



HOUSE OF LORDS

Ecclesiastical Committee

230th Report

**Church of England
Marriage
(Amendment)
Measure**

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The Ecclesiastical Committee

The Ecclesiastical Committee is a statutory Committee appointed under the Church of England Assembly (Powers) Act 1919.

It comprises thirty members, fifteen of whom are Members of the House of Commons, appointed by the Speaker, and fifteen of whom are members of the House of Lords, appointed by the Lord Speaker. The quorum is twelve.

Appointments to the Committee are generally made early in a Parliament. Unless the Speaker or the Lord Speaker decide otherwise, members appointed by them remain on the Committee for the life of the Parliament.

While its powers are those laid down by the Act, the procedures it has adopted are those of a Joint Select Committee.

Current Membership

HOUSE OF LORDS	HOUSE OF COMMONS
Lord Bilston	Sir Tony Baldry
Baroness Butler-Sloss	Peter Bottomley
Lord Davies of Coity	Ben Bradshaw
Lord Elton	Frank Field
Lord Glenarthur	Helen Goodman
Lord Griffiths of Burry Port	Sir Alan Haselhurst
Lord Judd	Sharon Hodgson
Lord Laming	Simon Hughes
Lord Lloyd of Berwick	David Lammy
Lord Luke	Gordon Marsden
Baroness Jolly	Patrick Mercer
Baroness Perry of Southwark	Laura Sandys
Lord Shaw of Northstead	Andrew Selous
Lord Walpole	Gary Streeter
Lord Williams of Elvel	

The following were also members of the Committee when the Measure was considered:

Sir Stuart Bell MP

Oliver Heald MP

Lord Newby

Remit

The Ecclesiastical Committee examines draft Measures presented to it by the Legislative Committee of the General Synod of the Church of England. It reports to Parliament on whether or not it considers the measures to be expedient.

It generally asks members of the General Synod to assist it in its deliberations. In some circumstances a conference of the Ecclesiastical Committee and the Legislative Committee may be convened.

The Church of England Measure on which the Committee has reported is presented to both Houses in its final form at the same time as the Committee makes its report.

Before the Measure becomes law, both Houses must approve motions that the Measure should be presented to the Sovereign for Royal Assent in the form that it was laid before Parliament.

Once both Houses have passed the necessary approval motions, the Measure is presented for Royal Assent and becomes law.

Publications

The reports and proceedings of the Committee are published by The Stationery Office by Order of both Houses. All publications of the Committee are on the internet at www.parliament.uk

Contacts

All correspondence should be addressed to the Secretary of the Ecclesiastical Committee, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number for general enquiries is 020 7219 3152.

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230TH REPORT BY THE ECCLESIASTICAL COMMITTEE

1. The Ecclesiastical Committee has met and considered the Church of England Marriage (Amendment) Measure referred to it under the provisions of the Church of England Assembly (Powers) Act 1919.
2. The Measure makes a number of changes to the law relating to marriage according to the rites of the Church of England.
3. Section 1 of the Measure amends the Church of England Marriage Measure 2008 so that persons who wish to marry on the basis of a qualifying connection with a parish are put in an equivalent position to those who marry on the basis of residence in the parish or of being habitual worshippers there.
4. Section 2 makes some changes to the procedure relating to the publication of banns. The Measure provides for an optional alternative form of words to that contained in the Book of Common Prayer and for banns to be published at the “principal service” (rather than, as at present, at “morning service”) and, as an option, additionally at any other service on the Sunday in question.
5. The Comments and Explanations printed with this report give further details of the provisions of this Measure and the background to it.
6. **The Committee is of the opinion that the Measure is expedient.**

MINUTES OF PROCEEDINGS

Tuesday 13 March 2012

Minutes of the meeting of the Ecclesiastical Committee held on
Tuesday 13 March 2012 at 4.30pm in Committee Room 1, House of
Lords.

Present:

Lord Bilston	Tony Baldry MP
Baroness Butler-Sloss	Sir Stuart Bell MP
Lord Elton	Ann Cryer
Lord Glenarthur	Ben Bradshaw MP
Lord Griffiths of Burry Port	Oliver Heald MP
Lord Judd	Gordon Marsden MP
Lord Laming	
Lord Lloyd of Berwick	
Lord Newby	
Baroness Perry of Southwark	
Lord Shaw of Northstead	
Lord Walpole	
Lord Williams of Elvel	

Lord Lloyd of Berwick in the Chair.

Mr Peter Milledge, Counsel to the Lord Chairman of Committees, in attendance.

Church of England Marriage (Amendment) Measure

The following representatives of the General Synod assisted the Committee in its deliberations:

The Right Worshipful Timothy Briden (Vicar-General, Province of Canterbury)

Mr William Fittall (Secretary-General of the General Synod)

Reverend Alexander McGregor (Deputy Legal Adviser to the General Synod)

Mr Clive Scowen (member of the House of Laity of the General Synod)

The Committee deliberated.

It was moved that the Church of England Marriage (Amendment) Measure be deemed expedient.

The motion was agreed to.

The Committee adjourned.

LEGISLATIVE COMMITTEE OF THE GENERAL SYNOD: COMMENTS AND EXPLANATIONS ON THE CHURCH OF ENGLAND MARRIAGE (AMENDMENT) MEASURE

INTRODUCTION

1. The Legislative Committee of the General Synod, to which the Measure entitled the Church of England Marriage (Amendment) Measure has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.
2. The Church of England Marriage (Amendment) Measure amends the Church of England Marriage Measure 2008 ('the 2008 Measure') and Part 2 of the Marriage Act 1949 ('the 1949 Act'). Copies of the relevant provisions of those enactments in the form they would take as amended by the Measure are set out in the Appendix.
3. The main changes to which the amendments give effect are
 - the application, to the case of marriage by virtue of a 'qualifying connection' under the 2008 Measure, of existing statutory provisions which - if the bishop has so directed - enable a person to marry in other churches in the benefice to which the parish with which he or she has a qualifying connection belongs, or in another benefice held in plurality with that benefice;
 - the application, to the case of marriage by virtue of a qualifying connection, of existing statutory provisions that address the situation where there is no parish church, or a church is not available because it is being rebuilt or repaired, by providing for the marriage to take place in an alternative church building (such as the church of an adjoining parish);
 - the provision of an entitlement for a person to marry in a church which was formerly the parish church of a parish with which he or she had a qualifying connection but has since become the parish church of a different parish (as a result of pastoral reorganisation);
 - the provision of an optional alternative form of words to that contained in the Book of Common Prayer for the publication of banns of marriage; and
 - the provision for banns to be published at the 'principal service' (rather than as at present at 'morning service') and, as an option, to be published additionally at any other service on the Sunday in question.
4. The remainder of this paper is in three parts. First, in paragraphs 6 to 21 it summarises the background to the introduction of the draft Measure into the General Synod and the proceedings in the Synod in respect of the Measure. Second, in paragraphs 22 to 45 it sets out what the Measure as presented to Parliament provides. Third, in paragraphs 46 to 66 it summarises the consideration of the draft Measure during the Revision Committee Stage and the subsequent Revision Stage in full Synod.
5. The Legislative Committee invites the Ecclesiastical Committee, having considered the material presented here, to issue a favourable report on the Measure. In the event of the Ecclesiastical Committee requiring any further explanation, the Legislative Committee stands ready to provide it.

