that were either particularly problematic or particularly beneficial during the pandemic. We then consider how our general recommendations will resolve some of the problems that were identified, before going on to set out what further adaptations will be needed in future emergencies.

WEDDINGS LAW DURING THE PANDEMIC

11.8 When sharing their experiences with weddings during the pandemic,[5] some consultees identified specific aspects of weddings law that had created particular problems.

11.9 The National Panel for Registration highlighted how the necessity for face-to-face appointments had resulted in hundreds of registrars being exposed to the virus. One consultee also questioned the point of giving notice when the information was only displayed in a building that was closed to the public.

11.10 Some consultees noted that the pandemic and the ensuing restrictions had had a particular impact on certain types of wedding. The Religious Society of Friends noted that many Quaker officers were "in groups needing to shield or advised to limit their activities", with implications for holding Quaker weddings. The Plymouth Brethren Christian Church identified a difficulty arising out of their inability to appoint an authorised person where a building had been registered for weddings for less than a year. As it explained, the result was that:

> the registrars needed to be in attendance, and the registrar office had closed prior to lockdown. As they held all the paperwork, there was no opportunity for these [weddings] to continue, but at that time there was no restrictive lockdown and the marriage could have gone ahead if the building had been registered for more than a year.

11.11 The National Panel for Registration also noted that ensuring that the rooms in which weddings took place were "Covid secure" meant that guests had to be limited further

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4 R Probert, R Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (2022) p 3.

5 Consultation Paper, para 1.65; Consultation Question 3.

than Government guidelines would have permitted. One local authority observed that smaller ceremony rooms had to be closed. A few consultees also noted the limits on obtaining a Registrar General's licence and the difficulty in ensuring that emergency ceremonies at home complied with Covid guidance.

11.12 Humanists UK said that the changing regulations "have without doubt been more disruptive for Humanist couples than most". It noted that such disruption was partly because their need to have two ceremonies meant two ceremonies to reorganise but also "because Humanist weddings have, at times, faced further restrictions than legally recognised marriages". As it explained, "non-statutory faith and belief ceremonies" were variously subject to the same restrictions as legal weddings, wedding receptions, belief gatherings, and other gatherings; but only in mid-October 2020 did regulations in England specifically make provision for attendance at "an alternative wedding ceremony", defined as "a ceremony based on a person's faith or belief".[6] The equivalent regulations in Wales, introduced in late December, "specified that such ceremonies can only be 'held in regulated premises'"[7] which were not where a Humanist wedding would generally take place.

11.13 The Wedding Celebrancy Commission also raised concerns about celebrant-led ceremonies not having been specifically included in the guidance issued from Government. A few independent celebrants felt that independent celebrants had been treated less favourably than Humanists.

11.14 A number of registration officers and local authorities, and the National Panel for Registration, criticised the lack of any option for the authority for marriage to be extended, noting the additional work (for local authorities) and costs (for couples) involved when couples had to give notice again. Several consultees noted that policies on requiring couples to pay to give notice again varied between local authorities. Criticism was also made of the fact that venues could not be changed unless a new notice was given.

11.15 Other consultees highlighted how specific aspects of weddings law had facilitated weddings taking place. The Faculty Office of the Archbishop of Canterbury highlighted the use of emergency special licences granted by the Archbishop for Anglican weddings involving either a participant or a close family member who is terminally ill, describing the increase in the use of such licences during the pandemic. It noted that in a normal year it would issue on average "about 40 emergency special marriage licences to authorise such weddings", but in the period of the first national lockdown (between 23 March and 4 July 2020) it had issued 104. The Faculty Office also explained that special licences had been granted to authorise weddings in hospital chapels "of frontline NHS workers involved in treating Covid-19 patients" and "the marriages at home of Armed Forces personnel due to be deployed overseas and whose planned weddings in church had had to be cancelled due to the restrictions on

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6 See The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations 2020 (SI 2020 No 1103), sch 1 sub-para 3(9)(a)(ii) and para 7(5); The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020 (SI 2020 No 1104), sch 1 sub-paras 4(9)(a)(ii) and 5(9)(a)(ii) and para 10(2); The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 (SI 2020 No 1105), sch 1 sub-para 4(9)(a)(ii) and para 11(2).

7 See The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (WSI 2020 No 1609), sub-para 57(1)(b).

weddings". However, it noted that its ability to issue special licences had been fettered during the second lockdown in England (between 5 November and 2 December 2020) as the regulations had imposed a condition that marriages could only take place by special licence where "at least one of the parties to the marriage is seriously ill and not expected to recover".[8]

11.16 Consultees also noted that the use of common licences had increased as banns could not be read when churches were closed during lockdown. Leicester Diocesan Registry noted that it had granted just nine common licences in 2019, as compared to 68 at the date of its response in late 2020. As it noted, common licences meant that Anglican churches were "able to accommodate last minute bringing forward of wedding dates". It also noted that once churches reopened, there had been an increase in the number of Bishop's orders granted under section 23 of the Marriage Act 1949, to allow flexibility within benefices for the calling of banns and solemnization of marriage.[9]

11.17 A number of consultees thought that it should have been possible for ceremonies to have gone ahead with just those whose presence was necessary for the marriage to be valid. Some further suggested that it should have been possible for weddings to take place at home or outdoors. The Church of England noted that it had concluded that there was "nothing in Anglican doctrine… to prevent a wedding taking place outdoors within the curtilage of the parish church", adding that "had the Government thought it helpful to change the law to allow this, we would have worked to make it possible".[10]

PROVISION FOR WEDDINGS IN FUTURE NATIONAL EMERGENCIES

11.18 The general scheme that we recommend for weddings will address some of the problems that were identified by consultees.

(1) Preliminaries: couples will be able to complete the first stage of the civil preliminaries remotely by giving notice online; the 28-day waiting period will begin once notice has been given and the notice will be displayed online.[11] Accordingly, individuals will not have to travel to a register office to start the waiting period or view notices of marriage, and these services could remain available even when register offices are closed.

(2) Location: as we explain in Chapter 6, since the publication of the Consultation Paper, Government has made provision for civil weddings to take place outdoors on the grounds of approved premises. Government also intends to amend the law to make similar provision for religious weddings, allowing them

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8 The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020 (SI 2020 No 1200).

9 This particular provision applies where two or more benefices are held by the same person, or "in plurality". The bishop of the diocese may direct that any banns that would normally be called in one parish church may be called in another. Equivalent provision is made for Anglican marriages in Wales under the Marriage (Wales) Act 1996, s 1. For the rules on where banns are required to be called for any given couple see Consultation Paper, paras 2.72 to 2.75.

10 Government introduced reforms, first on a temporary basis, to permit civil weddings on approved premises to take place outdoors, which came into force on 1 July 2021: see para 6.7 above.

11 See Recommendation 2 at para 3.78 and Recommendation 4 at para 3.136 above.

to take place on the grounds of registered places of worship and Anglican churches and chapels.[12] Under our scheme, weddings will be legally permitted to take place anywhere. Weddings will be allowed to take place in open spaces which are not linked to and within the same property boundary of a building, such as meadows and hilltops. These recommendations will, for example, allow religious groups whose buildings do not have suitable outdoor spaces nevertheless to hold weddings outdoors. In addition, because the location of the wedding does not need to be identified on the schedule or marriage document, our reforms will make it easier to switch to a location that minimises the risk of infection or other harm to those attending.[13]

(3) People required to be present: only one registration officer will be required to officiate at a civil wedding, reducing the number of people who are needed to be there.[14]

(4) Ceremonies: weddings will only need to be attended by a registration officer where the couple are having a civil ceremony; belief weddings will be officiated by belief officiants.[15] This rule will also apply to weddings involving people who are terminally ill, housebound or detained.[16] This reform will reduce the number of people who are needed to be present for many belief weddings, as the person celebrating the marriage can be authorised as the officiant, and will allow weddings to go ahead where registration officers are not available.

(5) The necessity of dual ceremonies: our scheme will reduce the need for couples to have dual ceremonies, again reducing the number of people with whom the couple will need to meet.

11.19 As we noted in the Consultation Paper, the benefits of these changes in any future national emergency can be illustrated by the experience of those jurisdictions that already allowed wedding ceremonies to take place in a wide range of locations.[17] In Northern Ireland, for example, outdoor weddings and civil partnerships were permitted to go ahead almost a month earlier than legal weddings could take place in England and Wales.[18]

11.20 However, our scheme still requires that the couple attend separate in-person interviews as a part of the preliminaries process, and that at least five people – the couple, the officiant, and two witnesses – should be present together at the wedding

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12 The Marriage and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021 (SI 2021 No 775); Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2022 (SI 2022 No 295); Ministry of Justice, *Outdoor Marriages and Civil Partnerships: Government response to the consultation on Outdoor Marriages and Civil Partnerships* (15 March 2022)

13 See Ch 6.

14 See Recommendation 18 at para 4.94 above.

15 See Recommendation 18 at para 4.94 above.

16 See para 10.12 above.

17 Consultation Paper, para 11.58.

18 The Health Protection (Coronavirus, Restrictions) (Amendment No 5) Regulations (Northern Ireland) 2020 (SR 2020 No 96).

ceremony. Such a ceremony would not be possible in the event of restrictions being imposed on gatherings of five people or less. In the light of experiences during the pandemic we think it important that provision is made for notice to be given and for weddings to continue to take place during any future national emergency that prevents couples from complying with the ordinary requirements.

Adaptations to facilitate weddings in times of emergencies

11.21 As we noted in the Consultation Paper, a national emergency such as a pandemic may lead to many weddings being postponed.[19] Where couples have already completed the necessary preliminaries, a postponement may result in the authority to marry expiring before the wedding can take place. Further, in the kind of national emergency in which restrictions are placed on travel and gatherings, it will not be possible for people to attend a register office. In that case, the entire process of civil preliminaries, and even the ceremony itself, would need to be able to take place remotely in order for couples to be able to marry.[20]

11.22 We therefore provisionally proposed that weddings legislation should contain a power for secondary legislation to make emergency provisions that would permit:

(1) the validity of schedules and other forms of authority to marry to be extended until after a national emergency;

(2) both stages of civil preliminaries to take place entirely remotely;

(3) the officiant, the couple, and the witnesses each to attend the wedding ceremony remotely; and

(4) the schedule to be signed by each of the officiant, the couple, and the witnesses remotely, or for each to sign a different copy of the schedule.[21]

Consultation

11.23 Overall, while more consultees agreed than disagreed with our proposal, there was not an overall majority in favour of it, with a number of consultees giving other answers. In addition, many consultees had different views on different elements of the proposal, with some elements of the proposal commanding more support than others. Before we consider consultees' responses on the different elements of our proposal, we set out some general responses.

11.24 Some consultees were strongly in favour of ensuring that there would be some means of ensuring legal weddings could go ahead in any future national emergency. Among them, the Equal Civil Partnerships Campaign commented that:

> we are very well aware of the risks – financial and legal – of couples being left without a legal relationship in case of the death of one partner. This is particularly relevant during a time of national emergency such as a pandemic.

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19 Consultation Paper, para 11.62.

20 Consultation Paper, paras 11.66 and 11.69.

21 Consultation Paper, para 11.82, Consultation Question 67.

Dr Stephanie Pywell (an academic) concluded that it was "sensible to delegate legislative powers that permit appropriate regulations to be made rapidly in the event of a national emergency". Dr Rajnaara Akhtar (an academic) also commented that non-legally binding ceremonies would continue to take place even if legal weddings did not. As she explained, religious-only ceremonies had been taking place within Muslim communities:

> online wedding ceremonies using platforms such as Zoom have been widely reported. This demonstrates the need for the law to retain some flexibility, especially where lockdown has excluded any weddings from taking place in person at all.

11.25 Other consultees were equally strongly opposed to our proposal and thought that there should be no adaptations to weddings law even in times of national emergency. Some thought that the adaptations we had proposed would undermine the significance or dignity of marriage and suggested that couples should simply wait until the emergency had passed to marry. Others were concerned about the potential for abuse, fraud, or deception, suggesting that there would be a greater risk of sham or forced marriages. Dr Rachael Clawson (an academic responding on behalf of her research project team) objected to all elements of our proposal, commenting that:

> All could significantly impact upon safeguarding vulnerable adults and children. Any system which does not require people to be seen in person can increase the likelihood of harm and abuse, both for people with learning disabilities who may be isolated and not have the skills to raise concerns for themselves and for potential victims of forced marriage. Anything that makes marriage easier to do makes safeguarding more difficult. The current system requires improvement in relation to safeguarding - implementing the measures suggested above would be a step backwards.

11.26 However, we note that many consultees who disagreed with our proposal had not appreciated that it was intended to deal with national-level emergencies rather than individual emergencies. Some therefore questioned when emergency provisions would apply and who would be responsible for determining if circumstances fell within the definition of an emergency, while a few expressed concerns about emergency provisions becoming the norm.

Extending the validity of the authority to marry

11.27 A majority of consultees agreed with the aspect of our proposal to extend the length of period for which the authority to marry is valid. Some specifically noted that the pandemic had illustrated the need for flexibility or commented that the inability to extend the authority to marry had caused extra work, cost and stress for registration officers and couples alike. In the context of Anglican preliminaries, Leicester Diocesan Registry noted that several couples had required a common licence "because their banns were out of date by the end of lockdown", while one couple had needed a second common licence because the first had expired during lockdown.

11.28 The Faculty Office of the Archbishop of Canterbury also agreed with our proposal but added that couples should be under a duty to inform the issuing authority "of any change in the information provided prior to the issue of the schedule or other

preliminary". Humanists UK also agreed and added that "there should be powers to allow more flexibility around amending notices and schedules, should this be needed".

Allowing both stages of civil preliminaries to take place entirely remotely

11.29 More consultees agreed than disagreed with this element of the proposal, but there was not an overall majority in favour of reform given the number of consultees giving other answers.

11.30 A few local authorities and registration officers agreed, subject to the process being carefully regulated (for example, with an online meeting) or at least part being in person. However, most local authorities and registration officers raised concerns that remote preliminaries could lead to issues of forced or sham marriage, or highlighted that an in-person meeting was needed to check the identity of the parties, their documents, and their capacity and willingness to consent to the marriage.

11.31 Many other consultees also expressed concerns about safeguarding if remote preliminaries were permitted. Some suggested that both stages of the civil preliminaries process could take place remotely as long as there was still an option to require an in-person interview if registration officers had concerns about consent or capacity. Others thought that there should be the option of an in-person meeting online. The National Commission on Forced Marriage, for example, commented that "there should be a way of conducting the crucial in-person interviews, supervised – online". Others, such as Christian Concern, thought that preliminaries "should be done in person even in times of emergency".

11.32 Although our question had focussed on civil preliminaries, Leicester Diocesan Registry also supported Anglican preliminaries being conducted remotely. It expressed the view that "the Church of England should seriously consider permitting the readings of banns at an online main parish service whilst public worship is not possible". It further noted that:

> An oath for a Common Licence cannot currently be taken remotely but we consider that in the event the taking of oaths is permitted remotely in other legal fields, be it in a national emergency or otherwise, then the Consistory Court should seriously consider following suit.

Allowing the parties to attend the wedding ceremony remotely

11.33 Again, more consultees agreed than disagreed with this element of the proposal, but there was not an overall majority in favour of reform given the number of consultees giving other answers.

11.34 Some consultees supported the option of holding a wedding ceremony remotely where the national emergency made it impossible for the parties to be physically present at the same location. The Baptist Union of Great Britain commented that "such a facility would have saved much heartache in the lockdown situation earlier this year", and noted that it would regard a remote wedding as "just as valid as a wedding with everyone in the same room". A number of local authorities similarly noted that having the option of remote weddings would provide flexibility.

11.35 Consultees' support for this option was however subject to there being safeguards against fraud and coercion. Two religious organisations made the point that the officiant, witnesses and couple at a remote ceremony must be able to see and hear each other. In addition, the Law Society noted that "individuals with additional accessibility or disability requirements and/or neurodivergent characteristics" may require support to participate fully in a remote ceremony.

