Law Commission
Reforming the law

Getting Married
A Scoping Paper

17 December 2015

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THE LAW COMMISSION

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Professor Nick Hopkins
Stephen Lewis
Professor David Ormerod QC
Nicholas Paines QC

Specialist adviser to the project: Professor Rebecca Probert

The Chief Executive of the Law Commission is Elaine Lorimer.

The Law Commission is located at 1st Floor, Tower, 52 Queen Anne's Gate, London SW1H 9AG.

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THE LAW COMMISSION

GETTING MARRIED: A SCOPING PAPER

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GLOSSARY

In this glossary we set out how we use the following terms in this paper:

"Anglican": this refers to the Church of England and the Church in Wales; in terms of marriage law in England and Wales, these organisations are treated differently from other religious organisations.

"Annulment": where a court annuls a marriage it is declaring that a marriage was never legally valid or has, following the declaration, become legally invalid. An annulment can also be called a decree of nullity

"Approved premises": premises at which civil marriages can be solemnized, following approval by a local authority (for example, a hotel).

"Authorised person": a person appointed by the trustees 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" or "banns of matrimony": a form of Anglican preliminary for marriage ceremonies in Anglican churches or chapels. The **publication of banns** or the calling of banns is an announcement in church of an intended marriage. A **certificate of publications of banns** is a written confirmation that banns have been duly publicised and that there is legal authority for the marriage to take place.

"Celebrant": a celebrant is a person who officiates at a marriage ceremony or marriage blessing.

"Celebrant system": in some jurisdictions outside England and Wales the legal validity of a marriage depends, principally, not on the place where the marriage takes place but on the legal status of a person officiating or present at the marriage, we call this a celebrant system.

"Civil marriage" or "civil ceremony of marriage": a marriage, or the ceremony leading to such a marriage, that is conducted and recognised by the state, and which is not a religious marriage.

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

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

"Clandestine (marriage)": historically, a marriage solemnized by an Anglican clergyman that did not comply with the requirements of the canon law.

"Codification": the collection in one statute of all the law in a particular area.

"Common licence": a form of Anglican preliminary for marriage ceremonies in Anglican churches or chapels. A common licence can only be issued by the appropriate ecclesiastical authority for the Church of England or Church in Wales in the diocese where the marriage ceremony will take place.

"Consolidation": the replacement by a single statute of several statutes or parts of statutes.

"Consolidating measure": a Parliamentary procedure which allows legislation to be consolidated and reformed in minor respects without the need for full debate by Parliament.

"Deathbed marriage": a marriage where one party is seriously ill, not expected to recover and cannot be moved.

"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.

"Directory requirement": a requirement within the marriage legislation that aims to channel marriages into a standard form. Failure to comply with a directory requirement will not invalidate a marriage.

"Dissenter": historically, a Protestant member of any church other than the Established Church. See also "non-conformist".

"Dissolution": the legal termination of a civil partnership.

"Divorce": the legal termination of a 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 being an Established Church within Wales, with implications for marriage law.

"Forced marriage": a marriage, which may be legally recognised or not, which one of the parties entered into without free and full consent due to violence, threats or any other form of coercion.

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

"Government White Paper": a white paper is a document produced by the Government setting out details of future policy on a particular subject, allowing the Government an opportunity to gather feedback before it formally presents policies as a Bill before Parliament.

"Humanism": the British Humanist Association's website states 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.”

“Interfaith”: an interfaith marriage ceremony or service is one that combines elements from different religious (and sometimes non-religious) traditions. By interfaith couple we mean a couple where the parties are of different faiths or hold different beliefs.

“Mandatory requirement”: a requirement in the Marriage Act 1949 or other legislation that is fundamental to a marriage; failure to meet such requirements will render a marriage void or a non-marriage.

“Marriage certificate”: a certified copy of the entry in the marriage register book.

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

“Non-conformist”: historically, a Protestant who did not conform to the usages and governance of the Established Church. See also “dissenter”.

“Non-marriage”: a marriage that falls so far outside the provisions of the marriage legislation that it is neither a valid nor a void marriage.

“Notice”: any couple intending to enter a legally binding marriage must give notice, which means formally telling the state that they wish to marry, and providing certain required information (for example, name, date of birth and nationality).

“Open doors”: it is a statutory requirement under the Marriage Act 1949 that marriages in registered buildings or register offices be solemnized with open doors. This has been interpreted by the Registrar General as requiring that the public must have unfettered access to witness the marriage and to make objections prior to or during the ceremony.

“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.

“Place of worship”: a place of worship certified pursuant to the Places of Worship Act 1855. Once certified as a place of worship, a building can also be registered to solemnize marriages. See also “registered buildings”.

“Preliminaries”: the steps that must be taken before a legally binding marriage ceremony can take place. Preliminaries can take several different forms, but are either civil, meaning that they are dealt with by the registration service, or religious, meaning that they are dealt with by the Church of England or the Church in Wales. By “universal civil preliminaries” we mean a situation where all couples would be required to give notice to the registration service.

“Prescribed words”: declarations and words of contract that must be said, without variation, by the parties to all marriages except Anglican marriages or those solemnized according to the usages of the Jews or the Quakers. Since 1996 there has been a choice between three alternative authorised versions of the prescribed words.

“Qualifying connection”: a connection that qualifies a person to marry in an Anglican ceremony in a church other than the church in the parish in which he or she resides or which is his or her usual place of worship. A person has a qualifying connection to a parish if, in that parish, he or she was baptised or had his or her confirmation entered into the register book; has resided there, at any time, for not less than six months; or has, at any time, habitually attended public worship there for not less than six months. A person also has a qualifying connection if he or she has a parent who during his or her lifetime resided or habitually attended public worship in that parish or has a grandparent who was married in that parish.

“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”). There must be a register office in each registration district.

“Registered building”: a certified place of worship which is also registered for the solemnization of marriages. Religious marriage ceremonies conducted by religious organisations other than those of the Anglican, Jewish and Quaker faiths must take place in registered buildings.

“Registering officer”: a person appointed by the Society of Friends responsible for registering marriages solemnized according to its usages.

“Registrar”: an officer appointed by the council. He or she is responsible for registering marriages solemnized in a register office, on approved premises, or in a registered building where a registrar (rather than an authorised person) is present. He or she will also register births and deaths in their district.

“Registrar General”: the head of the General Register Office.

“Registrar General’s licence”: a form of civil preliminary, used only to authorise a deathbed marriage.

“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”: the act of legally recording in the marriage register book marriages solemnized in England and Wales.

“Registration service”: the Government agency responsible for keeping records of all births, deaths, marriages and civil partnerships in England and Wales, among other functions.

“Religious divorce”: the dissolution of a religious marriage in accordance with the usages of that religion. Because a religious divorce does not necessarily correspond with or depend on a legal divorce granted by the courts to dissolve a legally-recognised marriage, there is an issue of “limping” marriages: couples can remain married in the eyes of their religion but not in the eyes of the law or vice versa.

“Religious marriage”: a marriage solemnized according to the rites or usages of a religion which is recognised by the state as a legal marriage.

“Religious-only marriage”: a marriage that is recognised by a faith or religious organisation but not the state because the marriage was formed in a religious ceremony not recognised as legally valid. From the perspective of the state a religious-only marriage is a form of non-marriage.

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

“Schedule” or “schedule system”: a system of legal authority and registration in use for marriages in Scotland. A document permitting the marriage to proceed, a schedule, is issued to the couple and signed by them (together with the celebrant and two witnesses) after the ceremony. The schedule is returned to the registration authority for the registration of the marriage, after the ceremony. Also called a “marriage licence” in other jurisdictions.

“Sham marriage”: a marriage between parties of whom at least one is “not a relevant national” (not a British citizen, national of an EEA State other than the UK, or a national of Switzerland) 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.

“Solemnize”: perform a legally recognised ceremony of marriage.

“Special licence”: a form of Anglican preliminary, issued by the Archbishop of Canterbury or another person authorised under the Ecclesiastical Licences Act 1533. A special licence can authorise an Anglican marriage to take place at any location named in the licence.

“Superintendent registrar”: an officer appointed by the council in his or her district. He or she takes the notices of marriage and grants the authority for civil marriages and other marriages proceeding by way of a superintendent registrar’s certificate and is responsible for solemnizing civil marriages.

“Superintendent registrar’s certificate”: a form of civil preliminary. Each party to the marriage must give notice to and receive a certificate from the superintendent registrar. This is the only form of notice that provides legal authority for civil marriage ceremonies (except deathbed civil marriages), Jewish and Quaker marriage ceremonies, and religious marriages in a registered building. It can also be used instead of Anglican preliminaries to provide legal authority for an Anglican marriage ceremony in a church or chapel.

“Universal civil marriage”: a system of marriage law in which the only legally recognised marriage ceremonies are civil marriage ceremonies. This is not the system of marriage law in England and Wales.

“Usages”: see “Rites”.

“Void marriage”, “invalid marriage” and “avoid a marriage”: a void marriage or a marriage which has been avoided, is invalid or a nullity, meaning the marriage is treated as never having come into existence. To be void because of a failure to comply with the formalities required to enter a marriage, the parties must have “knowingly and wilfully” failed to comply with the law. 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-marriage”.

“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.