BACKGROUND TO THE MEASURE

Marriage by virtue of a 'qualifying connection'

6. At common law a person is entitled to have banns of marriage published, and to marry¹, in the parish church of the parish where he or she is resident. The 1949 Act makes provision which recognises the existence of this right and additionally provides an equivalent right to marry in a parish church which is the usual place of worship of one (or both) of the persons to be married.
7. The Church of England Marriage Measure 2008 provides for a right to have banns published, and to marry, in the parish church of a parish with which one (or both) of the persons to be married has a 'qualifying connection'. This right is in addition to the common law and statutory rights for which the 1949 Act makes provision.
8. A person has a 'qualifying connection' with a parish under the 2008 Measure if
 - (a) that person was baptised in that parish or had his or her confirmation entered in a register book of confirmations for that parish;
 - (b) that person has at any time had his or her usual place of residence in that parish for a period of not less than six months;
 - (c) that person has at any time habitually attended public worship in that parish for a period of not less than six months;
 - (d) a parent of that person has during the lifetime of that person had his or her usual place of residence in that parish for not less than six months or habitually attended public worship in that parish for that period; or
 - (e) a parent or grandparent of that person has been married in that parish.
9. The 2008 Measure also makes provision for the grant of a common licence to a person who has a qualifying connection so that he or she may marry in the parish in question without banns being published (provided the other requirements as to the grant of a common licence are met).
10. Following the implementation of the 2008 Measure (which came into force on 1 October 2008) questions began to be asked by the registrars of a number of dioceses as to whether certain provisions of the 1949 Act and other related enactments - including those which enable a person to marry in other churches in the benefice to which the parish with which he or she has a qualifying connection belongs, if the bishop has so directed - applied to the situation where a person had a qualifying connection under the 2008 Measure. The advice given by the Legal Office of the National Church Institutions was that a number of provisions of those enactments - including those relating to multi-parish benefices - did not apply in such cases.

¹ The exercise of this right is subject to provisions which allow individual clergy to decline to solemnize marriages where a party has a living former spouse, is of the acquired gender under the Gender Recognition Act 2004 or where the parties are within certain degrees of kindred and affinity within which it is now lawful for persons to marry.

11. In July 2010, at the request of the diocesan synod of the Diocese of Ripon and Leeds, the General Synod debated and passed a motion in the following terms-

“That this Synod request the Archbishops’ Council to introduce legislation which would enable the Bishop to give directions allowing those who have a ‘qualifying connection’ with a particular parish (under the Church of England Marriage Measure 2008) to marry in any church within the benefice of which that parish forms a part.”

12. It was the passing by the General Synod of that motion which resulted in clause 1 of the Measure being brought forward. Those responsible for formulating the provisions of the Measure took the view that if statutory provisions that are concerned with multi-parish benefices were to be applied to marriages by virtue of a qualifying connection, the related provisions of the 1949 Act concerned with benefices held in plurality should also be dealt with. Clause 1 of the Measure was drafted on that basis.

Banns of marriage

13. The Alternative Service Book 1980 contained a rubric in the authorised marriage service set out in that book which made provision for an alternative, more modern, form of words for the publication of banns of marriage to that contained in the relevant rubric in the Book of Common Prayer. When The Alternative Service Book was replaced by Common Worship (in 2000), the notes to the marriage service again set out the same alternative form of words for the publication of banns.

14. The rubric in the Book of Common Prayer prescribes the following form of words for the publication of banns of marriage-

I publish the Banns of Marriage between N. of-and N. of-. If any of you know cause, or just impediment, why these two persons should not be joined together in holy Matrimony, ye are to declare it. This is the first [second, or third] time of asking.

15. The alternative form set out in Common Worship (and formerly in The Alternative Service Book 1980) is as follows-

I publish the banns of marriage between NN of..... and NN of..... This is the first / second / third time of asking. If any of you know any reason in law why they may not marry each other you are to declare it.

16. The 1949 Act refers only to the form of words prescribed by the rubric in the Book of Common Prayer. (See section 7(2).) The statutory authority for the General Synod to make provision by or under Canon for matters to which the rubrics in the Book of Common Prayer relate excludes the making of provision for the publication of banns of matrimony. (See section 1(1) of the Church of England (Worship and Doctrine) Measure 1974.) The authorisation of the forms of service contained in *The Alternative Service Book* and *Common Worship* did not, therefore, have the effect of giving legal authority to the alternative form of words for the publication of banns which those forms of service included.

17. However, as can readily be seen, the substance of what is published is the same in both cases, even if the form of words is not identical. Decided cases on the due publication of banns are to the effect that banns are duly

published if the substance of what is required has been published. When the Measure was introduced into the Synod in November 2010, the Vicar-General of Canterbury explained that ‘the fact than many marriages have taken place using the more recent form of banns ... does not in any way invalidate the publication of the banns; neither does it invalidate the marriage taking place on that basis.’ During debate, the Dean of the Arches said, ‘I do not believe there is any cause for concern about legality of marriages conducted in the interim period [i.e. the period prior to the intended enactment of the Measure].’

18. It was however considered desirable that there should be express statutory authority for the use of the alternative form of words for the publication of banns of marriage and it was on that basis that provision for the alternative form was included in the Measure as introduced.

PROCEEDINGS IN THE GENERAL SYNOD

19. The Measure was introduced into the Synod for First Consideration in November 2010. It was received positively by the Synod and committed to a Revision Committee. It received detailed scrutiny from the Revision Committee and then from the Synod at the Revision Stage in July 2011. The process of revision resulted in a number of amendments being made.
20. A small number of further, technical, amendments were made to the Measure at the Final Drafting stage which was also taken at the July 2011 group of sessions of the Synod. The Final Approval stage immediately followed when the Measure received the unanimous support of all three Houses.
21. The voting on the Measure at the end of the Final Approval stage was as follows-

	Ayes	Noes
Bishops	27	0
Clergy	168	0
Laity	172	0

THE PROVISIONS OF THE MEASURE

Section 1 - Qualifying connections under section 1 of the Church of England Marriage Measure 2008

Section 1(1)

22. Section 1(1) inserts a new section 1A (Further provision as to qualifying connections) into the 2008 Measure. The new section 1A contains four new subsections.

New subsection (1)

23. New subsection (1) applies certain existing statutory provisions to the case of marriages by virtue of a 'qualifying connection' under the 2008 Measure. These provisions will enable a person to marry-
- (a) in the church or chapel of another benefice that is held in plurality with the benefice to which the parish with which he or she has a qualifying connection belongs; and
 - (b) in the church or chapel of another parish in the same, multi-parish benefice as the parish with which he or she has a qualifying connection.
24. In both cases, the entitlement to marry in the church or chapel of the other parish or benefice depends on the bishop having made a direction to that effect in relation to the benefice(s) concerned. It remains in the bishop's discretion as to whether to make such a direction and - if so - which churches or chapels to specify in the direction.
25. By way of background explanation, historically each parish comprised a separate benefice, there being one incumbent (rector or vicar) of the benefice and parish. Benefices are sometimes held 'in plurality', so that the same priest is the incumbent of two or more benefices. Where this is the case, the incumbent holds the benefices in question separately. In practice benefices held by the same priest in plurality are likely to be neighbouring benefices and, to varying degrees, to act together in various ways.
26. As a result of the union of benefices under schemes for pastoral reorganisation, there are many cases of benefices that consist of two or more parishes. (These are referred to as 'multi-parish benefices'.) Although the parishes remain distinct and continue to have their own parish churches and their own parishioners, the cure of souls is committed to a single incumbent for the area of the benefice as a whole. (The cure of souls is sometimes shared between the incumbent and 'team vicars' if a team ministry has been established for the benefice.)
27. Under existing statutory provisions, the bishop may make directions in respect of benefices held in plurality and multi-parish benefices as to where parishioners may marry within the benefice or benefices concerned. New subsection (1) applies the same power to the case of persons who have a qualifying connection with a parish belonging to the benefice, or one of the benefices, concerned.