11.36 Overall, the idea of a remote wedding ceremony was the most contentious element of our proposal. Several consultees expressed safeguarding concerns about the possibility of coercion or other abuse. A number thought that it would be more difficult for the officiant to ascertain that each of the couple were genuinely consenting to be married, raising the risk of there being someone in the same room exerting pressure on them. A few thought that it would be more difficult for the officiant to ascertain the identity of the couple, or highlighted that there would be no opportunity for public access to the ceremony. Others raised the possibility that the couple might not be in the jurisdiction.

11.37 Leicester Diocesan Registry agreed that it should be possible for a civil wedding to be conducted online, but not an Anglican wedding, on the basis that "location is important to Anglican weddings, so therefore the physical presence of all five participants at a wedding is also key".

11.38 Consultees made various suggestions as to who might be required to be present. Some, including the Church in Wales, took the view that the couple, officiant and witnesses should all be in the same place. Others, including the Church of England, took the view that the minimum requirement should be for the couple and the officiant to be present with witnesses attending remotely. A few consultees referred only to the couple being present together.

11.39 Some consultees also questioned the need to make provision for remote wedding ceremonies. In addition to expressing concerns about the loss of important safeguards, Humanists UK commented that:

> in practice we cannot imagine many couples who genuinely wish to get married would want to do any of these steps, particularly the ceremony, remotely… . We think that couples would genuinely rather wait, if they had to.

Signing the schedule remotely or separately

11.40 Consultees' responses to this element of the proposal tended to be determined by their response to the idea of remote wedding ceremonies.

11.41 In general, those who took the view that it should be possible to have a remote ceremony agreed that it should be possible for the schedule to be signed remotely. A few suggested that electronic signatures on a single electronic document would be preferable to the parties signing different documents. Worcestershire County Council also commented that the schedule would have to be completed in the correct order, with the officiant and witnesses signing after the couple. It also suggested that there might need to be "an additional declaration for remotely viewed signatures to be completed by the witnesses and officiant to state they had witnessed the signatures remotely".

11.42 Similarly, most of those who took the view that the couple, the officiant and their witnesses should all be present generally saw no reason why they should not be able to sign the same document. Leicester Diocesan Registry did however note that:

> if circumstances required eg there are health risks in more than one party touching a document, or to spend more than a required amount of time in the presence of others, then remote signing of the schedule should be an option.

11.43 A few consultees expressed additional concerns that remote signing would not be evidence of consent or could be abused. One local authority noted that it would be harder to ensure that the schedule had been signed correctly, while three registration officers were concerned about the possibility of it being lost or improperly amended. OneSpirit Interfaith Foundation commented that remote signing "does not uphold the function of a ceremony".

11.44 One consultee who envisaged witnesses (but not the couple or officiant) attending remotely commented that the witnesses could sign later.

Discussion and conclusions

11.45 Our focus here is solely on the adaptations to weddings law that may be necessary in a future national emergency affecting a large geographic area that prevents couples from complying with the usual formalities for a period of time. We should emphasise that we are not making recommendations as to what measures Government should put in place in any such emergency. We cannot recommend fettering the ability of Government to impose restrictions on in-person gatherings, including weddings, for public health or any other reasons. Our recommendations are directed solely at the issue of how to ensure that weddings can take place when compliance with the usual requirements is impossible.

11.46 We note that some consultees took the view that couples should delay their wedding until after the national emergency had passed, or were opposed to any adaptations to weddings law being made to facilitate weddings. Yet for some couples a delay will mean that the wedding cannot take place at all. For others, the circumstances of the emergency, and the greater risk of death, will make it important that the wedding takes place sooner rather than later. We note that the pandemic had a particular impact on couples whose beliefs did not permit them to cohabit without being married and on couples who wanted to be married before having children.[22]

11.47 Some couples who held such views chose to have a ceremony that was not legally recognised. The evidence suggests that the pandemic will have led to an increase in the number of couples who have had a non-qualifying ceremony and a longer delay before such people can have a legal wedding.[23] There is also evidence that the longer

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[22] See further R Probert and S Pywell, "Love in the time of Covid-19: a case-study of the complex laws governing weddings" (2021) 41 *Legal Studies* 676.

[23] R Probert, R Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (2022).

the lapse of time since the non-legally binding ceremony, the less inclined couples are to have a legal wedding.[24]

11.48 Against these and other consequences we must consider the harm of allowing weddings to take place with fewer safeguards, and in particular, the risk of forced marriage. During the pandemic evidence has emerged which suggests that domestic violence has increased.[25] Similarly, with social isolation, including the shutting of schools and other community services, people might be more at risk of forced marriage, and less able to access help. As a result, the risk of forced marriages might be higher during an emergency, and might be higher still if all the requirements for a legal wedding could take place remotely.

11.49 However, the statistics published by the Forced Marriage Unit for 2020 do not suggest that this was the case during the pandemic.[26] The Forced Marriage Unit emphasised that it remained fully operational throughout 2020; nevertheless, it dealt with 44% fewer cases than in previous years. It attributed this drop principally to the restrictions on weddings taking place in England and Wales and to the greater difficulty of individuals being taken out of the jurisdiction to be married because of the restrictions on international travel. Significantly, the 7% of cases of potential or actual forced marriage that it reported as taking place in the UK rather than in another jurisdiction was in line with the statistics for previous years. Although a different picture might emerge over time, there is nothing in these figures at present to suggest that concerns about forced marriage increased when couples had non-legally binding ceremonies online during the pandemic.

11.50 Many couples attach considerable importance to getting married, with the evidence demonstrating that at least some would consider getting married by remote means if no other means were available to them. Given this evidence, together with the lack of evidence that online weddings led to increased concerns about forced marriages, we think that the importance of making some provision for weddings to take place outweighs the potential risks that were identified by consultees.

11.51 We should emphasise that we are merely recommending a power for Government to put emergency provisions in place. It would be for Government to assess, in the light of the circumstances of the emergency, whether the risks of emergency provisions being abused to facilitate forced marriages outweigh the harm of preventing any couples from getting legally married. If evidence were to emerge that online weddings facilitate or lead to an increase in forced marriages, Government could take the decision not to exercise the power to allow them.

11.52 Consultees' responses have also caused us to consider how emergency powers could be exercised. While in the Consultation Paper we presented these powers as

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[24] See further R Akhtar, "Unregistered Muslim Marriages: An Emerging Culture of Celebrating Rites and Conceding Rights" in J Miles, P Mody and R Probert (eds) *Marriage Rites and Rights* (2015).

[25] HHJ E Nott, "Addressing domestic abuse before, during and after the COVID-19 pandemic: a perspective from within the criminal justice system of England and Wales" (2022) *Criminal Law Review* 525, 536 to 537.

[26] Foreign, Commonwealth and Development Office and Home Office, *Forced Marriage Unit Statistics 2020* (1 July 2021), https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2020/forced-marriage-unit-statistics-2020 (last visited 1 July 2022).

operating together to facilitate weddings, each of these powers could also be exercised separately. Allowing for one or more of these powers to be implemented independently of the others would give maximum flexibility. Government could, for example, make provision for civil preliminaries to be completed online but not the ceremony itself, or vice versa. It would also enable Government to ensure that its response is proportionate both to the emergency and to the risks of changing requirements. It would therefore be for Government to decide whether the emergency provisions should be implemented in full or in part, and for how long they would be needed.

11.53 We acknowledge that the emergency provisions depend on access to technology. How couples can be supported to access such technology will be an operational matter to be determined as and when these powers are exercised.

Extending the validity of the marriage document or schedule

11.54 There is ample evidence of the problems created by the expiry of the authority to marry and the need for couples whose wedding had been postponed to either give notice again or, for Anglican weddings, to have their banns called again. Some consultees also flagged these problems when answering the earlier consultation question about the impact of the Covid pandemic.[27] A survey of those whose plans to marry had been disrupted by Covid also found that they would have welcomed the possibility of extending the validity of the authority to marry; as the authors noted:

> The fact that this was not possible under the current law generated quite a number of complaints. As one put it, 'not extending people's wedding license is utterly ridiculous!' Quite apart from the financial implications, there was the time and annoyance of going through the process again, especially when, as one noted, all their answers would be exactly the same as before.[28]

11.55 Our original proposal envisaged that the authority to marry would be extended "until after a national emergency". However, the evidence suggests that many couples will want to delay their weddings until they can celebrate as they wish, rather than getting married with limited numbers and subject to other constraints.[29] Given what we know of the backlogs that register offices have had to deal with, we think there is a good case for extending the authority to marry beyond the emergency period. We have therefore revised our recommendation so that the power to extend the validity of a marriage document or schedule will not be time limited. We envisage that there would be a blanket extension of the authority to marry rather than the documents being re-issued, with all officiants being alerted to the terms of such extension so that they are clear when they can proceed with a wedding.

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27 Consultation Paper, para 1.65, Consultation Question 3; see para 11.14 and following above.

28 R Probert and S Pywell, "Love in the time of Covid-19: a case-study of the complex laws governing weddings" (2021) 41 *Legal Studies* 676.

29 S Pywell and R Probert, "Postponing the day of your dreams" (2022) *Families, Relationships and Societies* (forthcoming).

11.56 Although a longer period of authority does raise the possibility that some information on the marriage document or schedule will be out of date,[30] that will not affect the validity of the marriage (except in the unlikely event that one of the couple has married someone else in the interim). We therefore do not think that there is any need to require couples to inform those who issued the marriage document or schedule of any change. However, we think that there should be a simple process for making amendments (for examples to details of occupation) before the wedding takes place.

Allowing civil preliminaries to take place online

11.57 We note that many consultees thought that it was important that there should be an in-person element, given the role that preliminaries play in identifying forced and sham marriages, and ensuring that people have capacity. However, we think that the phrasing of the question may have misled some consultees, who may have justifiably interpreted "remotely" as indicating that there would be no contact with an official. As we discussed in the Consultation Paper, our proposal was simply that it should be possible for the interview to take place remotely. By that we envisaged the use of an online video-conferencing facility (rather than, for example, a conversation on the telephone) so that the person conducting the interview can see the interviewee and pick up on any visual clues.

11.58 We acknowledge that conducting an interview online is not the same as sitting in the same room as the interviewee. As we explain in Chapter 3, we do not recommend that the law should make provision for this interview to take place remotely under normal circumstances.[31] But we think different considerations apply where the choice is between enabling interviews to take place online and not allowing weddings to take place at all. Should Government decide to exercise this power, we think that it should put measures in place to ensure that people are in the room alone for their interview.

11.59 We emphasise that all other elements of the preliminaries process will remain in place. Once initial notice has been given, the notice will be displayed on a publicly accessible Government website for 28 days.[32] If initial notice had been given via the online system, the interview would be required to take place before the schedule is issued. This interview would have to take place at least five days before the schedule is issued to allow time for any concerns to be addressed.

11.60 We note that some consultees suggested that the qualifications on our consultation question about the possibility of interviews taking place remotely would apply here[33] – that, if remote preliminaries were to be generally permitted, there would be an ability for a registration officer to require an in-person interview where they had concerns about forced and sham marriages. That was not something that we specifically contemplated when considering the provision of an emergency power. It is also worth

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30 See paras 3.168 and following above for a discussion of this point. See also para 7.22 and following above for a discussion of what information is recorded on the marriage document or schedule.

31 See para 3.151 and following above.

32 In addition, if either or both of the couple is not a relevant national and is not an exempt person, their intended marriage will still be referred to the Secretary of State to determine whether the marriage should be investigated as a potential sham, in which case the waiting period could be extended to 70 days. See the Glossary for the meaning of "relevant national" and "exempt person".

33 Consultation Paper, para 4.95, Consultation Question 7.

noting the concerns that consultees raised in relation to that aspect of the question, including that decisions to require an in-person interview could be made on a discriminatory basis, and that telling a couple that they were required to be interviewed in person might make them aware that there were suspicions, potentially putting someone at risk.[34] The ability to require an in-person interview would be unhelpful in a situation in which all registration staff were working remotely, or where health restrictions prevented anyone from travelling or meeting in person. Therefore, the concerns about the ability to require an in-person interview would be greater in the case of an emergency, as a potentially discriminatory decision to require an in-person interview could effectively halt the preliminaries process and prevent the wedding.

11.61 We also note that, when invited to share their experiences with weddings during the pandemic, a number of consultees highlighted the risk posed to clinically vulnerable people in travelling to a register office to give notice. Giving notice remotely (or requiring that registration officers travel to clinically vulnerable people) might particularly benefit them, even when an emergency did not require that the register office be closed or prevent individuals from travelling. We therefore think that Government could also consider whether remote interviews should continue after strict emergency rules have ended (for example remaining in place for the clinically vulnerable).

11.62 Our question asked only about the possibility of civil preliminaries being completed remotely. Since we are recommending that getting married after banns or by common licence will also require an in-person stage (a meeting or a declaration), we have considered whether it should be possible for these stages to be completed remotely. However, a complicating factor here is that allowing the in-person meeting to be completed remotely would be of little use if banns could not be called. While Leicester Diocesan Registry favoured banns being called online, we do not think that we should recommend such a fundamental change without having consulted on the matter. Moreover, since civil preliminaries may be used to authorise an Anglican wedding, we do not think that couples planning to marry according to Anglican rites would be disadvantaged if they had to use this route during the period of a national emergency. This approach would be consistent with our general approach of removing contingency provisions for the calling of banns. We also note that such couples would also have the option of a special licence.

Allowing the parties to attend the wedding ceremony remotely

11.63 We acknowledge that allowing a wedding ceremony to go ahead with the parties, officiant, and witnesses in separate locations would be a radical step. We also think that only a small number of couples would be likely to opt for getting married remotely, even if that is the only option. The survey of couples whose wedding plans had been affected by the pandemic found that 8.5% would have considered getting married by video-link had that option been available to them.[35]

11.64 We note that some consultees were concerned that online weddings would trivialise marriage. However, we think that the absence of any means of getting married

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[34] See para 3.149 above.

[35] R Probert and S Pywell, “Love in the time of Covid-19: a case-study of the complex laws governing weddings” (2021) 41 *Legal Studies* 676.

undermines the importance of marriage to a far greater degree. Couples in New York welcomed the option of being able to marry by videoconference, with one commentator describing such ceremonies as "a symbol of love persevering in a trying time".[36] Moreover, in practical terms the absence of an option of getting married legally simply results in more non-legally binding ceremonies.

11.65 We also note that consultees, whether they agreed or disagreed with our proposal, emphasised the need for safeguards to be in place to ensure that both of the couple were genuinely consenting to the marriage. We think that it would be reasonable to impose additional obligations on the officiant to speak to each of the couple separately prior to the wedding taking place. There could also be additional requirements on the couple to establish their identity; for example, the New York Executive Order that made provision for remote ceremonies required that couples show valid photo identification at the start of the ceremony.[37] Couples could also be required to establish that they were in England and Wales at the time of the ceremony, for example via a website that could only be accessed within the jurisdiction.

11.66 We note that if a particular religious or belief group took the view that it could not conduct weddings in line with what it regarded as essential for a marriage, it would not be under any obligation to do so. As we have noted elsewhere, the duty of the Church of England and the Church in Wales to conduct the weddings of any eligible couple does not mean that Anglican clergy can be compelled to conduct such weddings in whatever form or place the couple might request. Equally, there are religious groups who regard remote weddings as entirely consistent with their theological view of marriage and so there seems no reason to limit the power to civil weddings.

Signing the schedule or marriage document remotely or separately

11.67 If provision is to be made for the wedding ceremony to take place remotely, with the couple, the officiant, and the witnesses in separate locations, it will also be necessary for provision to be made for the schedule or marriage document to be signed electronically or for these people to sign separate versions of the schedule or marriage document.

11.68 We note that the changes to registration that have already taken place reduce the significance of such a provision. Whether there is one electronic document or multiple paper documents, the officiant will be under a duty to ensure their return to the register office to be registered. The marriage certificate will then be issued in due course.

11.69 Whether a schedule or marriage document can be issued electronically and signed electronically is, as we note in Chapter 7, largely a matter for Government. Similarly, whether a schedule or marriage document could be signed in counterpart also seems to be an operational point for the General Register Office.