CHAPTER 1
INTRODUCTION

BACKGROUND

1.1 A couple's wedding day is one of profound emotional, cultural, social, and legal significance. It is often presented as the best or most important day of one's life, and as a result is generally seen as requiring a special level of celebration and expenditure, both by the couple and by family and friends. Moreover, while the day itself is often now preceded by cohabitation and children, it does still mark the point at which the couple take on new obligations to each other.[1] The ceremony is both a public statement and a private commitment, and is surrounded by traditions – both ancient and newly created – that are of considerable significance to the parties themselves.

1.2 At the same time, a wedding is a legal transition in which the state has a considerable interest. Since a marriage will result in a legally binding tie with specific legal consequences, it should also be clear when it has come into being. The legal recognition of a ceremony requires a measure of scrutiny by the state to ensure that those seeking to marry are legally free to do so[2] and to prevent sham and forced marriages.[3]

[1] For discussion of the difference that legal marriage makes, see Cohabitation: The Financial Consequences of Relationship Breakdown (2007) Law Com No 307 and Matrimonial Property, Needs and Agreements (2014) Law Com No 343.

[2] The parties would not be free to marry each other if either was under the age of 16, already married or in a civil partnership, or too closely related to the other: Matrimonial Causes Act 1973, s 11. In such cases the marriage would be void.

[3] Forcing a person into a marriage is a crime under s 121 of the Anti-social Behaviour, Crime and Policing Act 2014, but the resulting marriage would be valid unless and until it was annulled: Matrimonial Causes Act 1973, s 12(c). A sham marriage, defined in s 24(5) of the Immigration and Asylum Act 1999 (as amended by s 55 of the Immigration Act 2014), is one entered into for the purpose of gaining an immigration advantage but this by itself would not invalidate it. A number of marriages are both forced and sham.

1.3 For many – if fewer than in previous decades – a marriage will be celebrated with significant religious rites.[4] Overall, there are over 40 thousand religious buildings in which it is possible to have a legally binding ceremony of marriage.[5] Anglican ceremonies continue to account for almost a quarter of all weddings, followed in popularity by ceremonies in Roman Catholic and Methodist churches.[6] A recent decision of the Supreme Court described religion, for the purposes of deciding what qualifies as a religious place of worship, 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".[7] This led to Scientology churches being recognised as places of religious worship where legally binding marriages can be solemnized.

1.4 More couples, however, now have a civil ceremony of marriage rather than a religious one, either in a register office or in "approved premises". This latter option was introduced by the Marriage Act 1994 and has proved extremely popular, rising from an initial 0.9% of all marriages in 1995 to 36.4% in 2005 and 60% in 2012.[8] On the following pages, the proportion of religious ceremonies and civil ceremonies is shown in Figure 1: How People Marry 2011,[9] and the change in the kinds of marriage ceremonies in England and Wales over time, from 1841 to 2012, is shown in Figure 2: Marriages by manner of solemnization and denomination, 1841 to 2012.[10] Around seven thousand venues are now approved to carry out civil ceremonies. Most of these are hotels or venues that host a variety of events; some are buildings that serve the community or have a charitable or educational purpose; a few are more unexpected, such as casinos, shopping centres and zoos.[11]

4 For discussion of trends over time see J Haskey, "Marriage Rites – Trends in Marriages by Manner of Solemnization and Denomination in England and Wales, 1841-2012" in J Miles, P Mody and R Probert (eds), *Marriage Rites and Rights* (2015).

5 Office for National Statistics, "Table 7: Buildings of worship in which marriages may be solemnised: area of location as at 30 June 2011, and denomination" in "5. Marriages by Area of Occurrence, Type of Ceremony and Denomination" in *Statistical bulletin: Marriages in England and Wales (Provisional), 2012* (11 June 2014), http://www.ons.gov.uk (last visited 4 December 2015).

6 Office for National Statistics, "Table 3:29: Marriages (numbers and proportions): type of ceremony and denomination, 1997-2007" in *Release: Marriage, Divorce and Adoption Statistics, England and Wales (Series FM2), No 35, 2007* (2010), http://www.ons.gov.uk (last visited 4 December 2015).

7 *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 610 at [57].

8 Office for National Statistics, "Table 1: Summary of marriage characteristics, 1981, 1991, 2002, 2002, 2007-2012" in "1. Marriage summary statistics 2012 (provisional)" and "Table 2: Type of ceremony and denomination (numbers), 1837-2011" in "5. Marriages by Area of Occurrence, Type of Ceremony and Denomination" both in *Statistical bulletin: Marriages in England and Wales (Provisional), 2012* (11 June 2014), http://www.ons.gov.uk (last visited 4 December 2015).

9 Source: above.

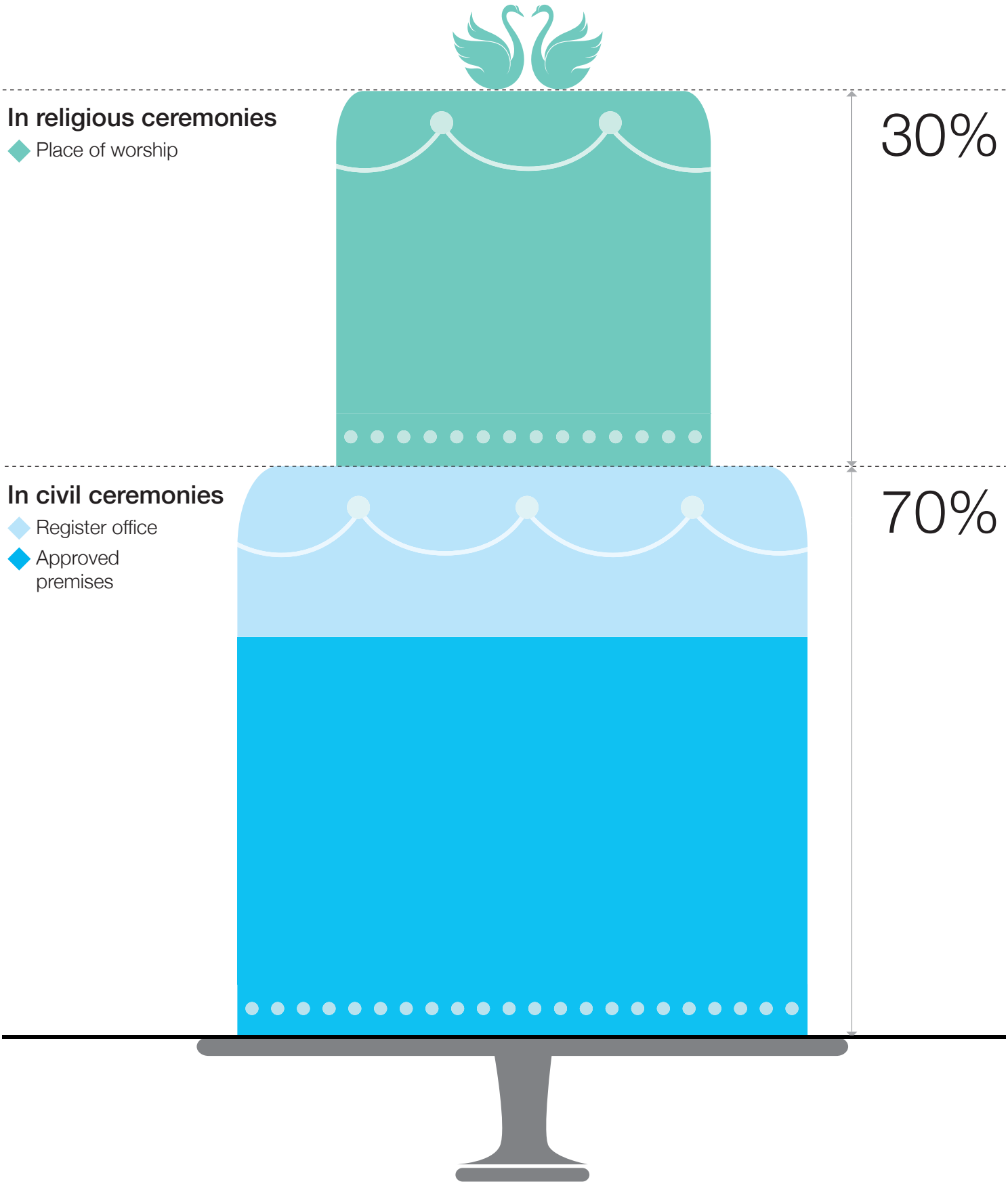
10 Source: adapted with the author's permission from, J Haskey, "Marriage Rites – Trends in Marriages by Manner of Solemnization and Denomination in England and Wales, 1841-2012" in J Miles, P Mody and R Probert (eds), *Marriage Rites and Rights* (2015) p 29 (Figure 3: Marriages by manner of solemnization and denomination, and female marriage rate, 1952-2012, England and Wales).