New subsection(2)

28. New subsection (2) applies existing statutory provisions that are concerned with the position where a church is unavailable because it is being rebuilt or repaired to the case of marriage by virtue of a qualifying connection under the 2008 Measure. It does so by providing that in those circumstances, banns may be published, and the marriage solemnized, in any building in which those things could be done under section 18 of the 1949 Act (Publication of banns and solemnization of marriages during repair and rebuilding of churches).
29. That will mean that where a person has a qualifying connection with a parish but the parish church or chapel of that parish is being rebuilt or repaired, that person will be able to marry (and have banns published) in-
 - (a) a building within the parish concerned that has been licensed by the bishop for the performance of divine service while the parish church or chapel is out of use;
 - (b) if the bishop has not licensed a building under (a), any consecrated chapel in the parish as directed by the bishop; or
 - (c) if neither (a) nor (b) applies, a church or chapel of any adjoining parish.

New subsection (3)

30. New subsection (3) applies section 6(3) of the 1949 Act to the case of marriage by virtue of a qualifying connection under the 2008 Measure. Section 6(3) of the 1949 Act deals with the situation where a parish does not have a parish church or chapel belonging to it, or does not have a church or chapel in which Sunday services are regularly held. Where that is the case, the parish is deemed to belong to any adjoining parish.
31. Applying that provision to the case of marriage by virtue of a qualifying connection will mean that if a person has a qualifying connection with a parish that has no parish church, or no church in which Sunday services are regularly held, he or she will be able to have the banns published, and marry, in the parish church of any parish that adjoins the parish with which he or she has the qualifying connection.

New subsection (4)

32. New subsection (4) applies section 29(3) of the Pastoral Measure 1983 to the case of a marriage by virtue of a qualifying connection.
33. Section 29 of the Pastoral Measure is concerned with the position where a parish has no parish church. The bishop may designate a building (or part of a building) in the parish as a 'parish centre of worship'. A parish centre of worship is for certain purposes, including marriage, deemed to be a parish church.
34. However, section 29(3) allows persons who have a right to marry in the parish to elect to proceed as if the building in question had not been designated as a parish centre of worship and, instead, simply to proceed under section 6(3) of the 1949 Act on the basis that the parish has no parish church and marry (and have their banns published in) the parish church of any adjoining parish.

35. By applying section 29(3) of the Pastoral Measure to the case of marriage by virtue of a qualifying connection, new subsection (4) will mean that a person who has a qualifying connection with a parish which has no parish church will be able to elect to marry in the parish church of any adjoining parish even if the parish with which he or she has the qualifying connection has a parish centre of worship.

Section 1(2)

36. Section 1(2) makes a minor correction to the drafting of section 1(2) of the 2008 Measure. It is possible for part of a building (as opposed to whole building) to be designated as a parish centre of worship. Section 1 (2) accordingly inserts the words ‘or part of a building’ into section 1 (2) of the 2008 Measure.

Section 1(3)

37. Section 1(3) inserts the words ‘Without prejudice to subsection (3) above,’ at the beginning of section 1(13) of the 2008 Measure so that it is obvious that section 1(13) (which makes provision for the situation where parish boundaries have changed) is additional to, and not in substitution for, the general provision for qualifying connections made in section 1(3) of the 2008 Measure.

Section 1(4)

38. Section 1(4) inserts a new subsection (13A) into section 1 of the 2008 Measure.
39. New subsection (13A) makes provision so that a person may marry in a church which was formerly the parish church of a parish with which he or she had a qualifying connection but has since become the parish church of a different parish (as a result of pastoral reorganisation).

Section 2 -Form and time of publication of banns

40. Section 2(1) provides statutory authority for the alternative form of words for the publication of banns of matrimony contained in *Common Worship*. Section 2(2)(c) makes a consequential amendment to the 1949 Act.
41. Section 2(2)(a) and (b) amend section 7 of the 1949 Act. The effect of those amendments is that banns will be published on three Sundays ‘during either the principal service or both the principal service and another service’. This is instead of ‘during morning service or, if there is no morning service on a Sunday ... , during evening service’, as section 7 of the 1949 Act currently requires. The reference to ‘the principal service’ reflects the fact that it is no longer necessarily the case that ‘morning service’ is the main Sunday church service. In many churches, an evening service is now the main Sunday service (even if a morning service is also held). Furthermore, it may be pastorally more appropriate for the persons whose banns are to be published to attend a service that is not the principal service and it is for that reason that the amendment makes it possible for the banns to be published, additionally, at another service besides the principal service.
42. The result is that the banns (1) must be published at the service at which they are likely to receive the greatest degree of publicity and (2) may

additionally be published at another service (because, for example, to do so would be helpful pastorally).

43. 'Principal service' is defined in the new section 7(1A) as 'the service at which, in the opinion of the clergyman or other person who ... has the responsibility for publishing banns of matrimony, the greatest number of persons who habitually attend public worship are likely to attend'. This means that it is the opinion of the member of the clergy (or other person) who publishes the banns that determines what is the principal service. Provided that the banns are published at the service at which he or she considers the greatest number of habitual worshippers are likely to attend, the validity of the publication of banns at that service will not be affected if, in the event, a greater number of such persons in fact attend another service on the Sunday in question. Reference has been made to 'persons who habitually attend public worship' (an expression borrowed from the Church Representation Rules) to avoid the situation arising where banns had to be published at a special service such as, for example, a special scout or guide service which might attract large numbers of non-regular worshippers on the occasion in question but which could not be reasonably regarded as being the principal service in the church on the Sunday in question.
44. New section 7(1B) makes it clear that if banns are published at another service on a Sunday in addition to the principal service, both of those occasions are deemed to be the same time of asking. So, for example, if, on the Sunday when the banns are first published, they are published at two different services, the person publishing the banns will say at both of those services, 'this is the first time of asking'

Section 3 -Citation, commencement and extent

45. Section 3 makes provision for the citation, commencement and extent of the Measure.

MATTERS RAISED BEFORE THE REVISION COMMITTEE AND THE GENERAL SYNOD

Section 1 -Qualifying connections under section 1 of the Church of England Marriage Measure 2008

Mission initiatives and other ‘fresh expressions of church’