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36 "Why Virtual Weddings Are No Longer Legal in New York", *New York Times*, 16 July 2021.

37 Executive Order 2020 No 202.20, Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (New York), https://www.governor.ny.gov/sites/default/files/atoms/files/EO_202.20.pdf (last visited 1 July 2022); Consultation Paper, para 11.70.

Who should be able to get married under these emergency provisions?

11.70 In the Consultation Paper we explained why we thought that the emergency provisions we had proposed for times of national emergency should apply to all couples.[38] We noted how couples might have various reasons for wanting to marry, and that a national emergency might make it all the more important for them to be able to do so. We therefore provisionally proposed that the emergency provisions should be able to apply to all couples, depending on the nature and length of the emergency.[39]

Consultation

11.71 A significant majority of consultees agreed with our proposal. Consultees commented that making the emergency provisions available to all would be fair, given the range of reasons why couples might want to marry. A few suggested that additional safeguards would need to be in place for those deemed vulnerable.

11.72 Those who disagreed largely repeated their objections to remote weddings or their concerns about forced or sham marriages.

11.73 Only a few consultees suggested that the availability of the emergency provisions should be limited to specific groups of couples. Humanists UK, for example, thought that there would be more merit in the power being drafted more narrowly and applying only to individuals with "compelling reasons to want to get married before a certain date", such reasons to be assessed by a registration officer. Other consultees advocated limiting the emergency provisions to those who were ill or otherwise incapacitated, those who had religious convictions against living together before marriage, military personnel (on immediate deployment), or circumstances necessary to prevent a child being born outside marriage. By contrast, the Marriage Foundation was concerned that applying the provision to all couples could lead to abuse but could not see how to avoid this without discrimination.

Discussion and conclusions

11.74 In times of national emergency, it might be necessary to ensure that any couple could be legally married using the emergency provisions. This view was shared by the majority of our consultees. It is further reinforced by the evidence from the Nuffield project and the survey of couples whose weddings were affected by the pandemic.[40]

11.75 Both these studies and responses to our invitation to consultees to share with us their experiences of weddings during the pandemic[41] show the variety of reasons couples have for wanting (or needing) to marry during a particular time period. Such reasons include illness (of the couple or other loved ones), planning a family, the desire to be able to cohabit, and needing to marry to obtain the immigration status necessary in

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38 Consultation Paper, para 11.76.

39 Consultation Paper, para 11.83, Consultation Question 67.

40 R Probert, R Akhtar, S Blake and S Pywell, *The impact of Covid-19 on legal weddings and non-legally binding ceremonies* (2022); R Probert and S Pywell, "Love in the time of Covid-19: a case-study of the complex laws governing weddings" (2021) 41 *Legal Studies* 676.

41 Consultation Paper, para 1.65, Consultation Question 3.

order to live together in the United Kingdom. No consultees gave justifications for why any one of these reasons were insufficient.

11.76 We think that a requirement to show "compelling reasons" to use the emergency provisions, as suggested by Humanists UK, would create more work for registration officers in assessing couples' reasons. We do not think that would be proportionate in the circumstances, since it is not clear what the harm would be of allowing a couple to marry if their circumstances were not deemed sufficiently compelling. It also raises the question of what the redress would be for a couple whose reasons had been unfairly deemed insufficiently compelling and a risk of inconsistent decision-making on fact-sensitive issues.

11.77 We note that in practice, those who seek to be married under the emergency provisions are likely to be those who have a particular reason for wanting to be married. As we discuss at paragraph 11.63 above, only a minority of those whose weddings had been affected by the pandemic would have considered the option of marrying remotely; most had postponed their wedding in the hope that they would be able to celebrate with family and friends in due course.

11.78 We also note that our proposal was simply for there to be a power to allow the emergency provisions to be extended to all couples. Government could choose to limit the emergency provisions to those who are terminally ill or clinically vulnerable. Limiting the provisions in this way might be appropriate if the emergency was of relatively short duration. However, any limits should take account of the significance of legal marriage to many couples in being able to have intimate relationships, live together (including in cases where one of the couple's immigration status, and so their ability to join their partner in the United Kingdom, might depend on a marriage) and/or have children.

Expedited weddings in times of national emergencies

11.79 As we explain above, the emergency provisions that we recommend for use in times of national emergency are designed to deal with a situation in which there are restrictions on travel and gatherings. They are not intended to provide an expedited process for getting married, and in relation to civil preliminaries, there would still be the waiting period between notice being given and the schedule being issued.

11.80 As we explained in the Consultation Paper, it will continue to be necessary for someone who is terminally ill to marry quickly, without being subject to a waiting period. Moreover, in a time of emergency more individuals might be at risk of dying within a short space of time. We therefore provisionally proposed that the emergency provisions should facilitate weddings of those who might be at risk of death, rather than requiring evidence that the person is seriously ill and unlikely to recover.[42]

Consultation

11.81 A significant majority of consultees agreed with our proposal. A number drew attention to the particular risks faced by frontline NHS workers during the pandemic, with the Faculty Office of the Archbishop of Canterbury noting how it had granted special

[42] Consultation Paper, para 11.84, Consultation Question 67.

licences during the first lockdown to facilitate weddings of NHS staff. A couple of consultees noted how those in vulnerable categories might have a particular wish to marry as soon as possible during a pandemic.

11.82 A number of consultees advocated extending the proposal to military personnel due to be deployed overseas. Dr Stephanie Pywell (an academic) also thought that there might be other situations in which emergency provisions should be available and that it would be "impossible to provide an exhaustive list of circumstances in which such facilitation would be desirable".

11.83 A few of those who disagreed with our proposal were opposed to, or did not see the need for, facilitating weddings for those about to die. Some suggested that those who are seriously ill are at greater risk of coercion and that the focus should be on deterring predatory marriages, highlighting the financial implications for family members. Others more generally argued that everyone was at risk of death in a pandemic or that such a provision would be open to abuse or fraud. The National Panel for Registration commented that the current experience was that "people will provide any reason valid or not, ill or not, to obtain a marriage / [civil partnership] urgently".

11.84 Other consultees focussed on the need for a clear definition of "risk of death". Many consultees thought that evidence, and particularly medical evidence, would be necessary if a person was claiming to be at risk of death, although opinions differed as to what the medical evidence should be and how it should be provided. A number thought that in the circumstances, establishing a "risk of death" would be more straightforward and less intrusive than having to establish that one of the couple was seriously ill and unlikely to recover, the requirement under the current law. Conversely, a few consultees assumed that the risk of death would need to be imminent.

Discussion and conclusions

11.85 Our proposal was about the provision to be made for expedited weddings at a time of national emergency. It was not about what provisions should be in place to expedite weddings at other times, or about whether the special provisions applicable in a time of national emergency should only apply to people at risk of death. It is understandable that many consultees did not appreciate the limited scope of our proposal from the phrasing of the question. In particular, we note that a number of consultees supported the extension of the provisions to military personnel due to be deployed overseas or military personnel more generally. Such people may wish to marry swiftly, but it is not clear why they would be at a higher risk of death in a national emergency, unless they were playing a unique role in responding to that emergency (for example, a conflict taking place in England and Wales).

11.86 On reflection, having considered consultees' responses, we do not think that there is any need to make a specific recommendation for expedited weddings at a time of national emergency. As we discuss in Chapter 10, we recommend that the waiting period should continue to be waived for people who have a terminal illness. Moreover, as we note in Chapter 10, there is a general discretionary power for the notice period to be shortened, under section 31(5A) of the Marriage Act 1949. We think that these

general provisions to allow expedited weddings will be sufficient in any national emergency.

Recommendation

Recommendation 52.

11.87 We recommend that weddings legislation should contain a power, to be exercised in a national emergency which prevents couples from complying with the formalities of getting married, for secondary legislation to make provisions that would permit any or all of the following measures to be put in place:

(1) the validity of schedules and other forms of authority to marry to be extended;

(2) both stages of civil preliminaries to take place entirely remotely;

(3) the officiant, the couple, and the witnesses each to attend the wedding ceremony remotely; and

(4) the schedule or marriage document to be signed by each of the officiant, the couple, and the witnesses remotely, or for each to sign a different copy of the schedule or marriage document.

Where necessary, the emergency measures should be able to extend beyond the end of the emergency.

11.88 We recommend that any special provisions that are put in place in a national emergency which prevents couples from complying with the formalities of getting married should be capable of applying to all couples (but need not do so), depending on the nature and length of the emergency.

Chapter 12: Fees

INTRODUCTION

12.1 In this chapter, we consider the fees which may be necessary under our scheme. Because we are recommending an entirely new scheme to govern weddings law, there will need to be accompanying changes to the fees that can be charged to reflect the different services that will be provided by registration officers, local authorities, and the General Register Office. Under the current law, many of the services that they provide relate to the authorisation of buildings or premises for weddings; under our scheme, with its focus on officiants, their services will focus on authorising officiants and officiating at weddings.

12.2 In this chapter, we only consider the fees that can be charged by a registration officer, local authority or the General Register Office, because these are the only fees that are set by statute.

12.3 We do not consider the fees that belief organisations can charge to conduct a wedding. All religious officiants and (if enabled by Government to conduct weddings) non-religious belief officiants will be free to set their own fees, and will not need legal authority under the weddings legislation to do so. However, the fees that nominated officiants can charge to officiate at a wedding will be subject to the rule that they should not subordinate their beliefs to commercial interests, as we recommend in Chapter 4.

12.4 We also do not consider the fees that the Anglican churches can charge, either in relation to Anglican preliminaries (including calling banns or issuing common or special licences) or weddings themselves. As we noted in the Consultation Paper, the Church of England and the Church in Wales set the fees that they charge, and this will continue to be the case under our scheme.[1]

12.5 Nor, in this chapter, do we consider the fees that maritime officiants or (if enabled by Government to conduct weddings) independent officiants will be able to charge. Such officiants will be able to set their own fees without requiring any authority under weddings legislation to do so. However, they will be subject to the rule, which we recommend in Chapter 4, preventing them from acting with a conflict of interest.

12.6 We are also not considering the fees that anyone providing ancillary wedding services can charge for those services, including services by religious organisations or venues hosting weddings. These are not matters governed by weddings law.

12.7 In this chapter, we consider where it will be necessary to make provision to empower a fee to be determined and charged for services provided by registration officers, local authorities or the General Register Office. Specifically, we consider fees in relation to

[1] Consultation Paper, paras 12.26 to 12.29.

civil preliminaries, the ceremony and location of weddings officiated at by registration officers, the authorisation of officiants, and registration of marriages.

12.8 The recommendations we make about fees are general. In some cases, we recommend that a fee should be prescribed in regulations, to be set nationally; in other cases, we recommend that there should be a statutory power to set a fee, but that whether the fee should be prescribed nationally or set locally on a cost-recovery basis is a matter for Government to determine.

12.9 We do not make recommendations about the level at which any fee should be set. In the Consultation Paper we made provisional proposals about the basis on which some fees should be set; however, on reflection, where we recommend that the fee should be prescribed in regulations, we have decided against making any recommendations along those lines. The basis on which Government can, by regulations, provide for fees to be payable is not constrained in the current Marriage Act 1949, and we see no reason to depart from this approach.

12.10 However, both current weddings law and the general law do provide the basis on which local authorities may set fees, where they are empowered to do so. Local authorities are permitted to charge fees on a cost-recovery basis. It is important that local authorities are able to recover the costs of the wedding services that they provide. But registration officers are appointed under the Registration Service Act 1953 to fulfil specific statutory functions and are officers of the local authority which appointed them.[2] They provide a necessary public service on behalf of the state, including, in some cases, services that no one else is legally able to provide. Accordingly, it would be inappropriate to permit local authorities to set fees on a for-profit basis, or to allow them to operate commercially or in competition with businesses, in relation to the statutory functions that registration officers perform.

CIVIL PRELIMINARIES

12.11 Under the current law, the Secretary of State is empowered by regulations to prescribe the fees payable for the giving of notice of marriage to a superintendent registrar, an application for the reduction of the waiting period,[3] and the issue of a Registrar General's licence.[4] The fees that have been prescribed are set out in the Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016. Different fees are prescribed: in cases where either of the parties are not exempt persons and where the superintendent registrar must travel to the person to give notice because they are housebound or detained; to consider foreign evidence of a divorce of dissolution of a civil partnership; to reduce the 28-day waiting period; and for a Registrar General's licence to be issued.[5]

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2 Registration Services Act 1953, ss 6 and 8.

3 Under the Marriage Act 1949, s 31(5A). We understand that the Secretary of State will make regulations acting on the advice of the General Register Office.

4 Marriage Act 1949, ss 71A(1)(a), (b) and (i) and (2).

5 SI 2016 No 911, sch 1.

12.12 As we explained in the Consultation Paper, these separate fees may remain under our recommended scheme, on the basis that they reflect the costs of services that will continue to be necessary.[6]

12.13 As we explain in Chapter 10, under our scheme registration officers will still be required to travel to persons who are terminally ill, detained or housebound, for the in-person meeting required as part of the civil preliminaries process. We provisionally proposed that there should be an additional, standard fee charged in cases where the registration officer must travel to one of the persons giving notice because that person is housebound or detained, set nationally on a cost-recovery basis.[7] Considering that such cases might deserve special treatment, we invited consultees' views as to whether the fee for both parties to give notice of a marriage involving a person who is terminally ill should be the same as the fee where the person is detained or housebound, or a separate fee that is set nationally but (on compassionate grounds) below cost level.[8]

Consultation

12.14 A substantial majority of consultees agreed with our provisional proposal for an additional fee, set nationally on a cost-recovery basis, to be charged in cases where the registration officer must travel to one of the persons giving notice because that person is housebound or detained. Consultees who agreed often thought it was fair or reasonable, or an appropriate way for any additional costs to be recovered in these cases without the need to calculate the actual costs in each individual case, based on the variation in time the registration officer might spend.

12.15 Consultees who disagreed did so for a number of reasons. One argument made was that it would be unfair, or potentially even discriminatory, to charge an extra fee to give notice when a person is detained our housebound. Another, raised by local authorities, was concern that a fee set nationally would not reflect the variation in costs, including travel costs, across England and Wales, meaning that some local authorities would not be able to recoup their costs. At the same time, another concern was that fees should be affordable, with some consultees suggesting a power to waive or reduce the fee in cases of hardship.

12.16 In relation to how the fee to give notice for a wedding involving a person who is terminally ill should be set, a majority of consultees were in favour of there being a separate fee, to be set on a compassionate basis. Many of these consultees made arguments based on the importance of compassion for the terminally ill.

12.17 Conversely, some consultees favoured the same fee that applies to persons who are detained or housebound also applying to persons who are terminally ill. Some said that being terminally ill does not necessarily mean that the person is unable to afford the fee and suggested that compassion is more about how the person is treated than what fee they are charged. Others argued against local authorities (and the general taxpayer) being required to subsidise this service. Some consultees argued in favour

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6 Consultation Paper, paras 12.17 and 12.18.

7 Consultation Paper, para 12.22, Consultation Question 75.

8 Consultation Paper, para 12.23, Consultation Question 76.

of a consistent approach or said that the same fee should apply to all couples, in some cases together with the ability for fees to be reduced or waived where the person is in financial hardship.

Discussion and conclusion

12.18 We take the view that the basis on which Government prescribes fees is ultimately not a matter on which the Law Commission can properly advise. We have come to this conclusion in part based on the responses we received to this and other questions in this chapter. Consultees' responses have highlighted that the issue of fees in fact raises some significant questions of fiscal policy, rather than law, which we are not well-placed to answer. They include questions such as: whether all couples should pay the same fee regardless of their circumstances, with the costs of giving notice spread evenly across everyone giving notice; whether couples whose circumstances mean that, for them to give notice, the local authority incurs greater costs, should be required to pay higher fees; and, ultimately, whether in some circumstances costs should be borne by local authorities, and so the taxpayer generally.