11 See para 1.30 below.

Figure 1

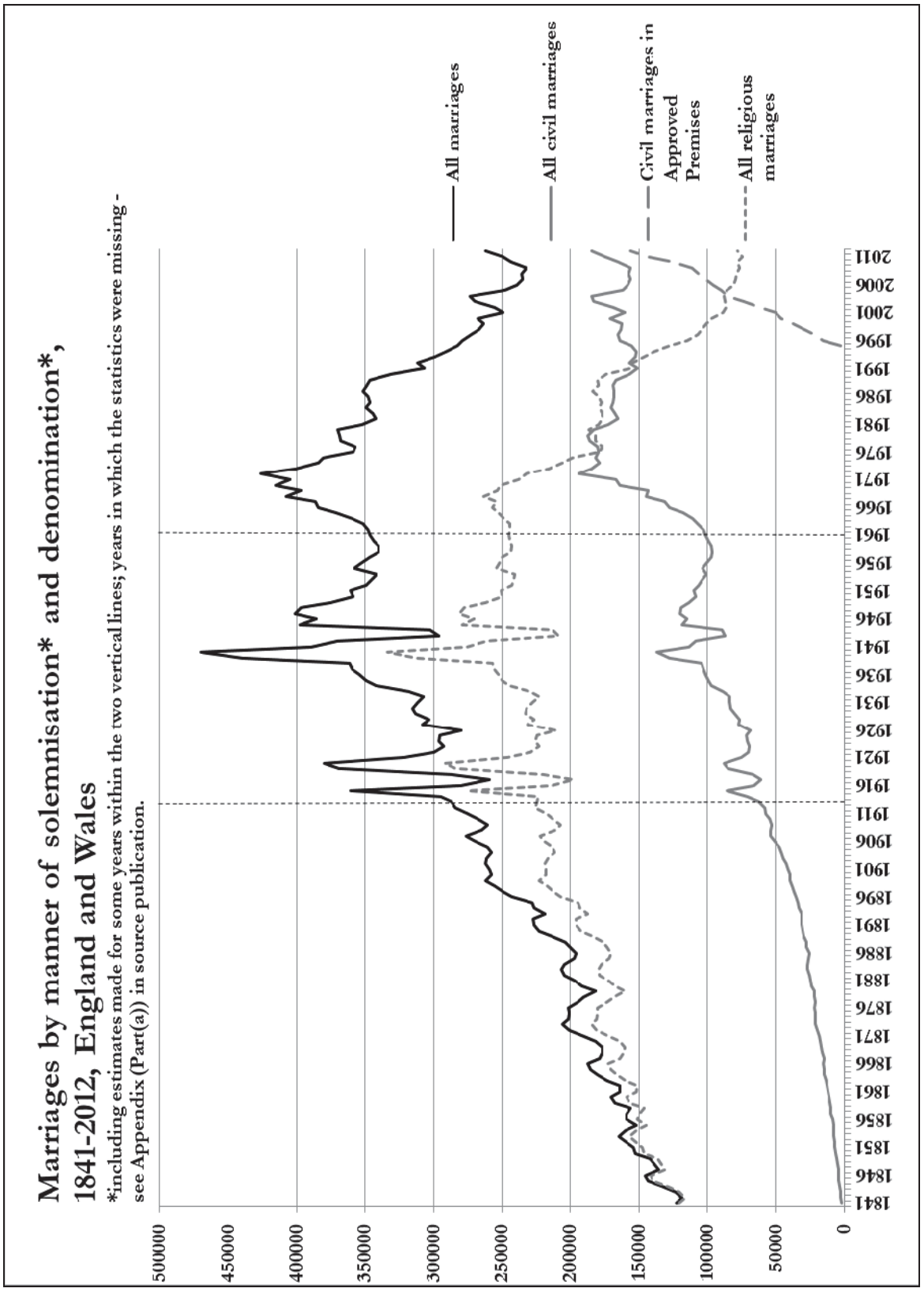
HOW PEOPLE MARRY 2011

Types of marriage ceremonies



Source: Office for National Statistics (www.ons.gov.uk)

Figure 2


Marriages by manner of solemnisation* and denomination*, 1841-2012, England and Wales
*including estimates made for some years within the two vertical lines; years in which the statistics were missing - see Appendix (Part(a)) in source publication.
All marriages
All civil marriages
Civil marriages in Approved Premises
All religious marriages
500000
450000
400000
350000
300000
250000
200000
150000
100000
50000
0
1841
1846
1851
1856
1861
1866
1871
1876
1881
1886
1891
1896
1901
1906
1911
1916
1921
1926
1931
1936
1941
1946
1951
1956
1961
1966
1971
1976
1981
1986
1991
1996
2001
2006
2011

1.5 This might make it sound as if couples wishing to marry have an abundance of choice. Yet there are a number of surprising restrictions in the law. Some of these restrictions flow from the current law which is largely based on the authorisation of buildings for the solemnization of marriage; we refer to this as the buildings-based model or system. With a few limited exceptions, it is not possible to marry outdoors, or in one's own home, or indeed in any place other than one specifically authorised for the purpose.[12] It is not possible for a non-religious belief organisation such as the British Humanist Association to conduct any form of legally binding ceremony of marriage. And even couples who wish to marry in a religious ceremony may not have the option to do so if they do not qualify to marry in a particular place.[13]

1.6 Couples must also make a choice between a religious ceremony or a civil ceremony: there is a bar on including religious content within a civil ceremony[14] and many religious groups will have a prescribed liturgy that the couple will be expected to follow. This poses a particular problem for the increasing number of interfaith couples, where each belongs to a different faith, who will generally have to choose between a ceremony that reflects the faith of one and a ceremony that reflects the faith of neither.[15]

1.7 As a result, many couples will need to have two (or possibly more) ceremonies to satisfy both the law and their own wishes or conscience: one ceremony that the law regards as binding and another belief-based ceremony that couples may regard as their "true" marriage ceremony. Other couples decide not to marry at all if they cannot do so in the way they want, or travel to another jurisdiction that permits a wider range of weddings. More worryingly, some go through a ceremony without checking whether it is legally recognised and only discover their lack of legal status at the time of relationship breakdown. There have been a number of cases in recent years in which the courts have had to decide whether a particular couple were in fact legally married, and the difficulty of interpreting the relevant legislation indicates a disturbing lack of certainty about what actually constitutes a marriage.[16]

[12] See paras 2.38 to 2.49 below.

[13] See paras 2.35 to 2.37 below on the conditions for marrying in a particular place of worship.

[14] See para 2.57 below.

[15] Some religions will celebrate interfaith weddings but this will depend on their own practices and policies. In addition, whether this is an option for any given couple will depend largely on the couple's proximity to the place of worship.

[16] See paras 2.65 onwards below.

1.8 The existence of such problems might come as a surprise, given that significant reforms to the law of marriage have occurred relatively recently; it was only in 2013 that legislation was passed allowing same-sex couples to marry, while changes to the process for giving notice prior to marriage came into force earlier this year.[17] Yet despite such changes, the basic structure of the law regulating *how* marriages can be celebrated has changed remarkably little since the Marriage Act 1836. This was the point at which most of the current routes into marriage were created and older ones were preserved.[18]

1.9 The Marriage Act 1836 was a radical change for its time, introducing the possibility of marrying in a civil ceremony or according to non-Anglican rites. A new process of giving notice to the civil authorities was introduced for such marriages, along with a system of registration applicable to all marriages. Anglican marriages, meanwhile, continued to be governed by a separate set of requirements relating not only to the ceremony but also to the required preliminaries.[19] Hence since 1836 there has been provision for civil and religious ceremonies and a dual system of civil and religious preliminaries.

1.10 At that time it was assumed that most couples would continue to marry in a religious ceremony of marriage; civil ceremonies were not expected to be popular. Moreover, while no limits were placed on the *types* of religious groups that could be recognised, the system was modelled on the practices of Christian denominations.[20] But it hardly needs to be pointed out that profound social changes have occurred in the subsequent 179 years. England and Wales is now a far more culturally and religiously diverse society, as well as a more secular one. A few reforms have been made to the law of marriage over the years to address some of the more pressing demands for change, but at the price of ever increasing complexity and confusion.[21]

[17] See respectively the Marriage (Same Sex Couples) Act 2013 and the Immigration Act 2014, the relevant provisions of which came into force on 13 March 2015 (SI 2014 No 93) and 2 March 2015 (SI 2015 No 371), respectively. A further change – the removal of restrictions on the time of day at which marriages can take place – was effected by the Protection of Freedoms Act 2012, s 114 (in force from 1 October 2012: SI 2012 No 2234). Previously s 4 of the Marriage Act 1949 had required marriages to be solemnized only between the hours of 8 am and 6 pm.

[18] See generally S Cretney, *Family Law in the Twentieth Century: A History* (2003) p 12.

[19] See paras 2.7 onwards below. Preliminaries are the steps that must be taken before a legally binding marriage ceremony can take place. Preliminaries can take several different forms, but are either civil, meaning that they are dealt with by the registration service, or religious, meaning that they are dealt with by the Church of England or the Church in Wales.

[20] Jewish marriages have always been treated on a different footing: see para 2.14 below.

[21] It will be necessary to use a number of technical terms when explaining the requirements, and a glossary of all of these is provided at the beginning of this paper.

1.11 The changes to the religious make-up of society are represented in Figure 3: Religion 1851 and 2011 on the following page.[22] Because there is no data on religious affiliation in the past, the figure instead shows the changes to the places of worship in England and Wales between 1851 and 2011. It also provides information on the religious views of the population in 2011, to show that the proportion of places of worship are not a true reflection of the views of the population, which is more diverse and more secular than the places of worship data would suggest.