46. The Reverend Christian Selvaratnam submitted two proposals to the Revision Committee for amendment to clause 1 of the draft Measure to extend the list of qualifying connections with a parish: first, to include habitual attendance at public worship for not less than six months in a mission initiative to which a bishop’s mission order related where the order made provision providing for there to be a qualifying connection with a particular parish where those conditions were met; and secondly, to include habitual attendance at public worship for not less than six months within the context of a ‘fresh expression of church’ that was not the subject of a bishop’s mission order, where the bishop has designated it as being associated with the parish in question for this purpose.
47. Mr Selvaratnam argued that since many people now worshipped in Fresh Expressions and other mission initiatives (particularly younger couples of marrying age), it was only right that the qualifying connection provisions should extend to them.
48. The Revision Committee acknowledged that such initiatives for worship were becoming increasingly important and supported the proposals in principle. However, since the 2008 Measure was statute law, it was important that the legal rights it established were certain and capable of enforcement, and the Revision Committee acknowledged that it was difficult to see how Mr Selvaratnam’s proposals could be defined with enough certainty that they might be incorporated within the ambit of the 2008 Measure. Although the Steering Committee for the Measure appreciated the thinking behind Mr Selvaratnam’s proposals, it advised the Revision Committee that the law already sufficiently dealt with the issue and did not believe amendments should be made to the draft Measure. The Steering Committee had come to the view that those worshipping in a Fresh Expression of Church or other mission initiative ought to rely on the provisions for a qualifying connection in the 2008 Measure if they were able, and beyond that should use the special licence procedure.
49. The Committee acknowledged that it did not seem possible to extend the qualifying connection provisions in the manner envisaged by Mr Selvaratnam in the context of the draft Measure, but noted that the issue would likely come up again in the future. The Committee therefore did not make any amendments to clause 1 of the draft Measure to extend the qualifying connection to include public worship at a mission initiative or a fresh expression of church.
50. At the Revision Stage in full Synod, Mr Selvaratnam tabled amendments to the same effect as those he had proposed to the Revision Committee. The Steering Committee for the Measure was opposed to the amendments for the same reasons as Mr Selvaratnam’s earlier proposals had been rejected by the

Revision Committee. The amendments were lost when put to a vote in the Synod.

Application of certain provisions of the Marriage Act 1949 to marriage by virtue of a qualifying connection

51. The Measure as originally introduced into the Synod, while it applied a number of existing statutory provisions to marriages by virtue of a qualifying connection, did not make provision applying section 6(3) of the 1949 Act or section 29(3) of the Pastoral Measure 1983 in such cases. (See paragraphs 31 to 36 above for a description of these provisions.) The Revision Committee received a proposal from the Dean of the Arches which argued that it should do so. This was on the basis that persons who wished to marry on the basis of a qualifying connection with a parish should be put in an equivalent position to those who married on the basis of residence in the parish or of being habitual worshippers there.
52. The Revision Committee agreed that as a matter of principle it was desirable, wherever possible, that that should be done. The Committee therefore accepted the Dean's proposals and amended the draft Measure accordingly.
53. The Dean had also submitted that section 15(2) of the 1949 Act, which made provision for the grant of a common licence in the circumstances to which section 6(3) of the Act applied, should also be applied to the case of marriages by virtue of a qualifying connection. The Committee was, however, advised that as a consequence of accepting the Dean's proposal to apply section 6(3), marriage by common licence in the same circumstances would be covered automatically by section 2 of the 2008 Measure as it stood because of the way in which that section operated. It was therefore unnecessary to amend the draft Measure further to apply section 15(2) of the 1949 Act.

Pastoral reorganisation

54. The Venerable Paul Ferguson submitted a proposal to the Revision Committee that related to the position where pastoral reorganisation had taken place in a parish with which a person had a qualifying connection. The Archdeacon proposed that where the boundaries of a parish had been changed, a person should be able to establish a qualifying connection with both (a) the parish where the place in question now was and (b) the parish in which the place in question used to be at the time when the facts giving rise to the connection with that place arose. However, the Committee was advised that that was already the effect of section 1 of the 2008 Measure: the qualifying connection that a person is deemed to have by section 1(13) is not in substitution for the connection that a person has by virtue of section 1(3).
55. Nevertheless, to clarify the issue, the Steering Committee proposed an amendment to insert the phrase, 'Without prejudice to section 1(3)' at the start of section 1(13) of the 2008 Measure. The Revision Committee accepted that amendment.
56. The Revision Committee also agreed to insert provision to amend section 1 of the 2008 Measure to address the position where a person has had a qualifying connection with a parish (parish A) and a church that was the parish church of that parish was now the parish church of a different parish

(parish B) so that he or she would be deemed to have a qualifying connection with parish B, and agreed to amend the draft Measure accordingly.

Section 2 -Form and time of publication of banns

Proposals to abolish banns as a legal preliminary to marriage

57. The Revision Committee had received submissions from the Right Reverend Donald Allister, Bishop of Peterborough and the Reverend Stephen Trott, supported in principle by the Reverend Paul Benfield, which proposed the abolition of banns as a legal preliminary to marriage.
58. The Chair of the Revision Committee determined those submissions to be out of order on the basis that they proposed amendments that were not relevant to the general purport of the draft Measure or within the scope of any relevant clause and that they could not, therefore, be given effect by the Revision Committee.
59. The Revision Committee noted that, had the proposals been within scope, it would nevertheless have rejected the proposal that banns should be abolished as a legal preliminary to marriage: the publication of banns presented a valuable pastoral opportunity.

Form of banns where marriage is by virtue of a qualifying connection

60. The Reverend Mark Steadman and the Reverend Paul Benfield each proposed that clause 2(1) of the draft Measure should be expanded to include an additional form of words to be used when publishing the banns of persons who intend to marry by virtue of a qualifying connection. Mr Steadman suggested that the statutory form of words should make express provision for that circumstance in order to clarify the law on banns and to reconcile differences between the law and practice.
61. The Revision Committee acknowledged that there might be some disparity between the law and practice in that regard, but rather than proposing an amendment to clause 2 of the draft Measure to address the issue, suggested that the House of Bishops be asked to revisit its statutory guidance, issued under section 3 of the 2008 Measure, as it related to the publication of banns in order to make the legal position clear to the clergy.
62. The Revision Committee therefore did not make any amendments to clause 2(1).

Service at which banns to be published

63. The Reverend Dr Rob Munro proposed in a submission to the Revision Committee that clause 2(2) should be amended to enable banns to be published at a service other than that required by section 7(1) of the 1949 Act. The 1949 Act currently requires banns to be published on three Sundays at morning service, or, only if there is no morning service, at an evening service. Dr Munro submitted that pastoral considerations - in particular the likelihood that many couples would attend in the evening even if there were a morning service - meant that the clergy should simply have a discretion as to the Sunday service at which banns would be published.
64. The Committee agreed that Dr Munro's suggestion made practical sense and amended the draft Measure accordingly.

65. However, at the Revision Stage in full Synod, the Reverend Canon Simon Killwick moved an amendment to substitute for Dr Munro's amendment a provision that would require banns to be published at the 'principal service' on the Sunday in question and also, optionally, at another service on that day. Canon Killwick recognised the existence of the pastoral considerations which Dr Munro was concerned about but argued that the publication of banns was essentially a public, legal act and ought therefore to take place at the service at which the greatest number of people were likely to attend. An option of an additional publication on the same day would address the pastoral concerns that had been raised.
66. The General Synod voted in favour of Canon Killwick's amendment.