12.19 Under the current law, fees for giving notice and reducing the waiting period can be prescribed by regulations, with different provision being made for different cases.[9] Registration officers are given the power to reduce or waive fees on the grounds of hardship, compassion, or error.[10] We think this approach should remain. In particular, we think that the fees for giving notice, including in cases where the registration officer must travel to the person to give notice because they are terminally ill, detained or housebound, should be prescribed in regulations. And we think that regulations should be able to make different provision for different circumstances, as Government sees fit.

12.20 Government may also decide to prescribe a fee for an amended schedule to identify a substitute officiant (or, in the case of a maritime officiant, a substitute ship) where the officiant (or ship) has changed in advance of the wedding.[11]

Recommendation 53.

12.21 We recommend that the Secretary of State should by regulations prescribe the fees in relation to the giving of notice of a marriage to a registration officer.

CEREMONIES OFFICIATED AT BY REGISTRATION OFFICERS

12.22 Under our recommended scheme, registration officers will continue to officiate at civil weddings, in the register office and in other locations. As a consequence, different fees may need to be payable depending on where the wedding takes place.

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9 Marriage Act 1949, s 74(3).

10 Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), reg 3.

11 See Recommendation 8 at para 3.202 and Recommendation 50 at para 10.191 above.

Weddings in the register office

12.23 Under the current law, an affordable option for couples wanting a civil ceremony is the low-cost, so called "statutory" ceremony in a register office.[12] The fee for the register office ceremony is set by regulations, as a fee for the attendance of the registrar, at £46. There is no fee prescribed for the attendance of the superintendent registrar, who is also required to attend.

12.24 Although what couples receive for this fee varies, generally local authorities offer a wedding ceremony in the register office, with two witnesses, but no other guests and no personalisation of the short ceremony permitted.[13]

12.25 As we explained in the Consultation Paper, marriage brings with it significant legal advantages and consequences. Accordingly, it is an important function of Government to provide couples with a low-cost way of marrying, for all who want it. However, concerns have been raised with us that the register office ceremony, for the prescribed fee, is not widely available: evidence suggests that some local authorities are significantly restricting the number of register office ceremonies they will conduct, or not advertising ceremonies for the prescribed fee.[14]

12.26 Although the scheme we recommend does not regulate weddings based on where they take place, in the Consultation Paper we explained our view that local authorities should continue to provide couples with the option of a low-cost wedding on the premises of the local authority, for a nationally set fee. We therefore provisionally proposed that it should continue to be possible for couples to have a civil wedding in a register office, for a fee prescribed by regulations.[15]

Consultation

12.27 Consultees overwhelmingly agreed with this provisional proposal.

12.28 In their responses, some consultees agreed that this option should remain for couples who want it, characterising a register office wedding as convenient and important for couples who want a "no frills" wedding ceremony. Some consultees emphasised the importance of couples not being precluded from marrying due to cost.

12.29 Several consultees commented on the availability of register office weddings, often saying they should be more readily available. Dr Stephanie Pywell (an academic) suggested that the law should prescribe a minimum number of slots per week that local authorities would be required to provide ceremonies at every register office, together with sanctions for local authorities that do not provide them. Similarly, Humanists UK said that legislation should require register office weddings to be generally available, "across all days of the week, and in a wide range of registration offices (perhaps even all)", and that the option be advertised. It also said that the law

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12 A register office is the office of the superintendent registrar of each district, required to be provided to the superintendent registrar by each council: Marriage Act 1949, s 45(1) and Registration of Services Act 1953, s 10.

13 Consultation Paper, para 12.32.

14 Consultation Paper, paras and 13.23 to 13.25.

15 Consultation Paper, para 12.37, Consultation Question 77.

should not permit restrictions about who may attend register office ceremonies or what such ceremonies can contain, beyond what is required by the size of the room and the punctual running of the ceremony. Humanists UK emphasised that such provision would be particularly important if Humanist weddings are not legally recognised.

12.30 Some consultees, including a dozen local authorities, said that fees for register office weddings should be set on a cost-recovery basis. Local authorities in this category were concerned that the current fee does not cover the costs to local authorities in providing the service. Two local authorities suggested that it should be a decision of the local authority when or at which of its locations it offers register office weddings. At least one local authority suggested that it was unfair to require only registration officers, but not other types of officiant, to provide the statutory ceremony for the prescribed fee, particularly if the prescribed fee was set below the level needed to recover costs. The same local authority further wondered if the availability of the statutory ceremony should be restricted to couples who cannot afford other options, or to residents of the district.

12.31 Two local authorities suggested that the statutory ceremony should be able to be offered in locations other than the register office.

Discussion and conclusion

12.32 A large majority of consultees agreed with this proposal, with many echoing our view that it is important that Government provides an option to couples wanting to get married for a low cost. We therefore intend to proceed with this policy.

12.33 We remain concerned that register office weddings are not readily available for all who want them. We cited evidence of this problem in the Consultation Paper.[16] Since we published the Consultation Paper, further research has confirmed the concerns about limitations on the availability of register office weddings. This research found limitations caused by the decrease in the number of register offices;[17] restrictions on the days and times when register office weddings are offered; and additional fees not provided for in the regulations, resulting in many couples paying considerably more than the prescribed fee. It also found that many couples are not able to discover that getting married in a register office ceremony is an option, reflecting that many local authority websites either make no mention of the option at all, or bury the option in favour of promoting more expensive ceremony packages.[18]

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16 All-Party Parliamentary Humanist Group, '*Any lawful impediment?': A report of the All-Party Parliamentary Humanist Group's inquiry into the legal recognition of humanist marriage in England and Wales* (2018); and S Pywell, "2 + 2 = £127, if you're lucky" (3 March 2020) *Law Gazette*, https://www.lawgazette.co.uk/practice-points/2--2--127-if-youre-lucky/5103309.article (last visited 1 July 2022).

17 Many local authorities have re-classified rooms which were register offices as approved premises, with the result that some counties only have a single register office where statutory ceremonies can take place: R Probert, S Pywell, R Akhtar, S Blake, T Barton and V Vora, "Trying to get a piece of paper from City Hall? The availability, accessibility and administration of the register office wedding" (2022) 44 *Journal of Social Welfare and Family Law* (forthcoming), https://www.tandfonline.com/doi/full/10.1080/09649069.2022.2067651 (last visited 1 July 2022).

18 R Probert, S Pywell, R Akhtar, S Blake, T Barton and V Vora, "Trying to get a piece of paper from City Hall? The availability, accessibility and administration of the register office wedding" (2022) 44 *Journal of Social*

12.34 We think it is essential that local authorities provide all couples who wish to marry in a simple ceremony for the prescribed fee the option of doing so. This option should be meaningfully available to all who want it. Marriage is an important legal status, with wide-ranging legal consequences. A couple wanting to be married in a simple civil ceremony should not be required to pay significant fees to do so. Cost should not be a barrier to marriage.

12.35 Local authorities raised concerns that the currently prescribed fee of £46 does not cover the costs they incur in providing the service. As we explained in the Consultation Paper, one reason that might inhibit local authorities from offering register office ceremonies is that they have no ability to recover the costs of the attendance of the superintendent registrar, because no fee has been prescribed for their attendance; a fee has been prescribed for the attendance of the registrar only.[19] Under our recommended scheme, only one registration officer will be required to attend any civil wedding. The amount of any fee prescribed for a ceremony in the register office is not a decision for us. However, that the fee need only cover the attendance of one registration officer might facilitate a fee being set which both is genuinely affordable for couples and allows local authorities to make such ceremonies more widely available.

12.36 We also note that when local authorities are providing services which they are obliged by statute to provide, and for which the fee is prescribed in regulations, they are not permitted to charge couples additional or higher fees. They cannot require a couple to purchase more expensive or additional services: the ability of local authorities to charge fees for additional services applies only to services which are discretionary, meaning a service which they are not required to provide and which the person has agreed to.[20] A local authority cannot limit access to the services it is required to provide under weddings law by imposing purportedly mandatory services, and requiring couples to pay for them. Accordingly, local authorities cannot charge separate booking fees or require couples to buy marriage certificates as a part of their provision of the register office ceremony, or otherwise increase the fee that they charge for providing the register office ceremony.

12.37 Although we think that ceremonies in the register office should continue to be available for a prescribed fee, there is no magic in the register office itself. If local authorities wish to offer a ceremony in locations other than the register office for the fee prescribed for register office weddings, they should be free to do so. Our recommendation is therefore not limited to register offices, but states that there should be a prescribed fee for a simple civil ceremony officiated at by a registration officer, whether taking place in the register office or not.

Welfare and Family Law (forthcoming), https://www.tandfonline.com/doi/full/10.1080/09649069.2022.2067651 (last visited 1 July 2022).

19 Consultation Paper, para 13.26.

20 Local Government Act 2003, s 93; Localism Act 2011, s 3; Local Government and Elections (Wales) Act 2021, s 26. For more detail, see para 12.95 below.

Recommendation 54.

12.38 We recommend that it should continue to be possible for couples to have a simple civil ceremony officiated at by a registration officer, for a fee prescribed by regulations.

Weddings outside the register office

12.39 Under the current law, civil weddings may also take place on approved premises. There are two types of fee, which local authorities are empowered to determine, payable in relation to weddings on approved premises: the fees premises pay in relation to their approval, and the fee couples marrying on approved premises pay for the attendance of the superintendent registrar and the registrar at those premises.

12.40 Under our recommended scheme, registration officers will generally be able to officiate at weddings in any type of location. There will be no restrictions as to where weddings can take place, other than the responsibility of officiants to consider whether the location is safe and dignified for the wedding.[21]

12.41 It will be necessary to allow a fee to be charged to cover any costs of the registration officer agreeing to the location of a wedding, where it takes place outside a register office, and to officiate at the wedding.

Fee for agreeing to the location

12.42 Under the current law, local authorities are empowered to determine the fee they charge for applications for the approval of premises and for the renewal of approvals. But these fees may not exceed the amount which reasonably represents the average costs incurred or likely to be incurred by the local authority in respect of the application or renewal.[22]

12.43 We explained in the Consultation Paper that, because the fees for the approval of premises are set by each local authority, they vary: our research showed that the median fee for an application was £1,500, but ranged from £51 to £3,210. We noted that such fees are likely to be passed onto the couples marrying in those locations.[23]

12.44 Under our recommendations, there will be no formal pre-approval process for any type of wedding location, and so no fee for applications for approval to the local authority. Weddings will take place in a wide variety of locations. All that will be required is for the officiant to agree, taking into account the safety and dignity of the proposed location.

12.45 Registration officers will therefore be obliged to conduct weddings in a wide range of places. Accordingly, although there will be no fee for approving premises for weddings

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21 See Recommendation 34 at paras 6.210 to 6.213 above.

22 Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 12(1) to (5).

23 Consultation Paper, para 12.39.

generally, a fee may need to be charged to recover the costs of any time a registration officer spends in ensuring that a location for a wedding is safe and dignified. We therefore provisionally proposed that if any fee is charged for registration officers to ensure that a location is safe and dignified, that fee should be set by the local authority on a cost-recovery basis.[24]

12.46 In the Consultation Paper, we had also considered the possibility of a voluntary pre-approval process for locations where weddings regularly take place. Should there be any such process, we provisionally proposed that any fee for it should be set by the local authority or Government body responsible for it, on a cost-recovery basis.[25] As we are not recommending that there should be legal provision for such a process, we do not need to consider the question of a fee for it.

Consultation

12.47 A very substantial majority of consultees agreed that any fee charged for a registration officer to ensure that a location is safe and dignified should be set by the local authority on a cost-recovery basis.

12.48 Most consultees did not give reasons for agreeing, or simply commented that the proposal was sensible, pragmatic, or fair. Some consultees went into detail about what costs should be recoverable and/or how those costs could vary by region.

12.49 Although most consultees agreed with the proposal, some argued for a nationally determined fee. Some of these consultees expressed concern about variation in the fees that local authorities would charge.

12.50 Some consultees also expressed concern about local authorities charging more than what is necessary to recover their costs and using this fee to generate income. And some suggested that fees should be transparent, reasonable, capped at a maximum amount, or monitored.

12.51 Several consultees argued that no fee should be charged; conversely, others said there should be no limit on what could be charged.

Discussion and conclusion

12.52 Although the majority of consultees agreed with this provisional proposal, we are not making a recommendation that any fee for a registration officer to ensure that a location is safe and dignified should be determined by local authorities. We have concluded that who should be empowered to determine the fee – whether the fee should be a national fee, prescribed in regulations, or determined by each local authority – is a matter for Government.

12.53 We note that some consultees, including local authorities and registration officers, emphasised the variation in costs across local authorities, together with the costs that they thought this fee should cover. However, we are unsure why local variation in certain costs borne by local authorities (such as for premises and salaries) should be

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[24] Consultation Paper, para 12.43, Consultation Question 78.

[25] Consultation Paper, para 12.46, Consultation Question 79.

reflected in some fees charged by local authorities but not in other fees. It is not clear why local staffing and premises costs should directly affect the fees charged to couples having civil weddings but not the fees for giving notice, given that both will require the involvement of paid local authority staff and premises for those staff.

12.54 Conversely, a prescribed fee for agreeing to a location might be inflexible. It might not work well, or might raise an expectation of payment, in situations where a fee is unnecessary (for example, for a hotel which regularly hosts weddings) or the time spent by the registration officer is very short (for example, if the assessment only requires a simple discussion with the venue owner). It might also make it difficult to use a similar approach to that used in Scotland, where the fee for agreeing to a location is bundled up with the fee for conducting a wedding.[26]

12.55 We therefore think that the basis on which fees are set for registration officers to consider the safety and dignity of the location of a wedding is a matter for Government to decide.

12.56 That said, we emphasise that we do not think that any fee chargeable to a couple for assessing a location as safe and dignified should be high. Certainly, it should not be comparable to the high fees charged for approving premises under the current law. As we have discussed in Chapter 6, under our recommendations the question for the registration officer is whether the location is safe and dignified for the particular wedding, not any and all weddings. With the significant body of law governing safety of premises generally, and the fact that wedding ceremonies are not inherently risky events, we do not think that detailed safety evaluations will be necessary in all or even most cases. What is necessary is a contextual and common-sense approach.

12.57 This approach need not generate significant or, indeed, any costs. As we note above, in Scotland, the fee for agreeing to a location is generally bundled up with the fee for conducting a wedding. Frequently, local authorities have one fee for conducting weddings on their premises and another fee for conducting a wedding in any other location. For example, in Renfrewshire the fee for a Saturday wedding at an agreed venue is only £76 more than the fee for a Saturday wedding, with additional guests, at a registration office; in West Lothian, it is £109 more.[27] Other Scottish local authorities may take a different approach: for example, Midlothian charges a fee of £61 for weddings at venues which, because they are not popular, need to be assessed.[28] We take reassurance from the experience in Scotland that any fee under our scheme – whether set nationally or by local authorities – will not be unreasonable or unaffordable.

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26 An approach we explained in the Consultation Paper, para 7.125.

27 Renfrewshire Council, *Marriage fees*, https://www.renfrewshire.gov.uk/article/3208/Marriage-Fees (last visited 1 July 2022); West Lothian Council, *Wedding Fees*, https://www.westlothian.gov.uk/article/50516/Wedding-Fees (last visited 1 July 2022). See also Perth and Kinross Council, *Marriage and civil partnership fees*, https://www.pkc.gov.uk/article/15029/Marriage-and-civil-partnership-fees (last visited 1 July 2022).

28 Midlothian, *Arranging a marriage*, https://www.midlothian.gov.uk/info/640/birth_marriage_and_death/47/arranging_a_marriage (last visited 1 July 2022).

Recommendation 55.

12.58 We recommend that there should be a power for a fee to be charged for registration officers to consider whether a location is safe and dignified for a wedding, but whether that fee is prescribed by regulations or determined by local authorities is a matter for Government to determine.