1.12 These different issues – the antiquity of the legislation governing marriage, the anomalies and potential unfairness arising from the fact that certain types of ceremonies are facilitated over others, the lack of certainty surrounding when a marriage will be valid, and the unnecessary complexity of the law – all provide good reasons for a new review of the law.[23]

PREVIOUS PROPOSALS FOR REFORM

1.13 There have been numerous proposals for reform over the years, indicating that the current dissatisfaction with the law is of long standing. In order to set our current work in context it is important to understand why earlier proposals, many of them carefully thought through at a high level, did not become law.

1.14 The most recent set of proposals for a fundamental overhaul of the system as a whole were put forward by the then Labour Government over a decade ago. These originated in a consultation paper issued by the Registrar General in 1999,[24] duly followed in 2002 by a Government White Paper.[25] A further consultation document issued in 2003 set out more detail on the proposed reforms and addressed the question of how reform should be achieved.[26]

[22] Sources: Great Britain Census Office and Horace Mann, *Census of Great Britain, 1851: Religious Worship in England and Wales* (1854) p 106 (Table A); Office for National Statistics, "Table 6: Certified places of worship: area of location as at 30 June 2011, and denomination" and "Table 7: Buildings of worship in which marriages may be solemnised: area of location as at 30 June 2011, and denomination" both in "5. Marriages by Area of Occurrence, Type of Ceremony and Denomination" in *Statistical bulletin: Marriages in England and Wales (Provisional), 2012* (11 June 2014); Office for National Statistics, "Religion detailed Table QS210EW" in *2011 Census, Key Statistics for Local Authorities in England and Wales Release, Religion Data from the 2011 Census* (2014), http://www.ons.gov.uk (last visited 4 December 2015).

[23] See paras 1.5 to 1.7 above.

[24] *Registration: Modernising a Vital Service* (1999).

[25] Civil Registration: Vital Change. Birth, marriage and death registration in the 21st century (2002) Cm 5355.

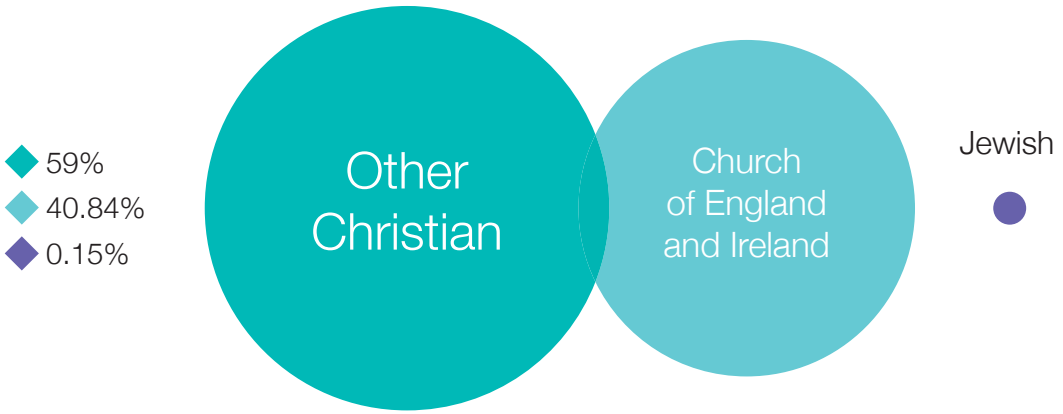
[26] General Register Office, *Civil Registration: Delivering Vital Change: A public consultation document about proposed changes to the legislation relating to the Civil Registration Service in England and Wales by means of a Regulatory Reform Order* (2003).

Figure 3

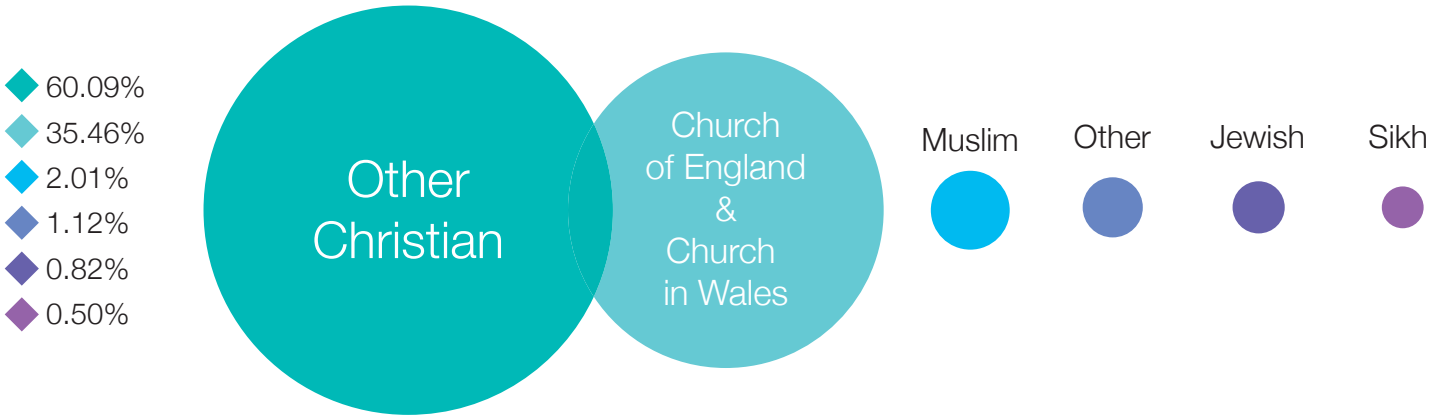
RELIGION 1851 and 2011

Places of worship in England and Wales

1851

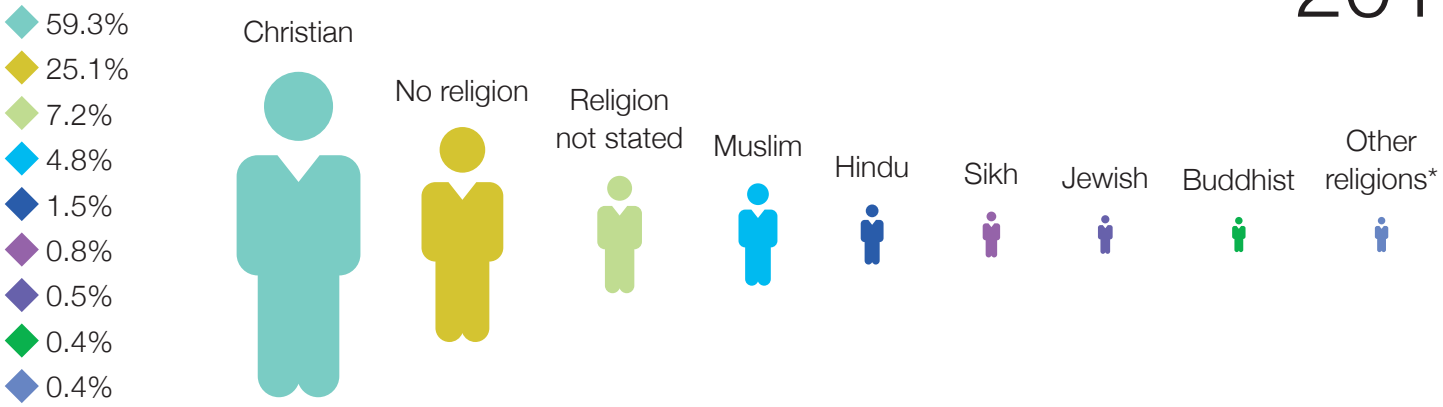


2011



Religious views of the population

2011



* The largest groups included in this category were Pagan, Spiritualist, Mixed Religion and Jain

Source: Office for National Statistics (www.ons.gov.uk) and 1851 Census of Religious Worship

1.15 The main proposals were that the existing restrictions on the location of a wedding should be removed and that the validity of a marriage ceremony would depend on the authorisation of the person who conducted it, or the "celebrant". It was envisaged that civil celebrants would be appointed by local authorities and religious celebrants would be appointed by their respective denominations, although those religions that were "less known or new" would be subject to criteria for recognition as a religious body before the Registrar General approved the appointment of a celebrant. These proposals would have solved a number of the problems linked to the current buildings-based system that were identified above, although no provision was made for interfaith marriages or marriages according to the forms of non-religious belief organisations.

1.16 A further proposed change was the introduction of near-universal civil preliminaries, replacing the current dual system of Anglican and civil preliminaries.[27] The details of couples giving notice would be entered on a central database and their eligibility to marry checked against existing entries. New technology would be used to publicise intended marriages and there would be a centralised system for individuals to object to a marriage going ahead where the parties were not eligible. Once satisfied that there was no legal obstacle to the marriage, and after a prescribed waiting period had passed, the registrar would issue a schedule that would both authorise the marriage to take place and would be signed and returned after the marriage as the register entry.

1.17 In the event, however, the Parliamentary Committee decided that the proposed legislative route of secondary legislation was an inappropriate method to achieve significant reform of the law in this jurisdiction.[28] In the absence of a suitable legislative vehicle, the proposals in relation to marriage were therefore abandoned.[29]

[27] The Church of England recommended a system whereby its clergy would be responsible for completing the marriage notice form and submitting it to the civil authorities, but the Church in Wales wished to retain the existing ecclesiastical preliminaries: above, see General Register Office, *Civil Registration: Delivering Vital Change: A public consultation document about proposed changes to the legislation relating to the Civil Registration Service in England and Wales by means of a Regulatory Reform Order* (2003) paras 3.7.31 to 3.7.38.