On behalf of the Legislative Committee

P.N.E. Bruinvels

Canon Peter N. E. Bruinvels

Deputy Chairman

November 2011

APPENDIX: MEASURES AND ACTS AMENDED BY THE CHURCH OF ENGLAND MARRIAGE (AMENDMENT) MEASURE

Section 1 of the Church of England Marriage Measure 2008 as it would be amended by the Measure

1 Marriages solemnized in churches, etc in parishes with which a party has a qualifying connection

- (1) A person intending to be married shall have the like, but no greater, right to have the marriage solemnized in a parish church of a parish with which he or she has a connection specified in subsection (3) below (in this Measure referred to as a “qualifying connection”) as that person has to have the marriage solemnized in the parish church of the parish in which he or she resides or which is his or her usual place of worship.
- (2) Where a church or other building or part of a building licensed for public worship has been designated, under section 29(2) of the Pastoral Measure 1983 (1983 No 1), as a parish centre of worship, this section shall apply to such centre of worship, while the designation is in force, as it applies to a parish church.
- (3) For the purposes of this section a person has a qualifying connection with a parish in which the marriage is to be solemnized if-
 - (a) that person was baptised in that parish (unless the baptism took place in a combined rite which included baptism and confirmation) or is a person whose confirmation has been entered in the register book of confirmation for any church or chapel in that parish;
 - (b) that person has at any time had his or her usual place of residence in that parish for a period of not less than six months;
 - (c) that person has at any time habitually attended public worship in that parish for a period of not less than six months;
 - (d) a parent of that person has during the lifetime of that person had his or her usual place of residence in that parish for a period of not less than six months or habitually attended public worship in that parish for that period; or
 - (e) a parent or grandparent of that person has been married in that parish.
- (4) For the purpose of subsection (3)(d) or (e) above “parent” includes an adoptive parent and any other person who has undertaken the care and upbringing of the person seeking to establish a qualifying connection and “grandparent” shall be construed accordingly.
- (5) A person who has the right to have a marriage solemnized in accordance with subsection (1) above shall have the like right to have the banns of that marriage published in the parish church where the marriage is to be solemnized.
- (6) The right to have banns published conferred by subsection (5) above is additional to and not in substitution for the requirements of section 6 of the 1949 Act for banns to be published in the parish church of the parish where

- the parties to the marriage reside or of each parish in which one of them resides.
- (7) Where a marriage is intended to be solemnized in accordance with subsection (1) above following the publication of banns by virtue of subsection (5) above section 11(2) and (4) of the 1949 Act shall apply as those subsections apply to a marriage of which the banns have been published in a parish or district in which neither of the persons to be married resides by virtue of section 6(4) of that Act.
- (8) Subject to subsection (9) below, a person who wishes to have his or her marriage solemnized in accordance with subsection (1) above shall provide such information, written or otherwise, as the minister of the parish in which the marriage is to be solemnized may require in order to satisfy himself or herself that that person has a qualifying connection and-
- (a) section 8 of the 1949 Act shall apply as if the reference in that section to a clergyman were a reference to the minister, and
 - (b) the minister shall be under a duty, when considering whether any information provided to him or her is sufficient to satisfy himself or herself under this subsection that the person wishing to have the marriage solemnized has a qualifying connection, to have regard to any guidance issued under section 3 below.
- (9) If the minister considers that it is necessary to do so, in order to satisfy himself or herself that a person has a qualifying connection, he or she may require that person to supply or support any information required to be provided under subsection (8) above by means of a statutory declaration.
- (10) Where a public chapel is licensed by a bishop for the publication of banns and the solemnization of marriages under section 20 of the 1949 Act, this section shall apply as if that chapel were a parish church of the parish or of any parish the whole or part of which is within the district specified in the licence.
- (11) In this section “church” does not include a cathedral.
- (12) In this section-
- (a) “minister” means-
 - (i) where a special cure of souls has been assigned to any priest for the area in which the church where the marriage is to be solemnized is situated, whether in a team ministry or otherwise, that priest, or
 - (ii) where sub-paragraph (i) above does not apply, the incumbent of the benefice in the area of which that church is situated, or
 - (iii) where neither of the above sub-paragraphs applies, the priest-in-charge of that benefice, or
 - (iv) where none of the above sub-paragraphs applies, in the case of a team ministry, the vicar, if any, appointed by the bishop to act as rector under section 20(14) of the Pastoral Measure 1983 (1983 No 1) or, if there is no such vicar appointed, the vicar who has held office for the longest period in that ministry, or

- (v) where none of the above sub-paragraphs applies, the rural dean of the deanery in which that church is situated;
 - (b) “parish” includes a conventional district; and
 - (c) any reference to baptism, confirmation, marriage or public worship shall be construed as a reference to baptism, confirmation, marriage or public worship, as the case may be, according to the rites of the Church of England.
- (13) Without prejudice to subsection (3) above, where, as a result of a pastoral scheme or otherwise, a parish has ceased to exist or the boundaries thereof have been altered and a person who wishes to have his or her marriage solemnized in accordance with subsection (1) above can establish a qualifying connection with a place situated within such a parish then, if that place is, at the time when the notice under section 8 of the 1949 Act is delivered, situated within the parish in which the church where the marriage is to be solemnized is situated, that person shall be deemed to have a qualifying connection with that parish.
- (13A) Without prejudice to subsection (3) or (13) above, where a person has had a qualifying connection with a parish (“parish A”) and a church which was a parish church of that parish at the time when that person had the qualifying connection has since become and continues to be a parish church of another parish (“parish B”) that person shall be deemed to have a qualifying connection with parish B.**
- (14) In relation to the establishment of a qualifying connection under subsection (3)(a) above by virtue of confirmation the references in subsection (13) above to a place shall be construed as a reference to the church or other place of worship in whose register the confirmation was entered.

Section 7 of the Marriage Act 1949 as it would be amended by the Measure

7 Time and manner of publication of banns

- (1) Subject to the provisions of section nine of this Act, banns of matrimony shall be published on three Sundays preceding the solemnization of the marriage ~~during morning service or, if there is no morning service on a Sunday on which the banns are to be published, during evening service~~ **during either the principal service or both the principal service and another service.**
- (1A) In subsection (1) of this section “principal service” means the service at which, in the opinion of the clergyman or other person who, under section 9 of this Act, has the responsibility for publishing banns of matrimony, the greatest number of persons who habitually attend public worship are likely to attend.**
- (1B) Where banns of matrimony are published on a Sunday during both the principal service and another service, both of those occasions shall be deemed to be the same time of asking for the purposes of the form of words referred to in subsection (2) of this section.**
- (2) Banns of matrimony shall be published in an audible manner and in accordance with the form of words prescribed by the rubric prefixed to the

office of matrimony in the Book of Common Prayer **or set out in section 2 of the Church of England Marriage (Amendment) Measure 201-**, and 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.

- (3) The parochial church council of a parish shall provide for every church and chapel in the parish in which marriages may be solemnized, a register book of banns made of durable materials and marked in the manner directed by section fifty-four of this Act for the register book of marriages, and all banns shall be published from the said register book of banns by the officiating clergyman, and not from loose papers, and after each publication the entry in the register book shall be signed by the officiating clergyman, or by some person under his direction.
- (4) Any reference in the last foregoing subsection to a parochial church council shall, in relation to an authorised chapel in an extra-parochial place, be construed as a reference to the chapel warden or other officer exercising analogous duties in the chapel or, if there is no such officer, such person as may be appointed in that behalf by the bishop of the diocese.

Deliberation

WITH THE ASSISTANCE OF REPRESENTATIVES OF
THE GENERAL SYNOD

TUESDAY 13 MARCH 2012

Present	Lord Lloyd of Berwick (Chairman)	Baroness Perry of Southwark
	Lord Bilston	Lord Shaw of Northstead
	Baroness Butler-Sloss	Lord Walpole
	Lord Elton	Lord Williams of Elvel
	Lord Glenarthur	Mr Tony Baldry
	Lord Griffiths of Burry Port	Sir Stuart Bell
	Lord Judd	Mr Peter Bottomley
	Lord Laming	Mr Ben Bradshaw
	Lord Newby	Mr Oliver Heald
		Mr Gordon Marsden

The Committee deliberated with the assistance of:

Witnesses: RT WORSHIPFUL TIMOTHY BRIDEN (Vicar-General, Province of Canterbury), MR WILLIAM FITTALL (Secretary-General of the General Synod), REV ALEXANDER MCGREGOR (Deputy Legal Adviser to the General Synod) and MR CLIVE SCOWEN (member of the House of Laity of the General Synod).