Fee for officiating at a wedding outside the register office

12.59 Under the current law, a wedding which takes place on approved premises must be attended by both a superintendent registrar and a registrar. Local authorities can charge a fee which reasonably represents the costs of their attendance to the local authority.[29]

12.60 As we explained in the Consultation Paper, the fees local authorities charge for the attendance of the superintendent registrar and registrar at a wedding on approved premises vary. Generally, local authorities use an ascending scale of fees for Monday to Thursday, Friday, Saturday, Sunday, and bank holidays and national holidays. When we compared the fees for a wedding at 2pm on a Saturday in summer, the median attendance fee was £488. There was some regional variation, with the lowest median attendance fee in Wales, at £440, and the highest in South East England, at £595.[30]

12.61 Under our scheme, all registration officers, as officiants, will be performing the same legal duties. Our initial view was therefore that there was merit in a prescribed fee being set by regulations. Because registration officers officiating at register office weddings would be performing the same core legal function as when they officiate at weddings in places other than the register office, the same fee could apply. However, to reflect the registration officer's travel time to and from the venue, an additional fee, set at an hourly rate, could be charged. We therefore provisionally proposed that there should be an additional fee for a registration officer to officiate at a civil wedding outside the register office, which should be a standardised hourly rate to reflect the cost of the registration officer's time in travelling to and from the wedding, prescribed by regulations to apply across England and Wales.[31]

Consultation

12.62 A very substantial majority of consultees agreed with this provisional proposal. Reasons for agreement included that the proposal was sensible, reasonable or fair. A national fee was favoured by some to reduce variation or to ensure that fees were reasonable. Some commented that a prescribed fee should be reviewed regularly or that couples should be advised of the fee in advance.

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29 Marriage Act 1949, s 46B(1)(b); Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005 No 3168), reg 12(6).

30 Consultation Paper, para 12.48.

31 Consultation Paper, para 12.55, Consultation Question 80.

12.63 Humanists UK was “strongly” in favour of “reasonable limits” on what registration officers can charge, explaining:

> It is clear to us that registrars’ fee structures are currently engineered to lead to profit for the local authority – indeed, during one of the Commission’s online consultation sessions concern was expressed by a registrar that the reforms might interfere with the cross-subsidisation by weddings of the rest of the registration service. Some civil marriage fees, for example at the weekend, currently run to thousands of pounds. This is particularly egregious, considering the de facto monopoly registrars currently enjoy, in terms of options for legally recognised marriages for non-religious couples. Removing such profit-making would de-commercialise the marriage industry. It would also reduce incentives for commercial behaviour for other types of officiant, by ensuring that registrars offer relatively low-cost options. And it would create parity between registrars and religion or belief officiants, who will similarly be bound by profit and gain rules. (It seems to us that it would be unfair to bind religion and belief officiants in this way, but not have any limits on registrars.)

12.64 In disagreement, 26 consultees, comprising local authorities and registration officers, argued that local authorities must be able to set the fee for a registration officer officiating at a wedding outside the register office. The majority of these consultees argued that variation in costs across local authority districts would make it impossible or unfair to impose one national rate, and/or that doing so would not truly reflect the costs of the service.

12.65 Local authorities variously identified staffing costs, the cost of living, operating costs generally, distances necessary to travel, and the length of ceremony permitted as factors that would fluctuate, perhaps significantly, across local authorities. Some local authorities also argued that other costs should be recoverable through this fee, with some commenting that the ceremony itself is a small portion of the time and cost spent on a wedding, or that longer time spent travelling to and from a wedding would not necessarily correlate to the time spent preparing for the ceremony. As costs that should be recovered in this fee, these consultees variously identified costs for premises; recruiting and training; administration and management; support staff; provision of information to and communication with couples; scheduling ceremonies; IT; preparation for the ceremony, including printing paperwork; attire for registration officers; travel expenses; inputting the completed schedule; preparing the marriage certificate; and storage.

12.66 Some consultees disagreed with calculating an individual fee for each wedding based on travel time. They said it would be complicated to calculate or would prevent quotes from being given to couples in advance of the wedding, or queried what would happen if travel took less or more time than quoted. Other consultees pointed out variation in pay of registration offices, for example, during evenings and weekends.

12.67 Several local authorities argued that registration officers should not be constrained, or at least not uniquely constrained, in the fees they may charge, so that there is a “level-playing field” with other officiants, often referring to independent officiants. Some said that the fees registration officers charge should be competitive or in line with market forces. Two local authorities appeared to suggest that the fees for civil weddings do or

should contribute to the funding for other wedding or registration services provided by local authorities.

12.68 Apparently not appreciating that this proposal considered the fee for officiating at a wedding, rather than celebrating or solemnizing it, some consultees made comments that the fee must be based on the complexity of the ceremony, time required to plan and write the script for the wedding, run rehearsals, or for other services.

Discussion and conclusion

12.69 Although a very substantial majority of consultees agreed with this provisional proposal, comments from many consultees, including local authorities, have raised difficult issues about the funding of local authorities and the services that registration officers provide. These are matters that the Law Commission is not well suited to answer. We therefore conclude that who should be empowered to determine the fee for a registration officer to officiate at a wedding in a location other than a register office is a matter for Government to determine.

12.70 Nevertheless, we think it is worth emphasising that registration officers are appointed to each district under the Registration Service Act 1953 to fulfil specific statutory, and public, functions, including under the Marriage Act 1949. On appointment, they are officers of the local authority which appointed them.[32]

12.71 We think, with respect, that the responses of some local authorities and registration officers to our consultation belies a misunderstanding about their role. Under weddings law, local authorities and registration officers are fulfilling a public function by providing services which the law requires that they provide. They are not acting as businesses to generate revenue. Nor are they operating competitively with private businesses, including, should Government enable them to conduct legally binding weddings, with independent officiants.

12.72 The specific functions of registration officers and local authorities justify our focus on them in relation to fees. Nevertheless, we do make recommendations about the fees that nominated officiants as well as maritime officiants and (if authorised) independent officiants could charge. Maritime officiants and (if authorised) independent officiants will be prevented from acting with a conflict of interest. Nominated officiants will be prevented from subordinating their beliefs to commercial interests. We agree with Humanists UK that it would indeed be odd for weddings law to prevent belief organisations from acting on a commercial basis, while allowing local authorities to do so. Both are authorised to officiate at weddings for specific reasons – to allow a couple to marry in line with a particular belief, or as a service provided on behalf of the state – and those reasons do not involve conducting a commercial business.

12.73 For that same reason, under our scheme, registration officers are not comparable with maritime officiants and independent officiants. Maritime officiants and, if enabled by Government to conduct weddings, independent officiants, will be permitted to operate on a commercial basis. As authorised officiants, they will be playing a public role;

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[32] Registration Service Act 1953, ss 6 and 8.

however, they are not in the same position as registration officers, who are employees of the state.

12.74 We also note that this question was focussed on the fee for a registration officer officiating at a wedding, not for providing any other service. We consider discretionary services provided by registration offices or local authorities at paragraph 12.90 and following below.

Recommendation 56.

12.75 We recommend that there should be a power for a fee to be payable for registration officers to officiate at a wedding outside a register office, but whether that fee is prescribed by regulations or determined by local authorities is a matter for Government to determine.

Weddings in specific circumstances

12.76 The current law makes specific provision for weddings to take place in the location where a person who is detained or housebound resides, or where a person who is terminally ill is located. There is no fee in relation to the location of these weddings, but the fees for the attendance of the registrar and superintendent registrar are prescribed by regulations.[33]

(1) For a wedding involving a housebound person: £81 (registrar) and £84 (superintendent registrar).

(2) For wedding involving a detained person: £88 (registrar) and £94 (superintendent registrar).

(3) For a wedding of a terminally ill person: £2 each for the registrar and superintendent registrar (which comes out of the £15 fee already paid for the Registrar General's licence).[34]

12.77 As we explain in Chapter 10, under our scheme, there will be no need for specific rules about where weddings involving a person who is detained, housebound or terminally ill can take place, as weddings will generally be able to take place in any type of location.[35] Accordingly, these types of wedding will not be subject to specific regulation, except that which is necessary to facilitate persons who are detained, housebound or terminally ill to give notice.

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33 Under the current law, both must attend a civil wedding. The registrar must also attend religious weddings involving a person who is detained, housebound or terminally ill, except weddings taking place according to Anglican, Jewish or Quaker rites. Under our recommended scheme, a registrar will not attend any belief weddings; instead, they will be officiated at by Anglican clergy or nominated officiants. See Ch 10.

34 Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), sch 1.

35 See paras 10.7 and 10.8 above.

12.78 We therefore provisionally proposed that the fee for a registration officer to officiate at a wedding at a place where a person is housebound or detained should be the same fee as prescribed for a registration officer to officiate at any other wedding outside the register office.[36] However, weddings involving persons who are terminally ill are currently given special treatment. As such, we invited consultees' views as to whether, for a registration officer to officiate at a wedding involving a person who is terminally ill, the fee should be set by regulations at a level below cost-recovery, or there should be no fee.[37]

Consultation

12.79 A substantial majority of consultees agreed with our provisional proposal that the fees for a registration officer to officiate at a wedding in a location other than the register office should also apply to weddings involving persons who are housebound or detained. Consultees who agreed in some cases described the proposal as fair or reasonable.

12.80 Consultees who disagreed included those who were concerned that weddings involving persons who are detained or housebound often take more time than other weddings, so any fee should enable the local authority to recover its costs. Some, including some local authorities, said that a cost-recovery fee would be necessary to ensure that weddings involving persons who are detained or housebound are not subsidised by other services. Some argued that local authorities should be able to set the fee.

12.81 Conversely, one local authority suggested that the ceremony provided in these cases would be less than the full ceremony in other locations, which should be reflected in a lower fee. Similarly, a few consultees suggested that the fee for a wedding in a register office should apply in these cases. Other consultees were in favour of providing these ceremonies for a reduced fee for reasons of compassion, to meet financial need, or to reflect that these couples will not have the same choice as other couples about the location of their wedding. Some suggested that charging the same fee as couples marrying in other locations would be unfair or discriminatory.

12.82 Consultees' views in respect of the fee for weddings involving persons who are terminally ill were mixed. A bare majority were in favour of the fee being set at a level below cost recovery, and a third were in favour of there being no fee at all. What is clear is that most consultees supported some form of reduction in fees for persons who are terminally ill, largely on compassionate grounds. Some thought that those who are terminally ill might be more likely to be in financial hardship or that it would be simpler for no fee to be payable. Another argument raised was that there are few such weddings, so it is unnecessary to recover the costs of providing the service. Some suggested that the fee for a register office wedding should apply.

12.83 Many arguments against a reduction or waiver of fee where one of the parties is terminally ill came from local authorities, who objected to fees being reduced below cost-recovery, pointing out the additional costs involved in prioritising and organising

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[36] Consultation Paper, para 12.61, Consultation Question 82.

[37] Consultation Paper, para 12.62, Consultation Question 83.

such weddings.[38] A few consultees noted that any costs that were not recovered would have to be covered by other couples getting married or the taxpayer. Some commented that persons who are terminally ill are not necessarily in financial hardship, or that one benefit of marrying was to minimise inheritance tax. Some simply thought that everyone should pay the same fee.

12.84 Alternatively, some consultees supported a discretion to reduce fees or a means test to allow fees to be reduced in cases of hardship.

Discussion and conclusion

12.85 Consultees raised many interesting points about how wedding services should be funded, particularly for couples who, due to circumstance or illness, might be less able to afford the standard fees to get married. Consultees also raised important issues about the funding of local authorities and the use of taxpayer money.

12.86 Currently, the fees for weddings involving persons who are detained, housebound or terminally ill are prescribed in regulations. In each category, a different fee is prescribed. This approach suggests that Government has taken policy decisions about how these weddings should be funded, whether the fees should recover the costs to local authorities in providing the service or whether these services should be subsidised.

12.87 We might agree on compassionate grounds that couples marrying where one is terminally ill should pay a reduced or no fee. We might agree that a lower fee should be charged to reflect that couples in which one is detained or housebound have no choice about the location of their wedding. But ultimately someone must pay for the cost of providing the service. It is not for us, but for Government, to say what taxpayer money should support.

12.88 Local authorities already have discretion to waive or reduce fees based on hardship or compassion.[39] This power will remain under our scheme. Even if costs are set on a cost-recovery basis, this power alone could be sufficient to ensure that couples would not be prevented from marrying in these or any other circumstances due to cost.

12.89 We conclude that the basis on which fees for weddings involving persons who are detained, housebound or terminally ill are decisions for Government. With the power to prescribe fees for weddings outside the register office, in Recommendation 56 at paragraph 12.75 above, together with the existing power to make different provision for different cases, Government will be able to make these decisions without further legislative provision being required.

Discretionary services

12.90 Under our scheme, officiants will not be required by the law to conduct or lead a ceremony at which they are officiating, although they may always or often do so in practice. The fees we recommend above relate specifically to the fees for registration

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38 Some consultees, including local authorities, said that the fees set for weddings involving persons who are terminally ill are too low in response to Consultation Question 62 (at Consultation Paper, para 11.17).

39 Marriage Act 1949, s 71A(5); and Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911), reg 3(2).

officers to officiate at a wedding. We explained in the Consultation Paper that, where a registration officer is providing additional services, including conducting or leading a ceremony, local authorities could charge an additional, discretionary fee. As we noted, many local authorities already provide additional services, one example being the "duo" service in which a registration officer conducts a personalised, non-legally binding ceremony in a location not authorised for legal weddings in addition to a legally recognised civil wedding. The general legal principle is that a local authority can charge for discretionary services on a cost-recovery basis.[40]

12.91 We therefore provisionally proposed that the principle that fees for discretionary services should be determined on a cost-recovery basis should continue to apply to additional services that local authorities provide, including for services registration officers provide beyond officiating at a civil wedding ceremony.[41]

Consultation

12.92 A very substantial proportion of consultees agreed with this provisional proposal. Consultees supported it for various reasons, including that it was fair or reasonable, ensured that civil weddings on commercial premises were not subsidised by taxpayers, would allow couples to have personalised ceremonies, or reflected the current law. Local authorities supported being able to set these fees themselves. Some consultees, although recognising that more elaborate or time-consuming ceremonies will be more costly for registration officers to provide, also commented that local authority fees should not be set on a profit-making basis, or that such fees should be reasonable or monitored.

12.93 Conversely, some consultees who disagreed, including several local authorities and registration officers, said that the fee for local authorities providing discretionary services should be able to be determined on a commercial or profit-seeking basis, or should be set to be competitive with other types of officiant. In particular, several local authorities commented that ceremony fees or fees for discretionary services can be used as an income stream to supplement the provision of services, including birth and death registration, that local authorities are required to provide. Some questioned why this proposal applied only to the services provided by registration officers.

Discussion and conclusion

12.94 Local authorities already have a power under the general law to provide discretionary services, and to charge a fee that allows them to recover the costs of provision. There is no need for weddings law to replicate these powers, so we do not need to make a recommendation in relation to it. Moreover, we are not recommending that weddings law give a specific, exceptional power to local authorities to set fees for wedding services, or any services ancillary to weddings, on a profit-making basis.

12.95 "Discretionary services" is a legal concept used in the context of the charging powers of local authorities. Under various pieces of legislation, local authorities are granted a

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40 Consultation Paper, paras 12.53 to 12.54.

41 Consultation Paper, para 12.56, Consultation Question 81.

general power to charge for discretionary services, provided that the charges do not exceed the costs of provision. A discretionary service is a service:

(1) that the authority is authorised, but not required by enactment (here, a new Marriage Act), to provide to the person, and

(2) where the person has agreed to its provision.[42]

12.96 The proposal was in relation to "additional services that local authorities provide, including for services registration officers provide beyond officiating at a civil ceremony". We were referring to any services provided beyond those which would be included within the fee for the registration officer to officiate at a wedding, whether at the register office or in a location other than the register office. Those fees, covered at Recommendations 54 and 56 above, would be based on the registration officer's time. Many of the services consultees asked about, such as booking and administration, some level of contact, and paperwork, would be costs that would apply to all weddings officiated at by registration officers, and so should be covered by the general fees for officiating. Couples should not be charged for the same service twice under the guise of an additional, discretionary fee.

12.97 Similarly, aspects within a ceremony performed by the couple (or any other person) – for example, the couple exchanging rings – are also not an additional service provided by the registration officer or local authority. They would be covered under a general fee for the registration officer's time. It is not for local authorities to allow or permit certain acts based on whether a couple pays an additional fee, as those acts are not a service provided by, and do not result in costs to, local authorities.