[28] It had been intended to introduce these reforms by means of a regulatory reform order. This is a form of secondary legislation, ie legislation made under powers delegated in an Act of Parliament (also known as primary legislation). Regulatory reform orders were made under powers contained in the Regulatory Reform Act 2001 (now replaced by Legislative and Regulatory Reform Act 2006). The decision that this route was inappropriate was made in relation to the White Paper's proposals on the registration of births and deaths but was felt to apply with equal force to the proposed reforms relating to marriage.

[29] Written Statement, *Hansard* (HC), 1 March 2005, vol 431, col 77WS.

1.18 By contrast, at least some of the proposals from a previous Conservative administration did find their way into law. Again, these proposals originated in an investigation into the operation of the registration service,[30] which was followed by a consultation paper in 1988 and report in 1990.[31] The recommendations that civil ceremonies should be able to take place on "approved premises" rather than only in register offices, and that couples marrying in a civil ceremony should be able to do so outside their district of residence, were both implemented by means of a Private Members' Bill in 1994.[32]

1.19 However, other recommendations – that the parties should be able to give notice outside their district of residence, that the process of publicising intended marriages be reformed, that only one registrar should need to attend a civil wedding, that the rules applying to religious marriages be simplified, and that the marriage certificate be amended to include, in addition to the names of the parties' fathers, the names of the parties' mothers – were not taken forward.[33]

1.20 The failure to implement these recommendations was despite the fact that these calls for simplification were hardly new even then. When a joint working party of the Law Commission and the Registrar General had reviewed this area of the law in 1971, it had drawn particular attention to the complexity of the current law.[34] It was felt that rationalisation was "clearly long overdue and should be attainable".[35] To this end, a new comprehensive Marriage Act was felt to be needed, within which the impact of failing to comply with the law should be clarified and the offences for flouting its requirements rationalised.

WHAT HAS CHANGED TO MAKE REFORM A PRIORITY?

1.21 This brief overview indicates that reform has long been thought to be necessary. The fact that certain proposals have been advanced on a number of occasions without success should not be taken as any indication of their merits. There are many pressures on Parliamentary time, and many valuable proposals do not become law immediately if there is not perceived to be a pressing need or desire for them at that time. However, much has changed even since the decision was made not to proceed with reform in 2005, let alone since the last codification of the law in 1949 or its origins in 1836.

[30] Office of Population Censuses and Surveys, *Efficiency Scrutiny Report: Registration of Births, Marriages and Deaths* (1985).

[31] Registration: A Modern Service (1988) Cm 531; Registration: Proposals for Change (1990) Cm 939.

[32] Marriage Act 1994, introduced by Gyles Brandreth MP.

[33] Although see now the Marriage and Civil Partnership Registration (Mothers' Names) Bill 2015-16, a Private Members' Bill which had its first reading on 4 November 2015.

[34] Family Law: Solemnisation of Marriage in England and Wales (1971) Law Commission Consultation Paper No 35.

[35] Family Law: Report on Solemnisation of Marriage in England and Wales (1973) Law Com No 53, para 6.

Demand for an alternative option

1.22 First, there is a growing demand for an alternative to the current civil and religious options for a marriage ceremony. The decline in adherence to formal religion, and the feeling that a civil option does not allow sufficient scope for personalisation, has led to individuals seeking other options that are meaningful to them. Interfaith couples may be looking for a tailored ceremony that reflects each partner's beliefs equally, while others may wish for a ceremony according to a particular set of beliefs, such as humanism.

1.23 As a result, there is a thriving and largely unregulated market in celebrants conducting non-legally binding marriage ceremonies. While the couples undertaking such ceremonies will usually have an additional civil ceremony and are rarely under any illusions about the legal status of their ceremony of choice, this developing practice does indicate a popular demand for legal change that was lacking in earlier decades.

1.24 Social change does not automatically require legal recognition, but there is growing acknowledgement of the legitimacy of the demands of those currently excluded from being able to solemnize legally binding marriages. The concept of "belief" is now regarded as encompassing more than just religious beliefs.[36] A large proportion of responses to the 2014 consultation on non-religious belief organisations drew attention to the point that "humanist couples cannot currently marry in a legal ceremony rooted in their beliefs conducted by a person who shares those beliefs, or in a place which is personally meaningful to them".[37]

1.25 Since 2005, however, couples have been able to have a legally valid humanist ceremony in Scotland.[38] In 2014, 5,180 couples resident elsewhere in the UK, the Isle of Man and the Channel Islands, were married in Scotland. Many will have been attracted by the romantic allure of Gretna Green[39] or by personal connections, others by the possibility of an outdoor wedding, but for some it will have been the possibility of a humanist wedding that determined their choice of venue. Humanist weddings are now the third most popular option in Scotland, after civil ceremonies and those conducted according to the rites of the Church of Scotland. Interfaith marriages can also be celebrated in Scotland: the One Spirit Interfaith Foundation performs around 300 marriages there each year.

[36] *Grainger Plc v Nicholson* [2010] 2 All ER 253; *Maistry v BBC* [2014] EWCA Civ 1116.

[37] Ministry of Justice, *Marriages by Non-religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response* (18 December 2014) para 9.

[38] Marriage and Civil Partnership (Scotland) Act 2014, ss 12 to 14.

[39] National Records of Scotland, "Table 7.9: Marriages, by country of residence, Scotland, 2014" in "Section 7: Marriages and Civil Partnerships" in *Vital Events References Tables 2014* (2015), http://nationalrecordsofscotland.gov.uk (last visited 4 December 2015). Half of all of those from England and Wales who marry in Scotland do so at Gretna Green: Office for National Statistics, "Report: Marriages Abroad 2002-2007" (2008) 133 *Population Trends* 65, 70.

1.26 The popularity of non-religious belief and interfaith marriages in Scotland is shown in Figure 4: Marriage Ceremonies, on the following page, where they are referred to as "Belief marriages".[40] This infographic shows the proportions of the different types of legally recognised marriage ceremonies available in Scotland compared with those in England and Wales. It shows not only the take up of the new option of belief ceremonies in Scotland, which are not available in England and Wales, but also that together belief and religious ceremonies account for nearly half of all marriage ceremonies in Scotland, compared to England and Wales where civil ceremonies are more common by a significant margin.

1.27 The Republic of Ireland has recently followed suit in permitting marriages by organisations that are "secular, ethical and humanist".[41] Marriages by celebrants that are nominated by non-religious belief organisations are also permitted in New Zealand, New York state, Massachusetts and Ontario.[42] Elsewhere, independent celebrants are authorised to conduct marriages in both New Zealand and Australia and in a number of US states and Canadian provinces.[43]

[40] Sources: Office for National Statistics, "Table 2: Type of ceremony and denomination (numbers), 1837-2011" in "5. Marriages by Area of Occurrence, Type of Ceremony and Denomination" in *Statistical bulletin: Marriages in England and Wales (Provisional), 2012* (11 June 2014), http://www.ons.gov.uk (last visited 4 December 2015); National Records of Scotland, "Table 7:7: Marriages, by denomination, Scotland, 2014" in *Vital Events Reference Tables 2014* (2015), http://nationalrecordsofscotland.gov.uk (last visited 4 December 2015).

[41] Civil Registration Act 2004, s 45A(1)(b) (as inserted by the Civil Registration (Amendment) Act 2012, s 3).