Q1 *The Chairman:* On behalf of Committee Members, I welcome you to this meeting of the Ecclesiastical Committee. I expect that most of you know what the procedure is likely to be, but first I shall ask Timothy Briden, the vicar-general of Canterbury, to introduce his colleagues.

Rt Worshipful Timothy Briden: Thank you, Chairman, and thank you for your kind words of introduction. Immediately to my right is Mr William Fittall, who is the secretary-general of the General Synod of the Church of England. He is flanked on his right by Mr Clive Scowen, who is a member of the Legislative Committee of the General Synod. To my left is the Reverend Alex McGregor, who is the deputy legal adviser to the General Synod.

Q2 *The Chairman:* Thank you. I am reminded that I should ask those Members of the Committee who have any relevant interest to declare it now. There are none. Thank you, Mr Briden, for your comments on and explanations of this fairly short Measure. They are unusually helpful in both giving the background and dealing with the two sections. Perhaps it would be helpful to deal with Section 1 before we come to Section 2. Are there any general observations that any of you would like to make on Section 1, its purpose and how it sets about it?

Rt Worshipful Timothy Briden: Because, as the Committee will have seen, this is a technical Measure on a technical subject, a few words of explanation from me by way of overview might be helpful. Section 1—and, indeed the remainder of the Measure—is concerned with the formalities of marriage. There are of course social issues in relation to marriage being discussed at the moment,

which form no part of the work done in relation to this particular legislation. Instead, it is intended to achieve a closer alignment between the provisions of the Marriage Act 1949 and the Church of England Marriage Measure 2008. In order to see this in context, it is necessary to go back to basic propositions. Before the 2008 Measure, the right to marry in a parish church was governed by the provisions of the Marriage Act 1949. In essence, it provided that marriage was to be by banns or by a licence dispensing with banns, known as a common licence. There was a further procedure by way of registrar's certificate with, which we are not concerned today as it falls within the civil system. In order to be married by banns or to obtain a common licence, one of the parties either had to be resident in the parish or that parish had to be the place of habitual worship of one of the parties, which in practice meant that that party had to be on the church electoral roll of the parish. The change made in the 2008 Measure was to add a further form of qualification by way of what was known as a qualifying connection. The most important forms of qualifying connection—and they were fairly numerous—were six months' residence within the parish at any time in one's life, habitual worship in the parish at any time in one's life or indeed baptism or confirmation in the parish. It enabled people who had been brought up in a particular place, moved away but wanted to come back and be married in their old home town to revert to that place for their wedding—a very natural and welcome arrangement. I think it right to say that the 2008 Measure, so far as we have been able to judge, has worked very well since it came into force.

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The 1949 Act itself recognised, however that there were circumstances in which people had a right to marry in a parish but there was not a church within that parish available for the purpose. Specific arrangements were made under the Act for couples to be married, normally in adjacent parishes, when that situation arose, the commonest one being where the church was undergoing repair so it could not be used and arrangements were then made for the marriage to take place in an adjacent parish. When the 2008 Measure was passed, it did not take specific account of those situations. Indeed, there was doubt about whether it had taken account of a slightly different permutation that arose in the case of what is commonly known as multi-parish benefices, which means that the Bishop has the power to enable any church within the benefice to be used, notwithstanding that it is technically not the parish church of the couple being married. This provides greater efficiency and flexibility, particularly on busy Saturdays in the summer months. The purpose of Section 1 is to provide quite simply that, where there arises a qualifying connection to be married in a particular parish, the bundle of rights to be married in adjacent parishes that arise under the Marriage Act or under the Pastoral Measure will equally apply. This promotes fairness and convenience between couples who are coming to the church seeking marriage. I shall illustrate that with a simple example: consider a bride who has a qualifying connection with parish A because it is the location of her childhood home. Unfortunately, when she wants to get married, the church in parish A is undergoing repair and there is no other licensed or authorised place of worship within the parish. This Measure will enable her to exercise the rights in Section 18 of the Marriage Act 1949 to be married in the church of an adjoining parish. That is a simple example and it is replicated in the various other special cases that the Committee will see set out in Section 1. I hope that that sets the scene for the way in which the rather difficult provisions of Section 1 will work in practice if they pass into law.

Q3 The Chairman: If I may say so, it sets the scene extremely well. You put it very clearly. Before I ask for questions from around the Committee, could I make sure that I understand this properly? The Measure does not in any way add to the qualifying connections; it merely says that the existing law should apply to the qualifying connections in the same way as it applies to those who are resident in the parish.

Rt Worshipful Timothy Briden: That is effectively the position, yes.

Q4 The Chairman: Then I think I do understand it. Can we have some questions? Perhaps everyone understands it.

Mr Bradshaw: Could I ask for clarification on where the banns are actually read under the current system? Are they read in the qualifying parish as well as in the bride and groom's home parishes, or just in the qualifying parish?

Rt Worshipful Timothy Briden: No, they have to be read in the qualifying parish and in the other parishes concerned. The object of the exercise is to give full publicity.

Q5 Lord Williams of Elvel: How is the six months to be calculated or verified?

Rev Alexander McGregor: The Committee probably asked about this matter when the 2008 Measure was before it, and some attention was given to it when the 2008 Measure was drafted. If the member of the clergy responsible is not himself able to say that the six-month attendance is met and does not know from his own knowledge that that is the case, there is a provision for the person who wants to establish the qualifying connection on that basis to make a statutory declaration saying that they have habitually attended for six months. Making a false statutory declaration is a criminal offence so we would not expect someone to make a false one. That is a fallback provision if there is no other way of determining whether a provision is met.

Q6 Lord Griffiths of Burry Port: I believe you talked about it being impossible to conduct a marriage in a parish church for the reasons that you described or in any other authorised church in the parish. I am a Methodist. We have authorised churches and places, and often we are in such parishes. We are bound to the Church of England by a covenant that makes it possible and indeed commendable for us to follow through on certain activities together, so would a Methodist church count as an authorised place under the provisions you are now describing?

Rt Worshipful Timothy Briden: There is a mechanism whereby that can be done, and indeed it is right to say that there is a considerable and encouraging level of co-operation between churches, including between the Methodist Church and the Church of England, as well as other churches, whereby ecumenical arrangements are made in order effectively to help each other out. The way that I envisage that particular scenario being addressed would be that the Methodist church available for use within the parish would be designated by the Bishop as a parish centre of worship. It could then be licensed for the purpose of celebrating marriages, and it would not then be necessary for the bride to go to a next-door parish because there was a place within the parish that was available for use.

Q7 Lord Glenarthur: With that explanation of this section, and extending a bit what Lord Griffiths has said, are any ideas or proposals likely to come

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forward in future to relax the qualifying connection? For example, people coming from different parts of the country for one reason or another might find it much more convenient to be married in London. There might be extenuating circumstances such as service in the Armed Forces that would make that sort of thing necessary, but it would be quite difficult to comply with the qualifying connection.

Rt Worshipful Timothy Briden: Thank you for that question, which gives me the opportunity to remind the Committee that behind this legislation there is a safety net in the form of the licensing power of the Archbishop of Canterbury. Under the Ecclesiastical Licences Act 1533, which is preserved in the Marriage Act 1949, the Archbishop of Canterbury has the power to grant a licence to couples to marry anywhere in England. This power has to be invoked from time to time—for example, by members of the Armed Forces because there is difficulty in complying with the other requirements. When the 2008 Measure was passed, the General Synod had very much in mind the existence of this residual facility. That is why, after some lengthy debate, the definition of qualifying connection was drawn in the way that it was. That is not to say that at some future time this might not be revisited by the General Synod, but certainly as things stand the sentiment is that with the special licence procedure there is sufficient protection for what might otherwise appear to be hard cases.