12.98 The fee for discretionary services would be chargeable for services provided by the local authority or registration officer for costs incurred in addition to those for officiating at the wedding. In most cases, these costs will simply be extra time spent on the ceremony, for example, any extra time for the registration officer to lead the ceremony, such as the time spent planning their script, attending rehearsals, or coordinating with other persons participating in the ceremony.

12.99 Local authorities' general power to charge for discretionary services is subject to a duty that the authority's income from the charge does not exceed the costs of provision of the service (taking one financial year with another). The Localism Act 2011 does not include the principle that only mandatory services are limited by the general principle of cost-recovery.[43]

12.100 However, this does not mean that there is no opportunity for local authorities to generate profit under a new weddings law. Although we do not recommend any powers for local authorities to set any fees on anything other than a cost-recovery basis, there are existing powers under the general law that, under a new weddings law, local authorities might be able to rely upon to generate income. In particular, local authorities might be able to generate revenue from providing venues for weddings,

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[42] Local Government Act 2003, s 93; Localism Act 2011, s 3; Local Government and Elections (Wales) Act 2021, s 26.

[43] Localism Act 2011, s 3. See Local Government Act 2003, s 93 and Local Government and Elections (Wales) Act 2021, s 26; S H Bailey, *Cross on Local Government Law* (9th edition 2022) para 12-35.

based on existing powers to provide recreational facilities[44] and restaurants.[45] They may also be able, in relation to ancillary services, to rely on the general power given to local authorities to trade commercially so long as they are operating through a company.[46]

FEES FOR AUTHORISING OFFICIANTS

12.101 Under the current law, in order to conduct weddings, most religious organisations[47] must have a place of worship certified and then registered for the solemnization of marriage. Fees for certification and registration are prescribed by regulations, as is the fee for the attendance of a registrar at weddings in the place of worship.[48] A fee has not been prescribed for the certification of an authorised person.

12.102 Under our recommended scheme, religious weddings will not be required to take place in a place of worship; accordingly, there will be no scheme for the certification or registration of places of worship for weddings law.

12.103 Instead, the focus of legal regulation will be on officiants. As we explain in Chapter 4, Anglican clergy and registration officers will automatically be authorised as officiants under our recommended scheme. But all nominated officiants, maritime officiants, and (if enabled by Government) independent officiants will have to be authorised by the General Register Office. In the Consultation Paper, we explained our view that the Registrar General should be able to prescribe a fee to reflect the work involved in assessing the application; however, we anticipated that the fee would be minimal, particularly for nominated officiants where the nominating body had made successful nominations in the past.[49]

12.104 We provisionally proposed that the Registrar General should be able to prescribe a fee for an application to authorise an officiant, set at a level to recover any costs incurred in assessing the application.[50]

Consultation

12.105 A very substantial majority of consultees agreed with this provisional proposal. Most consultees in favour described the proposal as reasonable, sensible or fair. A few consultees thought that a fee would deter frivolous applications for authorisation.

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44 Under the Local Government (Miscellaneous Provisions) Act 1976, s 19, local authorities can provide recreational facilities and require "such charges as the authority thinks fit" for their use.

45 Under the Civic Restaurants Act 1947, local authorities can establish and carry on restaurants and incidental activities.

46 Local Government Act 2003, s 95; Localism Act 2011, s 4; Local Government and Elections (Wales) Act 2021, s 27.

47 All those other than the Church of England; the Church in Wales; synagogues certified by the Board of Deputies of British Jews, the West London Synagogue, or St John's Wood Synagogue; and the Religious Society of Friends.

48 Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (SI 2016 No 911).

49 Consultation Paper, para 12.67.

50 Consultation Paper, para 12.69, Consultation Question 84.

12.106 Some consultees commented on the need for fees to be affordable and transparent, with some explaining that many types of officiant would not be operating for profit or would conduct only a few weddings per year.

12.107 Some of the consultees who disagreed thought that such fees would be unnecessary, whether because the General Register Office should not be involved in authorising individual officiants of nominating organisations, or because the work of the General Register Office would be minimal. Others worried that a fee could put obstacles in the way of some officiants, or small organisations, from conducting weddings, or suggested that there should be no fee for nominated officiants. The Religious Society of Friends noted that "any charge will be a change for Quakers", as they currently do not need to pay any fees.

12.108 Consultees also made various comments about what any fee should cover.

Discussion and conclusion

12.109 Under our recommendations, the General Register Office will be responsible for receiving and approving applications for authorisation of nominated officiants, maritime officiants, and (if enabled by Government) independent officiants. It is therefore appropriate for there to be a power to prescribe a fee for this process, set at a national level. Because local authorities will not have a role in this process, they will not set or receive any fee in relation to it.

12.110 As we explain throughout this chapter, it is not for us to recommend on what basis this fee should be set. Different fees could be set for different circumstances: it might be justified to set a lower fee for some categories or in some cases. Given the role of nominating bodies in ensuring that the persons they nominate are fit and proper, it could make sense for the fee payable for nominations of officiants by belief organisations to be set at a lower amount than the fee for individuals applying for authorisation as either maritime officiants or (if enabled by Government) independent officiants. This would seem particularly justified where a belief organisation had submitted successful nominations in the past, or was nominating more than one officiant at once: if the substance of those applications (for example, the training each person had received) was the same or similar, it would seem that the General Register Office could more quickly assess such applications, warranting a lower fee. It is also possible that Government would charge no fee at all. It is worth noting that, although the Marriage Act 1949 currently permits a fee to be prescribed for the appointment of an authorised person to a registered place of worship, no fee has been prescribed.

12.111 Of course, it is understandable that the need to pay a fee might not be welcomed by groups who currently do not have to pay any fee to Government in relation to being authorised to conduct weddings, such as the Religious Society of Friends. The same is true for groups which had to pay a fee for the certification and registration of a place of worship only once, years or even decades ago. But it is worth noting that many groups who conduct weddings under the current law are required to pay fees: for example, any time a group relocates to a new or different place of worship, they must re-certify and re-register their building. Under our recommendations, authorisation will not lapse over time: for each individual officiant, any prescribed fee will only need to

be paid once.[51] It is also worth emphasising that the approval of premises for civil weddings attracts very high fees, averaging £1,500,[52] costs which are inevitably passed onto couples having civil weddings. By providing for a wider and more even distribution of any fees necessary to fund the regulatory system, we believe our recommended scheme will be fairer for all couples.

12.112 We note, however, that when our new scheme comes into effect, a register of officiants, that does not currently exist, will need to be created, and belief organisations will need to nominate all those whom they wish to be officiants. For large organisations, that may involve nominating hundreds or even thousands of officiants. In setting fees, it will be a matter for Government to consider whether specific provision should be made as regards the fee payable by belief organisations in relation to the initial creation of the register.

Recommendation 57.

12.113 We recommend that there should be a power for a fee to be prescribed for the authorisation of a nominated, maritime, or (if enabled by Government to conduct legal weddings) independent officiant by the General Register Office.

REGISTRATION

12.114 In the Consultation Paper, we explained that under the current law there are no separate fees prescribed in relation to registration of marriages. However, there are fees prescribed for obtaining documents, such as a certified copy of an entry in the marriage register, conducting searches of entries in the marriage register, and making corrections to the marriage register. A new Marriage Act to enact our recommendations will similarly provide that fees can be prescribed in regulations for obtaining documents, searching the register, and making corrections.

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51 See Recommendation 17 at para 4.66 above.

52 See Consultation Paper, para 7.61.

Chapter 13: Conversion

INTRODUCTION

13.1 Marriage is not the only means by which a couple can formalise their relationship in England and Wales.

(1) Both opposite- and same-sex couples can register a civil partnership. A civil partnership is formed when each of the couple has signed the civil partnership document in the presence of each other, a civil partnership registrar, and two witnesses.[1]

(2) Same-sex couples can convert an existing civil partnership into a marriage.[2] There are different processes for conversion, modelled on the existing weddings law.[3]

13.2 In this project, we are not considering the formalities required to form a civil partnership. Our Terms of Reference include a policy assumption that it "will be for the Government to consider the detail of making corresponding provision where appropriate with civil partnership ceremonies". The task of doing so is therefore left to Government.

13.3 However, in this chapter, we outline the changes that could be made to the process for converting an existing civil partnership into a marriage. Our Terms of Reference include a policy assumption that recommendations we make in relation to the solemnization of marriage would also apply (in so far as is relevant) where a civil partnership is being converted into a marriage. Because this task involves applying our recommendations to reform weddings law to the conversion process, we did not consider or consult on the conversion process separately in our Consultation Paper. That is, there was no option under our Terms of Reference to consider whether the rules or processes for conversion should diverge from those governing weddings law, where they are currently based on them. Having determined our recommendations in relation to weddings, we are now in a position to outline how they could apply to the conversion process.

THE CURRENT CONVERSION PROCESS

13.4 Unlike getting married or entering into a civil partnership, there is no formal notice process and no waiting period to convert an existing civil partnership. Instead, the

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1 Civil Partnership Act 2004, s 2.

2 Marriage (Same Sex Couples) Act 2013, s 9. Only a civil partnership formed in England and Wales or consular or armed forces civil partnerships formed outside England and Wales, can be converted into a marriage of a same-sex couple.

3 The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181). This is also true of the process of registering a civil partnership, which provides for the standard procedure, the procedure for housebound people, the procedure for detained people, and the special procedure: Civil Partnership Act 2004, s 5.

couple must provide certain required information. To do so, the couple meet the superintendent registrar together to provide information and evidence about their identities and address(es), and a copy of the entry in the civil partnership register that evidences their civil partnership.[4] The conversion can then take place.

13.5 There are five conversion procedures. Generally, a couple can elect to have either the standard procedure without a ceremony, or the two-stage procedure with a ceremony. There are also separate procedures for people who are housebound, detained or terminally ill.

13.6 A conversion takes place when, having followed one of the five prescribed procedures, the couple is invited by the superintendent registrar to sign the conversion declaration, which each of the couple and the superintendent registrar sign in each other's presence. The conversion declaration is a document which includes the following declaration:

> I solemnly and sincerely declare that we are in a civil partnership with each other and I know of no legal reason why we may not convert our civil partnership into a marriage. I understand that on signing this document we will be converting our civil partnership into a marriage and you will thereby become my lawful wife [or husband].

In addition to signing the conversion declaration, the couple may also say the words of declaration.[5]

13.7 The conversion from the civil partnership to a marriage is then registered in the conversion register. The couple can obtain a marriage certificate, which will show that the marriage should be treated as existing from the date of the original civil partnership.[6]

The standard procedure

13.8 The standard procedure is an administrative process. Once the couple has provided the necessary information, the conversion can take place. Under the standard procedure, the conversion must take place in the register office or other premises provided by the local authority.[7]

The two-stage procedure

13.9 If the couple wants a ceremony rather than a simple administrative process, they can elect to have the two-stage procedure. It essentially allows a ceremony to follow the signing of the conversion declaration, mainly by allowing the signing of the conversion declaration to take place in locations where same-sex couples can get married: on

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4 The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181), regs 3(2)(a) and 4.

5 The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181), reg 3.

6 The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181), reg 18(1) and (4).

7 The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181), reg 6.

approved premises[8] or on religious premises where the necessary opt-ins to same-sex marriage have been given.[9]

13.10 When the conversion takes place outside the register office, the couple must arrange for the superintendent registrar to attend. There is no ability for another person authorised in relation to the registration of marriages to attend in the superintendent registrar's place.

13.11 The superintendent registrar may provide a service or ceremony following the conversion in a form to be agreed with the parties, but "no religious service may be used" in any such ceremony. Moreover, where a service or ceremony takes place in the register office or on approved premises, "no religious service may be used".[10] However, those prohibitions only apply to the superintendent registrar and do not preclude a religious service or ceremony being performed by another person.[11]

The procedures for housebound and detained people

13.12 There are separate procedures for people who are housebound or detained.

13.13 A conversion ceremony can take place in the location of a person who is housebound. In addition to the required evidence, the person must provide a medical certificate showing that, due to illness or disability, they should not move or be moved from where they are located for at least three months. The superintendent registrar will travel to the person where the conversion declaration will be signed.[12]

13.14 Similarly, a conversion ceremony can take place where a person is detained. In this case, the person must provide a supporting statement by a responsible authority which identifies where the person is detained, and that the authority does not object to the superintendent registrar attending for the conversion.[13]

13.15 In both cases, the procedure is the same as the standard procedure.[14]

The procedure for people who are terminally ill

13.16 There is also a procedure for people who are terminally ill, called the special procedure. In this case, only one of the civil partners must attend before the superintendent registrar to provide the required information. In addition to the required

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8 Meaning premises approved for civil wedding ceremonies under the Marriage Act 1949.

9 Meaning places of worship registered for same-sex marriage; places where the Religious Society of Friends and Jewish groups which have opted into same-sex marriage can take place; and naval, military or air force chapels registered for same-sex marriage.

10 The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181), regs 11 and 14.

11 Marriage Act 1949, s 46.

12 The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181), reg 7.

13 The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181), reg 8.

14 The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181), regs 7(3) and 8(3).

information, evidence must be provided that the other civil partner is seriously ill and not expected to recover, cannot be moved to a register office, and understands the nature and purport of signing the conversion declaration. The superintendent registrar will visit the place where the terminally ill partner is, for the conversion to take place.[15]

CONVERSION UNDER OUR RECOMMENDATIONS

13.17 In considering how our recommendations for weddings could apply to the conversion process, we have been mindful of the similarities and differences between the current laws governing weddings and those governing conversions.

13.18 The key elements of the laws governing conversions that are different from the laws governing weddings are:

(1) the lack of any waiting period;

(2) the requirement for a superintendent registrar to preside; and

(3) the fact that the conversion takes effect on the signing of the conversion declaration.

13.19 Accordingly, we envisage that these elements would remain in place for conversions under the new law. The only modification that we think could be made would be to allow any registration officer, rather than just a superintendent registrar, to preside over a conversion. That modification would reflect our recommendation that only one registration officer should be required to officiate at a wedding, rather than both a superintendent registrar and a registrar.[16] While we leave the decision as to whether the process for conversions should be modified in this way to Government, in our discussion of how the law could change we refer simply to a registration officer.

13.20 The key elements of the laws governing conversions that are similar to the laws governing weddings are:

(1) the requirement for the couple to meet with the superintendent registrar to provide certain information before the conversion takes place;

(2) the provision of a low-cost option in the register office;

(3) the restrictions on the locations where conversions can take place;

(4) the provision for a religious ceremony to take place afterwards; and

(5) the existence of special rules for those who are housebound, detained or terminally ill.

13.21 Before we consider how our recommendations relating to these aspects of weddings could apply to conversions, we should note that we do not think that there is any need

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15 The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014 No 3181), reg 9.

16 See Recommendation 18 at para 4.94 above.

for legislation to provide for a two-stage procedure. Under our scheme, there will be no restrictions on where a wedding can take place. If that is extended to conversions, then there will be no need to distinguish between conversions taking place on premises provided by the local authority and those taking place elsewhere. Nor do we believe that there is any need to provide legal authority to permit a ceremony whose function is purely ceremonial. Registration officers already provide additional ceremonies as discretionary services and their provision of a ceremony after a conversion would fall within that category. Any additional costs incurred by a registration officer in travelling to a different location or conducting an additional ceremony could be reflected in the fees charged.

The requirement to meet and provide evidence

13.22 As noted above, to convert a civil partnership into a marriage, the couple must meet the superintendent registrar to provide the required information. Given that a conversion declaration can be prepared immediately, with no waiting period, there appears to be no benefit to allowing the information to be given online in advance, except where one of the civil partners is housebound, detained or terminally ill. In such cases, the registration officer could still require to meet them both in person in advance of the conversion. To align this requirement with our recommendations on weddings,[17] the requirement to meet would also apply to a person who was terminally ill.