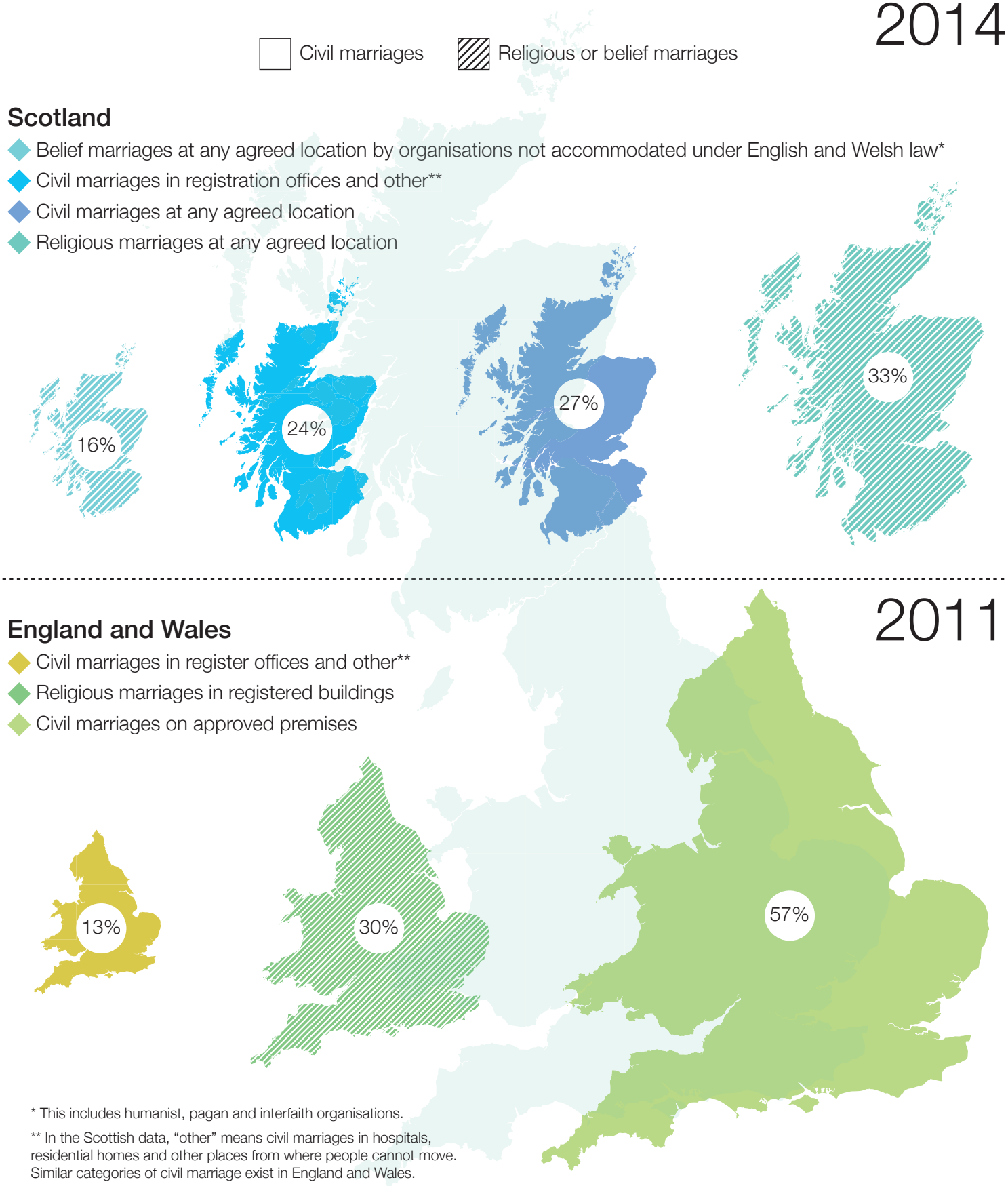
[42] Marriage Act 1955 (New Zealand), s 9(4). However, the American Ethical Union (broadly, the US equivalent to the British Humanist Association) and the Ontario Humanist Society appear to be recognised as religious movements in these jurisdictions and so its celebrants may be recognised in this way: see New York Domestic Relations Law, s11, General Laws of Massachusetts, Part II, Title III, Chpt 207, s 38 and Marriage Act 1990 (Ontario), s 20(3) and Ontario, *Religious Marriage Officiants listed by Name, Religious Body and Municipality* (13 November 2015), http://files.ontariogovernment.ca/opendata/officiants_nov13.xls (last visited 4 December 2015).

[43] Marriage Act 1955 (New Zealand), s 11; Marriage Act 1961 (Australia), Part IV, Division 1, Subdivision C; for US States see eg District of Columbia Code, Title 46, Ch 4, s 46-406 and Code of Virginia, Title 20, Ch 2, s 20-25; for Canada, see eg Marriage Act 1996 (British Columbia), s 32; Marriage Act 2000 (Alberta), s 8; The Marriage Act 1987 (Manitoba), s 7(1); and Marriage Act 1988 (Prince Edward Island), s 8.1.

Figure 4

MARRIAGE CEREMONIES

England and Wales compared with Scotland



* This includes humanist, pagan and interfaith organisations.

** In the Scottish data, "other" means civil marriages in hospitals, residential homes and other places from where people cannot move. Similar categories of civil marriage exist in England and Wales.

Source: Office for National Statistics (www.ons.gov.uk) and National Records of Scotland (http://nationalrecordsofscotland.gov/uk). The latest available data was used

Demand for a wider range of locations

1.28 Linked but not limited to this demand for an alternative option is a demand for marriages to be conducted in a wider range of locations. Humanist wedding ceremonies, and those conducted by independent celebrants, are often conducted outdoors. We understand that non-legally binding religious ceremonies are often conducted in the home, and that a number of religious groups would welcome the opportunity to conduct marriages in a wider range of locations. In addition, analysis of the venues that have been approved for weddings[44] suggests that the law is being stretched to allow at least some civil weddings to take place in private homes or in locations that are in the open air.

1.29 As long ago as 1970, when Parliament was debating the passage of legislation to allow for the possibility of deathbed marriages, a number of MPs drew attention to the fact that in other countries it was not uncommon for couples to marry in their own homes. Marriage, as one of them noted, was not simply "a matter of contract and ceremony and passion", it was also "a matter of domesticity, and the centre of domesticity is the home".[45] Subsequent legislation has permitted marrying in the home for the terminally ill and the housebound, so the current law does at least recognise this as a possibility.[46] In addition, the fact that a number of modest private dwellings have achieved the status of approved premises (but do not advertise as such) suggests that approval is effectively being sought for individual weddings to take place at home.

[44] HM Passport Office, *Guidance: Civil marriages and partnerships: approved premises list* (Home Office, 2015), using data available as at 6 May 2015, https://www.gov.uk/government/publications/civil-marriages-and-partnerships-approved-premises-list (last visited 4 December 2015). On the process for approval see paras 2.39 to 2.41 below.

[45] *Hansard* (HC), 13 February 1970, vol 795, col 1628 (Mr Howie).

[46] See paras 2.48 and 2.55 below. A marriage in the home can also be authorised by special licence (see paras 2.25 and 2.45 below). In theory, Jewish and Quaker weddings can also take place within the home, given the lack of any specific regulations relating to their location, although in practice this is uncommon.

1.30 There also appears to be a growing demand for weddings to take place outdoors. A number of celebrants have told us that many couples would like a simple ceremony in their own garden. Popular TV programmes such as *Don't Tell the Bride* often feature weddings taking place outdoors (although the couple are always shown going through an additional civil ceremony in the register office afterwards). It is also evident from the list of approved premises that an increasing number of venues offer what is effectively an outdoors wedding, with the formalities being completed within a small structure that barely qualifies as the "room" specified in the regulations.[47] Examples include bandstands, garden pergolas and, in one case, a beach hut. Some do not even appear to be permanent structures: one nature reserve, for example, offers the possibility of marrying in a "hide", while teepees and in one case a "growing arbour" have also been approved. For an illustration of the wide variety of the kinds of venues that were approved premises in 2015, including the percentages of each type, see Figure 5: Approved Premises 2015 on the following page.[48]

1.31 Scotland has long permitted religious marriages to take place in the parties' homes (or indeed anywhere) and has recently extended this possibility to civil marriages.[49] Outdoor weddings are also permitted in Northern Ireland, the Republic of Ireland, New Zealand, Australia, Canada, and many states in the US, while legislation is underway to permit them in Jersey.[50]

[47] On the regulations, see para 2.39 below. The venues classified as "natural world, gardens and zoos" in the Figure 5: Approved Premises 2015 all have some structure that has been approved as falling within the regulations.

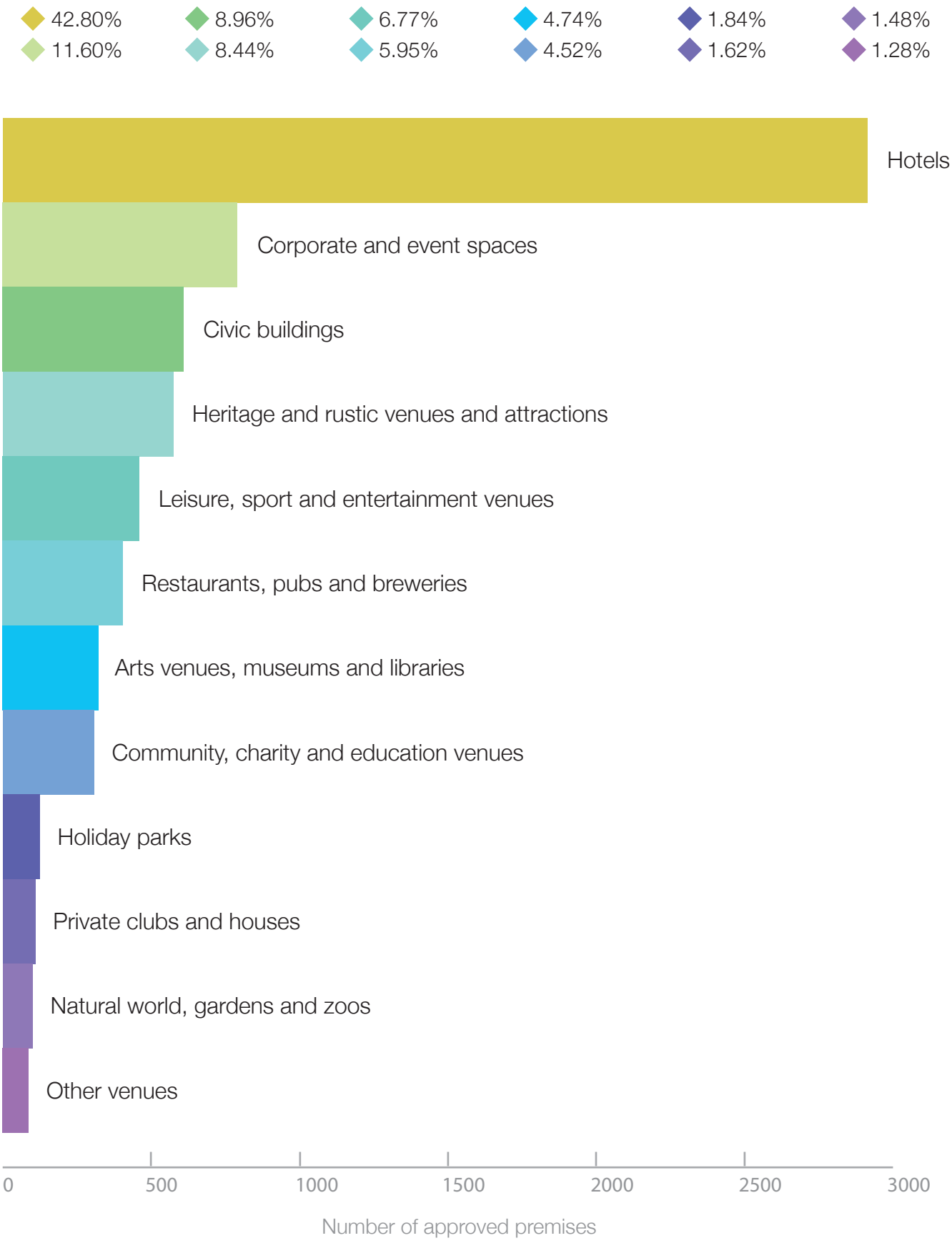
[48] Source: HM Passport Office, *Guidance: Civil marriages and partnerships: approved premises list*, using data available as at 6 May 2015, https://www.gov.uk/government/publications/civil-marriages-and-partnerships-approved-premises-list (last visited 4 December 2015).