Mr William Fittall: There was a lot of debate in the Synod in 2008 about how widely to draw these qualifying connections. There was a difference of view because this creates rights. It is not just a question of discretion; if you have these qualifying connections, you then have a right to be married in any of these places. There was a certain amount of caution over going too far in enabling people to marry anywhere at all. The experience has been very positive since the Marriage Measure came into force; indeed, the number of people married in Church of England services in 2010 was up, so I think we are seeing a benefit from it. There might be some caution, at least at this early stage, about opening the door more widely, but that will be looked at in the light of experience.

Mr Clive Scowen: It is also fair to say that at the time there were consultations with the Government of the day and there was concern from that angle about the potential, in drawing this too widely, for abuse. If it were just a free-for-all and you could get married anywhere, the scope for abuse and sham marriages was a major concern, which constrained those in Synod who might have wanted a wider scope.

Q8 The Chairman: How much does it cost to get an Archbishop's licence and roughly how many are applied for every year?

Rt Worshipful Timothy Briden: I can tell you the figures. The cost of a special licence from 1 April this year will be £250. I am afraid I do not have statistics about the number of applications made, but quantitatively there is a steady flow of application to the faculty office. It is certainly not something that happens only once in a blue moon.

Mr William Fittall: The numbers have gone down since the Marriage Measure came into force because people now have a wider range of qualifying connections. One of the arguments used was that people should have to apply for special licences only in more exceptional cases—marriages in college chapels, hospitals or in some other exceptional case. The numbers have reduced, and we could certainly supply you with the recent numbers if that would be helpful.

Q9 Lord Laming: I fear from what has been said that my question may be falling on stony ground. I am one of those people—and I suspect that I am not alone in this room—who think that the Church ought to be encouraging more people to get married in church rather than making restrictions. This is rightly described as a minor amendment. I hope that the Chairman will allow me to ask this: when will the Church come forward with a major change? Next to the parish in the village where I live there is a splendid but redundant farm, a number of whose buildings have now been converted into a variety of venues. It has seven licences ranging from being able to provide weddings for 20 people in the old farmhouse right through to 400 people. Those seven venues are, understandably, heavily promoted, yet I regret to say that the parish church, when some brave soul comes along and says that they would like to get married, asks them to jump through so many hoops. I would be unfaithful to my belief if I did not say that I think that the Church ought to be thinking about major changes in its marriage arrangements.

Rt Worshipful Timothy Briden: The aspiration is one that is widely shared. The complication—and I am sorry to make an issue of it—is that when the Marriage Act 1949 was passed, it was a conflation of the Church's practice in relation to marriage, which then took statutory form, and a variety of statutory requirements concerning civil marriages. Everything was brought together in that one Act. My work on the Amendment Measure brought home forcibly to my own mind the belief that it would be a good idea if the Marriage Act 1949 and the Church of England marriage legislation were to be revisited in toto and more modern comprehensive legislation brought forward. Unfortunately, though, that is not entirely in the remit of the Church of England; we are governed, as we will find when we move on to Section 2, by restrictions that are imposed by Parliament through statutory legislation. One hopes that the

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will for change will take effect in all quarters and that something better can be crafted.

[Deliberation suspended for a Division in the House of Lords.]

Q10 Baroness Perry of Southwark: My question is about the special licence. Is it not the case that when a couple are receiving a special licence, there is no publishing of the banns?

Rt Worshipful Timothy Briden: That is right: the banns procedure does not apply at all. Instead, they have to go the faculty office and the necessary information has to be sworn in the form of an affidavit. When the information is duly sworn, the special licence is issued.

Q11 Baroness Perry of Southwark: Does that not make the bogus marriage market more possible?

Rt Worshipful Timothy Briden: Anyone who has been to the faculty office and been questioned by the appropriate officers preparatory to the completion and swearing of the affidavit would flinch from proceeding further.

Sir Peter Bottomley: Perhaps I could repeat in public what I said in private: when my daughter's marriage was to be presided over by Lord Runcie, the Archbishop of Canterbury said that if we had too much difficulty with the faculty office we should go to the Archbishop and ask for help.

Rt Worshipful Timothy Briden: Very good advice.

Q12 Baroness Butler-Sloss: I share the aspirations of Lord Laming, but that is not what I want to ask about. This Measure is very complicated; I am a lawyer, and I read this through and thought, "What on earth does this mean?". I had to settle down and read it again. For ordinary members of the public who want to get married and do not know whether they qualify, do you have a simple two-sided laminated sheet in simple language to tell them what they should be able to do?

Rt Worshipful Timothy Briden: Almost. The faculty office produces a document that is described as a guide to the law for the clergy. It sets out in simple language that which appears in somewhat repulsive form in the legislation itself. I am also reminded that as part of the Church of England's marriage project, a simple two-sided document has indeed been produced and made available to the general public, dealing more specifically with qualifying connections. No doubt that documentation will be modified suitably to reflect the current proposed legislation if it passes into law.

Baroness Butler-Sloss: I am relieved to hear it.

Mr William Fittall: Perhaps I could add to that. As a result of the investment in the weddings project over the past five years, which involved doing some consumer research among both those who had been

married in church and those who did not come but might have, a number of initiatives were taken. One was to create a national weddings website, and the latest figures suggest that now over half the people who come to Church of England weddings start to plan their weddings online. There is very simple guidance on there about where you can marry, and in addition you can find the church that is nearest to you, so we have tried quite hard to meet the consumer need rather than just approaching it from the legal perspective.

Q13 Lord Elton: I apologise for arriving late, My Lord Chairman. If I cover ground already covered, I am sure you will stop me. I want to take up what Lord Laming raised earlier. I had always assumed that the restriction ensuring that as far as possible couples marrying in the home town of one of the couple was that the banns should be read in a place where the people were known, and that any fees due should not be alienated from a benefice that thought it might be entitled to them. The first is the more important consideration, though. Mr Fittall raised the point about registering online and surely that answers the difficulty; surely, in the digital age, everyone knows where everyone is if they want to. Perhaps the Church should be thinking about how to tie that ability to the ability to know if you need to know, which might free up the marriage location market in a way that would be very beneficial to couples as well as to the Church.

Rt Worshipful Timothy Briden: I think that those are helpful observations that form part of the material that the Church of England would want to carry forward from the marriage project exercise. There will inevitably be further refinements to the system that the digital age will call for, and we must be alive to that. Those observations are helpful.

Q14 Lord Judd: Could we return to the subject of the licence fee, to which you referred a moment ago. Is there any room for this fee to be waived? You mentioned hospitals, for example. I can think of very real examples of people who might find £250 quite a barrier at that point in their lives—in some special circumstances, perhaps particularly so. I wondered whether there was any room for discretion. We were talking about a simple, accessible sheet of information about marriage and how to go about it. Is it explained anywhere why the licence fee is necessary and to whom it goes?

Rt Worshipful Timothy Briden: On the question of a waiver, it is right to say that in general terms in relation to the fees payable for weddings—it is not just the faculty office; there are parochial fees as well that arise where a marriage is conducted pursuant to banns or by common licence—there is a discretion to waive fees in cases of hardship, a discretion that has been maintained robustly by the parish priests in Synod who regard this as an

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essential facility in the sort of hard cases that the noble Lord has in mind. Although I am not privy to the practice inside the faculty office, I envisage that similar considerations will apply there. I suspect that as a last resort, as has been suggested elsewhere in the Committee, the answer would be to get in touch with the Archbishop.