The provision of a low-cost option in the register office

13.23 The current standard procedure for conversion is essentially equivalent to a register office wedding. In Recommendation 54,[18] we recommend that simple civil wedding ceremonies should continue to be available. Accordingly, we think that a simple procedure for conversions should continue to be available for a prescribed fee.

Rules governing where a conversion can take place

13.24 The current two-stage procedure offers couples the option of having their conversion outside the register office and with a ceremony following the conversion. Based on the current weddings law, there are limitations on where conversions can take place.

13.25 Under our scheme, there will be no legal restrictions on where a wedding can take place, except that the officiant will be responsible for considering whether the location is safe and dignified. If this approach is extended to conversions, there would no longer be any need for special provisions to allow a conversion to take place in locations other than the register office. It would be the role of the registration officer presiding over the conversion to consider whether the location is safe and dignified.

13.26 However, as we explain in Chapter 6, as a matter of property law, religious organisations will still be free to refuse to permit weddings on their premises with which they disagree, and the same will apply equally to conversions. Moreover, as we explain in Chapter 8, legislation that implements our recommendations should include the creation of a specific exception in equality law to ensure that owners of religious premises could refuse to allow their premises from being used for same-sex

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17 See Recommendation 44 at para 10.67 above.

18 See para 12.38 above.

weddings; this exception could also include conversions, which are only available to same-sex couples.

Any subsequent ceremony

13.27 As noted above, we do not think that the law needs to make provision for a ceremony that takes place after a conversion. Such a ceremony has no legal effect and is purely ceremonial in nature.

13.28 We think that confusion may have been created by the terms of section 46 of the Marriage Act 1949. This particular provision originally set out the conditions under which a religious ceremony might be performed after a register office wedding. It was subsequently extended to include ceremonies performed after any civil wedding or conversion. However, it should be noted that its original aim seems to have been prohibitive rather than permissive, intended to prohibit clergy from entering the ceremony in the marriage register or from giving the impression that the ceremony superseded or invalidated the earlier register office wedding.[19] As we note elsewhere, its existence has led to confusion and we have recommended that it be repealed as unnecessary, a recommendation we explain in more detail in Chapter 5.[20]

13.29 We note that the Religious Society of Friends, in disagreeing with our proposal to abolish section 46, appeared concerned that without it, a conversion could not take place in a Quaker meeting house. We do not think this is the case. As we explain, our intention is not to prevent ceremonies which are of no legal effect from taking place, before or after a couple has a legally recognised ceremony. We do not think any further provision is necessary to allow a ceremony to follow a conversion, just as we do not think any further provision is necessary to allow a non-legally recognised wedding to follow a legal wedding.

13.30 As at present, the ceremony following the conversion could be provided by a superintendent registrar. If the couple wished for a religious service, this would be a matter for them to arrange with the relevant religious group, and would need no special authority under the conversion legislation.

The procedures for people who are detained, housebound and terminally ill

13.31 Under our scheme, a conversion would be able to take place in any location, so long as it is safe and dignified. Therefore, the only specific rules necessary for a conversion involving a person who is either detained or housebound would be to ensure the registration officer attended the person for them to provide the required information and for the conversion to take place.

13.32 As we explain in Chapter 10, we think that it should be for the Registrar General to determine what evidence a person should be required to provide to establish that they are detained or housebound. In addition, where a person is detained, under our general scheme it no longer seems necessary to require the person to provide evidence that the authority of the detention facility does not object to the

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19 R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (2021) pp 91 to 99; R Probert, "Rites and Wrongs: Anglican ceremonies after legal weddings, 1837-1857" (2022) *Studies in Church History* (forthcoming).

20 See paras 5.187 and following above.

superintendent registrar attending for the conversion; instead, a person who is detained would need permission in relation to the location of the intended conversion in the same way that any other person will need permission. However, as we noted in relation to weddings, as this point may interact with wider policy considerations in relation to prisons and prisoners, Government may wish to retain this requirement for a statement from the responsible authority agreeing to the conversion taking place at the facility, as a part of the notice procedure.

13.33 We do not think that there would need to be specific provision for those who are terminally ill. The main purpose of maintaining a separate category for weddings involving people who are terminally ill is to allow the wedding to take place immediately, rather than after the 28-day waiting period. Because there is no waiting period for a conversion, there is no reason to treat people who are terminally ill separately. If, as a result of their illness they are unable to be moved, then the provisions applicable to people who are housebound would apply.

13.34 Under the current law, there is no provision for a couple involving a person who is housebound, detained or terminally ill to have a ceremony following the conversion. As noted above, we do not think that the absence of provision should preclude a subsequent ceremony being added, or that such a ceremony would need explicit authorisation.

Chapter 14: Recommendations

Recommendation 1.

14.1 We recommend that the requirement that couples are resident in an English or Welsh registration district for seven days prior to giving notice of their intention to marry to a registration officer should be abolished.

Paragraph 3.47

Recommendation 2.

14.2 We recommend that it should be possible to start the waiting period by giving notice online or in person at any registration district, and that any person giving notice online should be required to attend a separate in-person interview at a later date.

Paragraph 3.78

Recommendation 3.

14.3 We recommend that the minimum period between the in-person interviews and the date on which the schedule is issued should be five days.

Paragraph 3.109

Recommendation 4.

14.4 We recommend that, as part of the civil preliminaries process, notices of marriage should be publicly displayed online, save where this would expose either of the couple or a member of their family or household to a risk of a specific and identifiable physical or psychological harm.

Paragraph 3.136

Recommendation 5.

14.5 We recommend that caveats should be able to be given before or after a person gives notice of marriage, so long as evidence is provided. That evidence could include:

(1) a forced marriage protection order in relation to the individual;

(2) that the person entering the caveat has been appointed as the individual's attorney under a Lasting Power of Attorney and has grounds to believe that the individual does not have capacity to marry;

(3) that the person entering the caveat has been appointed the individual's deputy by the Court of Protection; and/or

(4) where there are concerns in respect of a bigamous marriage, a marriage certificate.

Paragraph 3.142

Recommendation 6.

14.6 We recommend that it should no longer be possible for couples marrying in England or Wales to give notice in Scotland or on a naval ship at sea.

Paragraph 3.167

Recommendation 7.

14.7 We recommend that the schedule should be valid for 12 months from the date of issue.

Paragraph 3.174

Recommendation 8.

14.8 We recommend that the schedule should identify the officiant or authorised/nominating organisation who will officiate at the wedding, in particular –

(1) for registration officers, it should identify "registration officer in [name of] registration district";

(2) for Anglican weddings, it should identify "Clerk in Holy Orders authorised to exercise ordained ministry in [name of] parish";

(3) for nominated officiants, it should identify "[the name of the chosen officiant] or another authorised officiant under the Marriage Act nominated by [name of nominating organisation]"; and

(4) for independent officiants (if authorised to officiate at weddings), it should identify "[the name of the chosen] independent officiant".

14.9 We recommend that the couple should be able to request an amended schedule with a substitute officiant and/or substitute authorised/nominating organisation, so long as the request is made within a specified period before the date of the ceremony, such period to be determined by the General Register Office.

Paragraph 3.201

Recommendation 9.

14.10 We recommend that a substitute officiant should be able to officiate at the wedding if the officiant named in the schedule is unexpectedly unable to act, for reasons that include death, sudden illness or unavoidable delay, when the minimum period for amending the schedule in advance of the wedding has passed.

Paragraph 3.227

Recommendation 10.

14.11 We recommend that each of the couple should be required to provide specified evidence of their name, age, marital status (including of any previous marriage or civil partnership) and nationality (or EU settlement status) in order for banns to be called or a common licence obtained.

Paragraph 3.257

Recommendation 11.

14.12 We recommend that banns published in Scotland, Northern Ireland or Ireland should no longer be legal authority for an Anglican wedding in England and Wales.

Paragraph 3.263

Recommendation 12.

14.13 We recommend that the rules governing where banns can be published to authorise an Anglican wedding if a church is injured by war damage should be repealed as redundant.

Paragraph 3.268

Recommendation 13.

14.14 We recommend that banns should only be required to be called in the parties' parish(es) of residence, and if that is not an option the parties should use the civil preliminaries process or obtain a common or special licence.

Paragraph 3.282

Recommendation 14.

14.15 We recommend that where banns are called, a separate in-person meeting should take place between each of the couple and the incumbent of their parish(es) a minimum of five days before the marriage document is produced.

Paragraph 3.296

Recommendation 15.

14.16 We recommend that both of the couple should be required to attend and make separate declarations that there is no impediment to their marriage in order for a common licence to be granted to authorise an Anglican wedding.

Paragraph 3.307

Recommendation 16.

14.17 We recommend that all weddings should be attended in person by an officiant who should have a legal duty to:

(1) ensure that the parties freely express consent to marry each other;

(2) ensure that the other requirements of the ceremony are met; and

(3) ensure that the schedule or marriage document is signed by each of the couple, two people who have witnessed the parties' expression of consent, and themselves.

14.18 We recommend that all officiants should have a responsibility to uphold the dignity and significance of marriage in their role as officiants and in officiating at weddings.

14.19 We recommend that the General Register Office should issue guidance to all officiants on how to fulfil their legal duties and responsibilities.

Paragraph 4.63

Recommendation 17.

14.20 We recommend that there should be no time limit on the authorisation of officiants.

Paragraph 4.66

Recommendation 18.

14.21 We recommend that:

(1) registration officers should be able to officiate only at civil weddings; and

(2) as a matter of weddings law, only one registration officer should be required to officiate at a civil wedding.

Paragraph 4.94

Recommendation 19.

14.22 We recommend that Clerks in Holy Orders authorised to exercise ordained ministry within the Church of England and Church in Wales should automatically be recognised as officiants.

Paragraph 4.105

Recommendation 20.

14.23 We recommend that the relevant governing authority of a religious organisation or (if enabled by Government to officiate at weddings) non-religious belief organisation should be able to nominate officiants if:

(1) the organisation has been established for a minimum period, during which period it has had members from at least 20 households who meet regularly in person for worship or in furtherance of or to practise their beliefs (but the relevant governing authority need not have existed for any minimum period);

(2) it has a policy about nominating and monitoring officiants; and

(3) it would be a manifestation of an individual's religion or beliefs to have a wedding officiated at by an officiant nominated by that organisation.

The evidence required to demonstrate the existence of the organisation could be (but is not limited to) a constitution or governing document or documents.

14.24 We recommend that the non-religious belief organisations able to nominate officiants should be limited to those whose sole or principal purpose is the advancement of a system of non-religious beliefs which have a level of cogency, seriousness, cohesion and importance that brings them within the meaning of article 9 of the European Convention on Human Rights.

14.25 We recommend that there should be a transitional provision, that would apply to all existing registered places of worship, which would deem them to meet the requirement for 20 individuals from separate households. It would allow such places to nominate officiants. It should expire one year after commencement of the new legislation.

Paragraph 4.256

Recommendation 21.

14.26 We recommend that nominating organisations should be required to ensure that the people they nominate as officiants are "fit and proper" persons, by providing evidence that they:

(1) are of good character;

(2) have not been convicted of any offence which the General Register Office has determined would preclude a person from being fit and proper, by disclosing to the General Register Office any unspent convictions;

(3) have attained the age of 18;

(4) have undertaken training in the legal aspects of being an officiant, which is

(a) provided by the nominating organisation and approved by the Registrar General, or

(b) provided by the General Register Office; and

(5) understand the legal requirements for being an officiant and performing the role.

14.27 We recommend that for each named officiant, a nomination should be made to the General Register Office, which will be responsible for keeping a public list of all nominated officiants. The list should include officiants' names, the town or district in which they reside, and the organisation by which they were nominated, but individuals should be able to opt out from having their nominating organisation or area of residence included on the public list where the inclusion of such information would expose them to a risk of specific and identifiable harm.

14.28 We recommend that:

(1) the primary responsibility for monitoring nominated officiants and requesting withdrawal of their authorisation if they fail to comply with the fit and proper person standard or their duties or responsibilities should lie with the organisation that nominated them; but

(2) the General Register Office should have the power to de-authorise nominated officiants if they fail to comply with the fit and proper person standard or their duties or responsibilities, and if the body who nominated them fails to act.

Paragraph 4.259

Recommendation 22.

14.29 We recommend that nominated officiants should be entitled to charge for officiating at a wedding but should be precluded from subordinating the expression of their beliefs to commercial interests.

Paragraph 4.262

Recommendation 23.

14.30 We recommend that, if enabled by Government to officiate at weddings, independent officiants should apply to the General Register Office to be authorised.

14.31 We recommend that individuals applying to be authorised as independent officiants should be required to demonstrate that they are "fit and proper" persons, by providing evidence that they:

(1) are of good character;

(2) have not been convicted of any offence which the General Register Office has determined would preclude a person from being fit and proper, by disclosing to the General Register Office any unspent convictions;

(3) have attained the age of 18;

(4) have undertaken initial training in the legal aspects of being an officiant, the content of which is determined by the General Register Office and is provided by

(a) the General Register Office, or

(b) a provider approved by the Registrar General; and

(5) understand the legal requirements for being an officiant and performing the role.

14.32 We recommend that the General Register Office should hold a public list of independent officiants that includes officiants' names and the town or district in which they reside, but individuals should be able to opt out from having their area of residence included where the inclusion of such information would expose them to a risk of a specific and identifiable harm.

14.33 We recommend that independent officiants should be required to undertake ongoing training as prescribed by the General Register Office, and that they should be automatically de-authorised if they fail to comply with this obligation.

14.34 We recommend that the General Register Office should be responsible for monitoring independent officiants and de-authorising those who fail to comply with the fit and proper standard or their duties and responsibilities.

Paragraph 4.326

Recommendation 24.

14.35 We recommend that independent officiants should be prevented from acting with a conflict of interest. This rule should not prevent an independent officiant from being employed by a commercial venue, so long as the independent officiant does not insist that a wedding take place in that venue.

Paragraph 4.331

Recommendation 25.

14.36 We recommend that maritime officiants should apply to the General Register Office to be authorised.

14.37 We recommend that individuals applying to be authorised as maritime officiants should be required to demonstrate that they are "fit and proper" persons, by providing evidence that they:

(1) are of good character;

(2) have not been convicted of any offence which the General Register Office has determined would preclude a person from being fit and proper, by disclosing to the General Register Office any unspent convictions;

(3) have attained the age of 18;

(4) have undertaken initial training in the legal aspects of being an officiant, the content of which is determined by the General Register Office and is provided by

(a) the General Register Office, or

(b) a provider approved by the Registrar General; and

(5) understand the legal requirements for being an officiant and performing the role.

14.38 We recommend that the General Register Office should hold a public list of maritime officiants that includes officiants' names and the ship or ships on which they are employed.

14.39 We recommend that maritime officiants should be required to undertake ongoing training as prescribed by the General Register Office, and that they should be automatically de-authorised if they fail to comply with this obligation.

14.40 We recommend that the General Register Office should be responsible for monitoring maritime officiants and de-authorising those who fail to comply with the fit and proper standard or their duties and responsibilities.

Paragraph 4.337

Recommendation 26.

14.41 We recommend that maritime officiants should be prevented from acting with a conflict of interest.

Paragraph 4.342

Recommendation 27.

14.42 We recommend that an officiant should only be able to be authorised as one of the below categories of officiant at any one time –

(1) Anglican clergy;

(2) registration officer;

(3) nominated officiant; or

(4) independent officiant/maritime officiant.

14.43 We recommend that it should not be possible for a nominated officiant to be nominated by more than one nominating organisation at any one time.

Paragraph 4.358

Recommendation 28.

14.44 We recommend that there should be a means for complaints about nominated, maritime and independent officiants to be made directly to the General Register Office, with the procedure to be adopted to be devised by the General Register Office after consultation.

14.45 We recommend that the General Register Office should have the power to conduct investigations necessary to exercise its powers.

14.46 We recommend that there should be a procedure for officiants to appeal to the relevant Secretary of State against a decision by the General Register Office not to authorise them, or to withdraw their authorisation.

Paragraph 4.365

Recommendation 29.

14.47 We recommend that, during every wedding ceremony, in the presence of each other, the officiant and two witnesses, the parties should be required to express their consent to be married to each other.