[49] Marriage (Scotland) Act 1977, s 18(1A) (as amended by the Marriage and Civil Partnership (Scotland) Act 2014, s 21). The location must be agreed with the celebrant or registrar in advance and specified in the marriage schedule.

[50] Many of these jurisdictions do not regulate the location of the ceremony: The Marriage Regulations (Northern Ireland) 2003, reg 2; Civil Registration Act 2004 (Republic of Ireland), ss 51(2)(c), 51(2A) and 52(1) (as amended by the Civil Registration (Amendment) Act 2014, SI 2014 No 34 (Republic of Ireland), s 16); Marriage Act 1955 (New Zealand), ss 24(1)(a) and 31(1); Marriage Act 1961 (Australia), s 43; for Canada, see eg Marriage Act 1996 (British Columbia), ss 9 and 20 and Marriage Act 1990 (Ontario), ss 24 and 25; for US, see eg Maine Revised Statutes 2014, Title 19A, Ch 23, s 651-1 and General Laws of Massachusetts, Part II, Title III, Ch 207, s 38; *Hansard* (States of Jersey), 15 July 2015, para 1.

Figure 1

The different types of approved premises



Source: HM Passport Office (May 2015)

1.32 The issue of where people marry should also be seen in the context of the widely publicised cost of weddings. While a register office wedding can cost as little as £120,[51] opening up the possibility of marrying in a wider range of venues would allow the location of the wedding to be both cheap and personal. Given that surveys suggest that considerations of cost weigh heavily with cohabiting couples contemplating marriage,[52] reform enabling simpler weddings that have meaning to the parties might encourage some to marry who would not otherwise do so.

Religious-only marriages

1.33 The third major set of reasons for reform relate to the perceived rise in religious-only marriages, that is marriages that are conducted in accordance with the rites of a particular religion but without legal status. Such marriages may be entered into for a variety of different reasons, depending on the background of the couple in question (including their age, education, ethnicity, community and religiosity). For some a religious-only marriage will be a means of living together as a couple outside legal marriage, for others it may be because the religious ceremony alone has meaning for them, but for some others it will not be a conscious choice and the lack of a legal marriage will be undesirable.[53] Some religious-only marriages take place at the parties' place of worship, but we have been told that more are celebrated in private houses or on premises that are only approved for civil marriage.

1.34 The practice of religious-only marriage has been highlighted particularly in respect of Muslim couples,[54] although the variety of practices across Muslim communities should be noted. Some Muslim couples will have separate religious and civil ceremonies; some will regard the civil contract as containing all that is important in religious terms and will not have a separate religious ceremony; and some will go through a legal religious ceremony of marriage in a mosque that has been registered for marriage. Others, however, will only undertake the religious ceremony and will not be married in the eyes of the law.[55]

[51] The cost is currently £35 for each notice, £46 for the ceremony, and £4 for the certificate: Registration of Births, Deaths and Marriages (Fees) (Amendment) Order 2014, SI 2014 No 1790.

[52] A Barlow, S Duncan, G James and A Park, *Cohabitation, Marriage and the Law* (2005) pp 71 to 72.

[53] R Grillo, *Muslim Families, Politics and the Law: A Legal Industry in Multicultural Britain* (2015) Ch 3; 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).

[54] Above.

[55] Above.

1.35 The precise number of religious-only marriages is unknown, since by definition they do not appear in any state record. Some of the higher estimates[56] are based on anecdotal evidence rather than systematic surveys and have been questioned.[57] Nonetheless, it is telling that only 200 legal marriages in Muslim places of worship were recorded in 2010,[58] against a background population of 2,706,066 Muslims in the 2011 census.[59] This of course does not include those Muslim couples who had a civil ceremony before, after, or instead of an Islamic ceremony. But even if there are fewer unregistered marriages than supposed, it is still a serious issue as a religious-only marriage will usually be classified as a "non-marriage" in English law.[60] The result is that the parties to it have no legal status, are not counted as married, and have no protection in the event of the relationship breaking down and no automatic rights if the other party dies.

1.36 All of these recent changes indicate that there is both a need and a desire for reform. Yet the problems with the system are such that reform is not a simple matter of deciding whether any particular group should be able to conduct legally binding marriages. Rather, a thorough review of the law as a whole needs to be carried out in order to provide a system that is both more coherent and fair to all.

[56] See eg the "Register Our Marriage (ROM)" campaign, which states that 80% of marriages among Muslims are not legally recognised, https://www.facebook.com/ainakhanlawyer/posts/629555683843429 (last visited 4 December 2015).

[57] G Douglas, N Doe, S Gilliat-Ray, R Sandberg and A Khan, *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts* (Cardiff University, 2011) studied the Shariah Council of the Birmingham Central Mosque and found that half of the cases it dealt with "involved couples who were not married under English civil law" (p 39). Given that such couples have no other forum for their dispute, it cannot be inferred from that that half of all Muslim marriages are not legally recognised.

[58] Office for National Statistics, *FOI request: Number of Muslim weddings*, http://www.ons.gov.uk/ons/about-ons/business-transparency/freedom-of-information/what-can-i-request/previous-foi-requests/population/number-of-muslim-weddings/index.html (last visited 4 December 2015).

[59] Office for National Statistics, "Religion detailed Table QS210EW" in *2011 Census, Key Statistics for Local Authorities in England and Wales Release, Religion Data from the 2011 Census* (2014), http://www.ons.gov.uk (last visited 4 December 2015).

[60] See paras 2.70 onwards below.

THE IMMEDIATE CATALYST FOR OUR WORK

1.37 The immediate catalyst for our current work was the debate during the passage of the Marriage (Same Sex Couples) Act 2013 on the possibility of non-religious belief organisations being able to conduct legally binding marriages. These were defined as organisations "whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics".[61] There had been earlier Private Members' Bills seeking to introduce this option but these had not progressed beyond a first reading.[62] The 2013 Act, by contrast, empowered the Secretary of State to make provision for such marriages,[63] and required the Government to carry out a consultation on the issue.[64]

1.38 While the response to the consultation was very positive,[65] there remained difficult questions as to how this new option could be implemented in a way that was fair to all and did not create new anomalies in the law. A number of respondents indicated that any change of this kind should take place only as a part of a more fundamental review of the system as a whole.[66] For this reason, the Government decided not to proceed at that stage with the option of making an order permitting marriages according to the usages of belief organisations.[67]

1.39 Instead, in December 2014 the Government asked the Law Commission to conduct a review of the law governing how and where people can marry in England and Wales. Given the range of complex legal, social and religious issues underpinning the law of marriage, it was felt appropriate for the initial phase of work carried out by the Law Commission to be a scoping study exploring the issues that would need to be considered before proceeding to public consultation on options for reform.

THE SCOPING EXERCISE

1.40 The aim of the current scoping exercise was accordingly to identify the questions that any future reform project would address. Its role was to ensure that we were aware of the key problems and concerns and had analysed the legal issues that would arise in devising suitable solutions. The objective was not, at this stage, to consult on options for reform: that would be for the next phase of the project.

[61] Marriage (Same Sex Couples) Act 2013, s 14(7).

[62] The Marriage (Approved Organisations) Bills 2012-13 and 2013-14, both introduced by Lord Harrison.

[63] Marriage (Same Sex Couples) Act 2013, s 14(4), although under s 18(2)(d) any such order would require approval by both Houses of Parliament.

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

[65] When asked "Is there a substantial case for a change in the law to establish non-religious belief ceremonies as a third type of legal ceremony, alongside religious and civil ceremonies, for getting married in England and Wales?", 95.4% said "yes": Ministry of Justice, *Marriages by Non-Religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response* (18 December 2014) Annex A, p 17.

[66] Ministry of Justice, *Marriages by Non-Religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response* (18 December 2014) p 19.

[67] Provision had been made for this by the Marriage (Same Sex Couples) Act 2013, s 14(4).