Q15 Lord Judd: Is there also information about who gets the licence fee and what it is meant to cover? I think that people sometimes want to know where it is going. Furthermore, sometimes some quite scurrilous rumours go around.

Mr William Fittall: It is important to see the fees issue in a broader context. We estimate that fees contribute about £35 million a year to the total income of the Church of England—that is, fees received in relation to wedding and funeral services. Overall, that is quite a significant sum of money. Your particular questions earlier were about the Archbishop’s special licence, which applies in a very limited number of cases. That is what the £250 is normally charged for but, in relation to the great generality of fees, some fees are prescribed under recently revised legislation—this Committee saw the Fees Measure a little while ago—which created a statutory right for clergy to waive fees for the first time. As for where the money goes to, historically fees went to the incumbent but over 90% of incumbents already assign their fees because they receive their stipend from the diocese, and in future that element of the fee will go straight to the diocese. There is another proportion of the fee that goes to the parochial church council to help with the upkeep of the building, a contribution to heating costs and so on.

Q16 The Chairman: I think we ought to move on to the publication of banns. Would you like to say something about Section 2 of the Measure?

Rt Worshipful Timothy Briden: The background to this provision is, again, to achieve closer alignment with the Marriage Act 1949 and indeed to modify it to a limited extent. When the 1949 Act was passed, the only form of banns available for use in church was that provided for in the rubric to the *Book of Common Prayer*. It was therefore to that particular formulation that the Marriage Act made reference when it provided for the saying of banns. In subsequent years the Church of England obtained power to modify its liturgies, and both in *The Alternative Service Book* and in *Common Worship* a liturgical alteration was made to the form of banns provided for in the marriage services taken under those liturgies. The operative change was that, whereas in the *Book of Common Prayer* version those attending were asked to declare any “cause, or just impediment” as to why the couple should not marry, in the revision the wording was streamlined to become “reason in law”. The phraseology is

slightly different but it means effectively the same thing. Unfortunately, the Marriage Act did not catch up with this, and the opportunity has been taken in Section 2 to authorise the more modern form of words within the statutory framework so that in future, under this legislation, it will be possible to use either the form of words prescribed in the *Book of Common Prayer* or the alternative formulation that appears in Section 2. That is the mechanism that we seek to achieve. Visiting the topic of banns also prompted at the Revision Committee stage the examination of another restrictive provision in Section 7 of the Marriage Act. Once again, when the Act was passed it was the almost invariable practice for there to be a major morning service in every parish church. If by any chance there was not, there would be a major evening service. Nowadays, with the creation of multi-parish benefices and, if I can put it this way, the spreading of the clergy much more thinly on the ground, the patterns of worship are much less fixed than they were previously. It was urged upon the Revision Committee that there should be greater flexibility in this regard so that it is possible to read banns at other services. Originally, it was envisaged that instead of prescribed Sunday services, there should be provision for the reading of banns at any Sunday service. When the matter went back to the floor of Synod, it was suggested that this was perhaps a little unwise because, after all, the object of banns was to publicise the proposed marriage but, under the liberal formulation, it would be possible for banns to be read at a service at which virtually no one was present. Accordingly, it was suggested and brought forward into the legislation that there should instead be a requirement for the banns to be read at the principal Sunday service, that being the service at which the officiating minister expected there to be the maximum number of people. That is only expectation—one can never tell who is going to turn up to a service—but ministers generally know what the most popular services are and it was thought that the requirement should be that the banns should be read at that service.

On the other hand, that might not be the service that the couple themselves were able to attend. If they wish to attend a service and have banns read, then it was thought appropriate to make provision for that, so that is the dual approach that appears in the legislation before the Committee.

The Chairman: Thank you, that is very clear. We have here Section 7 of the Marriage Act 1949 as amended by this measure, and perhaps it is easiest to follow this from that. It is fairly straightforward.

Q17 Oliver Heald: Often, when you listen to the banns being read, someone will nudge you and say, “Do you know them?”. With the qualifying connections, that is of course a bit less likely. Instead of saying “I publish the banns of X of X

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parish”, might it be possible to say, “I publish the banns of marriage between X, a person baptised in this parish, and Y of another parish”, so that the qualifying connection is part of the reading of the banns? Then you would know why they are coming there.

Rt Worshipful Timothy Briden: In terms of the formula that is laid down by law, there is provision for extra wording to be inserted to identify the names of the couple concerned and to put in extra explanatory matter. What goes in by way of addition is the subject of guidance that the House of Bishops is authorised to provide under the 2008 Measure. Work is being carried out now on exactly how that guidance should be pitched. When the guidance first came out after the 2008 Measure, the Bishops considered that the appropriate course was to make reference to the nature of the qualifying connection, if indeed there was one. Now the pendulum is swinging somewhat the other way and it is thought a little bit too prescriptive to go into great detail about the qualifying connection. This is something that the House of Bishops will be revisiting. I have no doubt, however, that the observation that you make about the utility of describing the qualifying connection will be borne in mind by the House of Bishops when it reconsiders the guidance.

The Chairman: Thank you very much. Are there other questions or has the time come for Mr Baldry or Sir Stuart to put a proposal before the Committee?

Sir Stuart Bell: I think that we do that in private, my Lord Chairman, after the officials have left.

Q18 Lord Williams of Elvel: Could I ask one question on the commencement provision? It is perfectly clear that Section 2 shall come into force on the day on which the Measure is passed. However the Measure states that “section 1 shall come into force on such day as the Archbishops of Canterbury and York may jointly appoint and different days may be appointed for different provisions or for different purposes”. Could we have a bit of enlightenment on why this rather curious commencement provision was included?

Rt Worshipful Timothy Briden: It is the usual form of commencement provision that gives the

Archbishops the maximum flexibility. I envisage that they would wish to bring the whole of Section 1 into force at the same time. However, it is right to say that part of Section 1 concerns a very minor adjustment of Sections 1(2) and 1(13) of the 2008 Measure, and it is perhaps conceivable that the Archbishops would want to bring those provisions in first. As I say, though, my expectation is that the entirety of Section 1 will come into force at the same time.

Q19 Lord Griffiths of Burry Port: Forgive me, Lord Chairman, but since my noble friend has raised another question, perhaps I may be so bold. I do not want to be anecdotal but at the moment I am involved in a case that raises a question of principle, which is why I raise it. There are reasons why banns may be read in a parish other than the parish where either one of the couple resides, and one is that the priest in the parish where they both reside, even though they met all the stipulated requirements, will not remarry a divorced person. Consequently, all this has to happen potentially in a place where they may not be known. How much is portable from one parish to another in those circumstances? In terms of reading banns, what form of words would cover a situation of that kind?

Rt Worshipful Timothy Briden: I envisage that the most convenient way for the couple concerned would be for at least one of them to acquire the right to be regarded as a habitual worshipper in another parish, which would effectively involve attending church there periodically—it does not have to be every Sunday—for six months and then being registered on the electoral roll. Once that was done, the banns would be read in that parish and they would also have to be read in the parish of residence, but the fact that the minister declined to marry the couple in that parish would not be a good reason for failing to read the banns because there is a statutory right to have banns read in one’s parish of residence.

The Chairman: Thank you. I think it only remains for me to thank all four of you most warmly on behalf of the Committee for answering our questions so carefully and well. We are all much wiser as a result of what you have told us.