(1) In every belief ceremony (that is, a ceremony officiated at by a member of the Anglican clergy or a nominated officiant), consent to be married to each other should be able to be expressed by the parties' words or actions.

(2) In every civil ceremony (that is, a ceremony officiated at by a registration officer, maritime officiant or (if enabled by Government) independent officiant), consent to be married to each other should be expressed by the parties saying the required words of contract, or words to the same effect.

14.48 We recommend that confirmation by a person that they have previously consented to be married to the other person should amount to an expression of consent to be married to that other person.

14.49 We recommend that the schedule or marriage document should contain a declaration to be signed by each of the parties (in the presence of each other, the officiant and two witnesses) that confirms that they have expressed consent to be legally married to the other.

14.50 We recommend that the marriage should be formed at the point when both parties have expressed their consent to be married to each other in each other's presence.

Paragraph 5.78

Recommendation 30.

14.51 We recommend that all weddings should take place according to the form and ceremony agreed between the parties and the officiant, provided it complies with the other legal requirements.

14.52 We recommend that in the new Marriage Act there should be no special rules about the form that Anglican, Jewish or Quaker weddings must take, and no legal limitations on who is eligible to be married in a Jewish or Quaker wedding. Like all religious groups, Anglican, Jewish and Quaker groups will continue to be able to impose their own requirements about the content of their ceremonies, and Jewish and Quaker groups will continue to be able to impose their own requirements about whose ceremonies they will conduct, as a matter of their own practice.

Paragraph 5.118

Recommendation 31.

14.53 We recommend that weddings should not be required to take place with open doors or with public access.

Paragraph 5.141

Recommendation 32.

14.54 We recommend that a civil ceremony should be required to be identifiable as a civil ceremony.

(1) The civil officiant or another person leading the ceremony should identify the wedding as a civil ceremony (so they cannot identify it as a religious or non-religious belief ceremony) or the civil officiant should identify themselves as a civil officiant, to the couple and two witnesses.

(2) The couple's expression of consent, using the required words, should not include references to or elements of religious or non-religious beliefs or practices.

14.55 We recommend that a religious or non-religious belief service should not be permitted in a civil ceremony; however, a civil ceremony should be able to incorporate religious or non-religious belief elements, including but not limited to:

(1) music;

(2) readings;

(3) symbols, iconography and dress;

(4) rituals and symbolic acts;

(5) prayers;

(6) blessings; and

(7) vows and statements or expressions of commitment or consent by the persons to each other that make references of a religious or non-religious belief nature, provided that any such vow or statement does not replicate words or form of any ritual, vow, statement or expression of consent required of any couple marrying in a religious or non-religious belief marriage ceremony.

14.56 We recommend that the civil officiant should not be required to participate in any religious or non-religious belief elements.

Paragraph 5.183

Recommendation 33.

14.57 We recommend that the provision to permit a religious service to be conducted after a civil wedding ceremony (section 46 of the Marriage Act 1949) should be repealed as redundant, but it should continue to be possible for a couple to have a non-legally binding wedding ceremony before or after a legally binding wedding ceremony.

Paragraph 5.203

Recommendation 34.

14.58 We recommend that the existing restrictions on where a wedding can take place should be abolished.

14.59 We recommend that all weddings should be legally permitted to take place in any location. In particular,

(1) civil wedding locations should not have to be publicly accessible or regularly available to the public for the solemnization of civil marriages; and

(2) there should be no legal prohibitions on the use of religious or non-religious belief venues for any type of wedding.

14.60 We recommend that wedding locations should not be required to be pre-approved. Instead, officiants should be responsible for deciding whether to approve the location of each wedding at which they officiate. In deciding whether to approve a location, officiants will be responsible for considering the safety of those attending and the dignity of the location.

14.61 The General Register Office should provide guidance to officiants on how to assess whether a location is safe and dignified for a wedding.

Paragraph 6.210

Recommendation 35.

14.62 We recommend that at the ceremony (and in advance of being signed), the schedule or marriage document should have added to it:

(1) the date of the wedding;

(2) the location of the wedding;

(3) the identity and authorising or nominating body of the officiant; and

(4) the identity of the witnesses.

14.63 We recommend that at the ceremony (and in advance of being signed), the schedule or marriage document should be able to have added to it:

(1) the names and occupations of the parties' parents, with each party able to include up to four each persons who may be identified as "mother", "father", or "parent"; and

(2) the name of any person conducting or solemnizing the wedding, and any religious (or non-religious belief) organisation with which they are affiliated, where relevant.

Paragraph 7.55

Recommendation 36.

14.64 We recommend that, where the wedding ceremony takes place in Wales, couples should be able to have their schedules and marriage documents issued and completed in Welsh alone.

Paragraph 7.57

Recommendation 37.

14.65 We recommend that any one of the following factors on its own should render a marriage void:

(1) the failure of either or both parties to complete the in-person stage of the civil or Anglican preliminaries, other than where the marriage is by special licence (although a failure on the part of the registrar or Anglican clergy to interview each of the couple separately would not render a marriage void);

(2) the wedding taking place after authority to marry had lapsed;

(3) the knowledge of both parties that the ceremony was not officiated at by an authorised officiant; or

(4) the knowledge of both parties that the necessary opt into same-sex marriage had not been given by the relevant religious governing authority, in the case of same-sex marriages.

Paragraph 9.50

Recommendation 38.

14.66 We recommend that failure to comply with any of the other requirements except those listed in Recommendation 37 should not render a marriage void, including:

(1) mistakes in the issuance of the schedule or marriage document (including whether the conditions for the issue of the schedule or marriage document had been fulfilled);

(2) the absence of witnesses; and

(3) a failure to sign the schedule or marriage document, or to register the marriage.

Paragraph 9.86

Recommendation 39.

14.67 We recommend that the following factors should result in a non-qualifying ceremony:

(1) both

(a) the failure of either or both parties to complete the in-person stage of the civil or Anglican preliminaries, other than where the marriage is by special licence (excluding a failure on the part of the registrar or Anglican clergy to interview each of the couple separately); and

(b) either

(i) the knowledge of both parties that the ceremony was not officiated at by an authorised officiant, or

(ii) in the case of same-sex marriage, the knowledge of both parties that the necessary opt into same-sex marriage had not been given by the relevant religious governing authority; or

(2) failure of one or both parties to express consent to the marriage.

Paragraph 9.100

Recommendation 40.

14.68 We recommend that a presumption in favour of the validity of a marriage should arise where:

(1) the couple have signed the schedule or marriage document, or

(2) the couple have given notice and gone through a ceremony with a person acting as officiant

but should not require the couple to have cohabited for any period after its celebration.

14.69 We recommend that the presumption that a couple is married if they have cohabited for a long period of time and are believed to be married by friends and family should be abolished.

Paragraph 9.129

Recommendation 41.

14.70 We recommend that the three-year time limit on petitioning for nullity on the basis of lack of consent should be abolished.

Paragraph 9.145

Recommendation 42.

14.71 We recommend that it should be an offence

(1) for an officiant, someone who purports to be an officiant, or someone who is leading the ceremony, dishonestly to mislead either of the couple about their status (or the status of the officiant or anyone purporting to be an officiant) or the effect of the ceremony; or

(2) for an officiant to fail to disclose that the ceremony at which they are officiating will not give rise to a valid marriage; however, it should be a defence for the defendant to prove that they acted reasonably in the circumstances.

Paragraph 9.201

Recommendation 43.

14.72 We recommend that, to obtain authority to marry with no waiting period, the registration officer issuing the schedule should be satisfied that at least one of the parties to the marriage is terminally ill, meaning that they have a serious medical condition and it would be unreasonable to expect them to comply with the 28-day waiting period before being given authority to marry.

Paragraph 10.66

Recommendation 44.

14.73 We recommend that parties who have a terminal illness should be required to give notice of their intention to marry and be interviewed by a registration officer prior to the authority to marry being issued, but that these steps can take place immediately prior to the wedding.

14.74 We recommend that, to require a registration officer to attend the location of a person to take their notice, the registration officer should be satisfied that the person is unable to attend the register office because

(1) the person is housebound or detained, or

(2) the person is terminally ill, and as a consequence is unable to attend the register office.

Paragraph 10.67

Recommendation 45.

14.75 We recommend that, to satisfy the registration officer that

(1) the person is terminally ill, the person should be required to provide medical evidence of their serious medical condition and risk of death and of their mental capacity to marry; and

(2) the person is housebound or detained, the person should be required to provide evidence as specified by the Registrar General.

Paragraph 10.69

Recommendation 46.

14.76 We recommend that the Registrar General's licence should be abolished, and that there should be a single form of civil authority to marry – a schedule – issued by registration officers.

14.77 We recommend that schedules issued in all cases should be valid for 12 months, including for couples where one or both parties

(1) have a terminal illness, or

(2) are detained in prison or hospital or are housebound.

Paragraph 10.70

Recommendation 47.

14.78 We recommend that weddings should be able to take place in the territorial sea, and in bays and other coastal waters, adjacent to England and Wales.

Paragraph 10.100

Recommendation 48.

14.79 We recommend that civil weddings should be able to take place in international waters under the law of England and Wales on board cruise ships that are registered in the United Kingdom with a port of choice in England or Wales.

Paragraph 10.187

Recommendation 49.

14.80 We recommend that weddings on board cruise ships in international waters should be officiated by deck officers who have been authorised by the General Register Office as maritime officiants.

14.81 In addition to being subject to the same rules as we have recommended should apply to independent officiants, we recommend that in an application for authorisation to the General Register Office, the deck officer should provide evidence that the cruise company for which the person acts as a deck officer:

(1) has an appropriate chain of command; and

(2) has policies and procedures in place to ensure that weddings taking place in international waters will comply with all the legal requirements, including that such weddings will only take place when the ship is in international waters.

14.82 We recommend that a person should be able to be authorised both as a maritime officiant and (if enabled by Government) an independent officiant.

Paragraph 10.188

Recommendation 50.

14.83 We recommend that maritime officiants should be identified on the schedule as "a maritime officiant authorised under the Marriage Act to conduct weddings on board [the name and International Maritime Organisation SHIP identification number of the ship]".

Paragraph 10.191

Recommendation 51.

14.84 We recommend that any one of the following factors should render a marriage void following a wedding on board a cruise ship in international waters:

(1) the failure of both or either party to have an in-person interview in giving notice;

(2) the wedding taking place after authority to marry had lapsed; or

(3) the wedding not being officiated at by a deck officer on board.

14.85 We recommend that the following factors should result in a non-qualifying ceremony where the wedding takes place on board a cruise ship in international waters:

(1) both

(a) failure of one or both parties to the marriage to give notice of the intended marriage, and

(b) that the ceremony not being officiated by a deck officer on board; or

(2) failure of one or both parties to express consent to the marriage.

Paragraph 10.192

Recommendation 52.

14.86 We recommend that weddings legislation should contain a power, to be exercised in a national emergency which prevents couples from complying with the formalities of getting married, for secondary legislation to make provisions that would permit any or all of the following measures to be put in place:

(1) the validity of schedules and other forms of authority to marry to be extended;

(2) both stages of civil preliminaries to take place entirely remotely;

(3) the officiant, the couple, and the witnesses each to attend the wedding ceremony remotely; and

(4) the schedule or marriage document to be signed by each of the officiant, the couple, and the witnesses remotely, or for each to sign a different copy of the schedule or marriage document.

Where necessary, the emergency measures should be able to extend beyond the end of the emergency.

14.87 We recommend that any special provisions that are put in place in a national emergency which prevents couples from complying with the formalities of getting married should be capable of applying to all couples (but need not do so), depending on the nature and length of the emergency.

Paragraph 11.87

Recommendation 53.

14.88 We recommend that the Secretary of State should by regulations prescribe the fees in relation to the giving of notice of a marriage to a registration officer.

Paragraph 12.21

Recommendation 54.

14.89 We recommend that it should continue to be possible for couples to have a simple civil ceremony officiated at by a registration officer, for a fee prescribed by regulations.

Paragraph 12.38

Recommendation 55.

14.90 We recommend that there should be a power for a fee to be charged for registration officers to consider whether a location is safe and dignified for a wedding, but whether that fee is prescribed by regulations or determined by local authorities is a matter for Government to determine.

Paragraph 12.58

Recommendation 56.

14.91 We recommend that there should be a power for a fee to be payable for registration officers to officiate at a wedding outside a register office, but whether that fee is prescribed by regulations or determined by local authorities is a matter for Government to determine.

Paragraph 12.75

Recommendation 57.

14.92 We recommend that there should be a power for a fee to be prescribed for the authorisation of a nominated, maritime, or (if enabled by Government to conduct legal weddings) independent officiant by the General Register Office.

Paragraph 12.113

Appendix 1: Terms of Reference

1.1 The review will consider how and where couples can marry in England and Wales. It will seek to provide recommendations for a reformed law of weddings that allows for greater choice within a simple, fair, and consistent legal structure.

1.2 Five principles will underpin recommendations for reform:

(1) Certainty and simplicity;

(2) Fairness and equality;

(3) Protecting the state's interest;

(4) Respecting individuals' wishes and beliefs; and

(5) Removing any unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples.

1.3 To this end, the Law Commission will make recommendations regarding:

(1) Whether the legal preliminaries that must take place before a wedding could be streamlined;

(2) How the law should be reformed to enable marriage ceremonies to take place in a wider range of venues, including outdoor locations, at sea, and on military sites;

(3) How the law should be reformed in relation to who can solemnize a marriage and how it could be reformed to enable a wider range of persons to solemnize a marriage. This will include how marriage by humanist and other non-religious belief organisations could be incorporated into a revised or new scheme, and how provision could be made for the use of independent celebrants, but the Law Commission will not make recommendations as to whether the groups who can solemnize marriages should be expanded;

(4) What content is either required or prohibited as part of a wedding ceremony;

(5) How marriages should be registered, and by whom;

(6) What the consequences of failing to comply with all or some of the requirements for a valid marriage should be; and

(7) What offences are necessary to underpin the system governing weddings.

1.4 The review will proceed on the following policy assumptions.

(1) The project will not look to introduce universal civil marriage but it should investigate the potential for introducing universal civil preliminaries.

(2) There should be no change to the principle that, provided other requirements are met, religious groups should be able to marry people. There should be no change to the law determining what amounts to a religion for the purpose of the solemnization of marriage as decided by the Supreme Court in *R (on the application of Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77.

(3) The project should not undermine immigration provisions introduced by the Government to protect against sham marriages. These include the changes to marriage law enacted by the Immigration Act 2014, which extended the length of the waiting period that must elapse between parties to an intended marriage giving notice of the marriage and the authority for the marriage being granted, and which prescribed a different route for individuals who are not relevant nationals.

(4) The provisions of the civil and criminal law dealing with the issue of forced marriages should not be undermined by any changes to the law.

(5) That any non-religious belief organisations or independent celebrants given the right to conduct marriage ceremonies cannot discriminate between opposite and same-sex couples.

(6) Recommendations we make in relation to the solemnization of marriage would also apply (in so far as is relevant) where a civil partnership is being converted into a marriage.

(7) It will be for the Government to consider the detail of making corresponding provision where appropriate with civil partnership ceremonies, for example in the cases of approved premises which are open to marriage and civil partnership ceremonies.

1.5 The review will not consider:

(1) Who is eligible to enter into marriage;

(2) The question of whether or not religious groups should be obliged to solemnize marriages of same sex couples, which was decided by Parliament following wide public debate.

(3) The rights or responsibilities which marriage creates, such as the financial entitlements of surviving spouses or the consequences of divorce.

(4) The Church of England's and the Church in Wales's duty to conduct marriage ceremonies for their parishioners.

(5) The grounds on which a marriage can be void or voidable other than those grounds that relate to a failure to comply with the required formalities.

(6) The law of divorce, including the issues that can arise when a civil divorce has been granted but a religious one has not.

(7) How the law deals with marriages that have taken place in other jurisdictions.

(8) Ancillary wedding services unrelated to the law governing how and where people can legally marry, such as flowers and catering, including any cost or choice difficulties for consumers in relation to those services.