1.41 The fundamental question underlying the scoping work was whether the current law, which has evolved over a long period of time, provides a fair and coherent legal framework for enabling people to marry.

1.42 Addressing this question required consideration of each stage of the solemnization of marriage, from the initial preliminaries to the ceremony and subsequent registration. It also involved consideration of how the law deals with non-compliance with existing requirements, for example whether a failure to comply with a particular requirement renders the marriage void or exposes officials to criminal sanctions. We have undertaken in-depth analysis of the problems with the current law (as set out in Chapter 2), analysed what the objectives of law reform in this area should be (in Chapter 3), and identified a range of questions that would need to be considered in detail at the consultation phase of the project (see Chapter 4).

1.43 During the course of the scoping phase we met with a number of groups and individuals with particular expertise or interest in the issues under consideration. This was not intended to be a comprehensive consultation exercise but rather an attempt to ascertain the nature and range of concerns about current law and practice. Some groups or individuals were already involved in campaigns for reform, or had responded to the earlier consultation on non-religious belief organisations. Others were identified because they represented particular interests relevant to marriage law. A number of religious groups shared information as to their beliefs, practices and concerns, and particularly interesting insights into the potential demand for change was provided by those groups involved in celebrating weddings that do not currently have legal status in this jurisdiction.

1.44 The General Register Office, together with a number of different registration services and their representatives, shared their expertise on the operation of civil registration and of civil marriages more generally. We were able to witness the process for giving notice at the register office, the final checks carried out before the ceremony, and the spectrum of civil ceremonies, from the pared down version that included only what was legally required, to a much more personal celebration. The latter included readings and music of the couple's choosing and an overview of their life together from the registrar.

1.45 As part of our comparative research, we visited Edinburgh to discuss the operation of the Scottish law of marriage in the light of the recent reforms enacted by the Marriage and Civil Partnership (Scotland) Act 2014. We met with representatives of the Scottish Government, the National Records of Scotland,[68] registrars from Edinburgh and Glasgow, the Church of Scotland, the Humanist Society Scotland, and the Scottish Council of Jewish Communities.

[68] This is the authority responsible for the registration of births, deaths, marriages, civil partnerships and adoptions and for the laws relating to the formalities of marriage in Scotland.

1.46 All of those we met were very positive about the "schedule system" approach taken in Scottish law and provided extremely helpful insights into the way in which the system operated. In brief, all couples getting married in Scotland give notice at the register office and are issued with a schedule permitting the marriage to go ahead at a particular specified location. The location of the ceremony need not be a building, and we were told of marriages on mountain tops and in the middle of a loch (identified by a GPS reference). The ceremony is conducted by a celebrant,[69] who signs the schedule along with the couple and two witnesses. The couple then return the schedule to the register office for registration.

1.47 We also undertook some preliminary research into marriage law in other jurisdictions. In addition to Scotland, Northern Ireland and the Republic of Ireland, we also looked in detail at the US, Canada, Australia, New Zealand and South Africa, as well as undertaking an overview of the different approaches across Europe. Therefore, there are a range of international models to consider when designing a simpler, fairer and more modern law of marriage that serves society as it is today rather than as it was in the early nineteenth century.

1.48 In terms of the challenges of reform, it is worth noting that prior to 2003 Northern Ireland had marriage laws that were even more complex and piecemeal than the current law in England and Wales.[70] The topic was referred to the Law Reform Advisory Committee in January 1998 and its recommendations[71] resulted in the Marriage (Northern Ireland) Order 2003. The law relating to preliminaries was simplified, with universal civil preliminaries required and a schedule system adopted.[72] The law relating to who was able to solemnize a marriage was streamlined to either registrars or registered religious officiants.[73] The reform also simplified and widened the rules as to where a marriage can take place. There are now no restrictions on the place for religious marriage, and a civil ceremony can now be celebrated at an approved place as well as in a register office.[74]

1.49 Finally, we felt that in order to gain a deeper insight into how couples experienced the law, it would be helpful to attend a number of different types of weddings. We are particularly grateful to the couples who were willing for us to be present at their ceremonies, and to all of those who arranged for us to be present.

[69] There are four different categories of celebrant: (1) ministers of the Church of Scotland; (2) those belonging to one of the religious or belief organisations prescribed by legislation as capable of conducting marriages; (3) a celebrant nominated by a religious or belief organisation; and (4) a temporary celebrant: see Marriage (Scotland) Act 1977, s 8(1).

[70] A number of different religious bodies had their own preliminaries, different licensing and registering requirements applied to different religious buildings, and civil marriages were limited to register offices: Marriage Law (2000) Law Reform Advisory Committee No 9, Ch 1.

[71] Marriage Law (2000) Law Reform Advisory Committee No 9.

[72] Marriage (Northern Ireland) Order 2003, arts 3 and 7.

[73] Marriage (Northern Ireland) Order 2003, art 9. A religious body – defined in art 2(2) as "an organised group of people meeting regularly for common religious worship" – can apply either to register an officiant with the Registrar General or request a temporary authorisation: arts 11 and 14.

[74] Marriage (Northern Ireland) Order 2003, art 18.

PRELIMINARY CONCLUSIONS AS TO THE NEED FOR REFORM

1.50 As a result of the work carried out during the scoping phase of the project, we have concluded that there is a clear need for reform. We agree with the Government's conclusion following its consultation on marriage by non-religious belief organisations that there is no simple solution that would solve the range of problems with the law that we have identified.[75] In particular, as we explain in Chapter 3, the answer cannot be simply to exercise the order-making power contained in section 14(4) of the Marriage (Same Sex Couples) Act 2013 to enable non-religious belief organisations to solemnize marriages. That is not to say that the law should not be reformed to accommodate marriages by non-religious belief organisations; but any steps to do that need to take place alongside a broader updating of the law of marriage that seeks to address a number of long-standing problems.

1.51 We consider that the problems in the current law can appropriately be addressed by a full Law Commission reform project, which would enable us to consult in detail on options for reform before making recommendations to the Government. The next stage of the work would be a consultation phase, during which we would seek views on specific proposals for reform. We have concluded that the scope of that consultation should be broad. In Chapter 3 we set out what we think the objective of reform of the law of marriage should be, focusing on a number of guiding principles:

(1) certainty and simplicity;

(2) fairness and equality;

(3) protecting the state's interest; and

(4) respecting individuals' wishes and beliefs.

1.52 We set out in detail in Chapter 4 of this paper the questions that we think should be covered, which include:

(1) What preliminaries should a couple have to fulfil prior to getting married? That is, what information should a couple have to provide and to whom? As part of these preliminaries, how should the process of authorising a marriage work? This question would include consideration of the merits of universal civil preliminaries, an option that has been proposed in this jurisdiction since 1836.

(2) Who should have the authority to solemnize marriages? Is there scope for the current rules to be aligned among different groups, and should the ability to solemnize marriages be extended?

(3) Where should the law permit marriages to take place? Should they, for example, be able to take place outdoors?

[75] Ministry of Justice, *Marriages by Non-Religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response* (18 December 2014) pp 13 to 15.

(4) What should be required of the marriage ceremony? What, if any, content should be prescribed and should there be restrictions on content? Who should be present at the ceremony?

(5) How should marriages be registered? Who should be responsible for the registration?

(6) How should the law deal with the consequences of non-compliance and what offences and sanctions might be needed to uphold the law of marriage?

Although broad, we have concluded that a consultation should not be entirely open-ended. As we set out more fully in Chapter 4, we consider that a number of areas should be out of the scope of further reform work. We have also identified a number of policy decisions that we would not be seeking to revisit and which therefore provide the parameters for the project.

Out of scope

1.53 A number of areas of marriage law were agreed with the Government from the outset of our work as being outside the remit of this scoping review and so outside of any Law Commission reform project. These comprised:

(1) issues of capacity: that is, who can be married, including the age of consent or the restrictions on marrying within prohibited degrees of kinship;

(2) the question of whether or not religious groups should be obliged to solemnize marriages of same-sex couples, which was recently decided by Parliament following wide public debate; and

(3) the rights or responsibilities which marriage imparts, such as the financial entitlements of surviving spouses or the consequences of divorce.

1.54 We have also identified other issues that should be excluded from the scope of future law reform work;[76] the project's focus on entry into marriage implicitly excludes certain issues. For example, the grounds on which a marriage may be void or voidable are out of scope, save in so far as they relate to a failure to comply with the required formalities.

[76] See paras 4.62 to 4.63 below.

1.55 During our scoping work we have taken the view that certain other issues that could in theory be included in a review of marriage law should also be excluded from consideration. These are listed in Chapter 4,[77] but an example of such an issue is the duty of the Church of England and Church in Wales clergy to marry their parishioners. It is generally accepted that both the Church of England and the Church in Wales have a duty to conduct marriages, assuming the couple in question are eligible to marry.[78] Indeed, for the Church in Wales, this duty is one of the "vestiges of establishment".[79] Nothing in this paper should cast any doubt on the continuance of that duty, subject of course to its current limitations. This duty reflects the special position that the Anglican church has traditionally held in relation to marriage. We have been mindful of this special position, but it does not mean that the current modes of marrying according to Anglican rites cannot be evaluated, and issues raised for consideration. One option that will need to be considered is whether England and Wales should introduce a system of universal civil preliminaries, as is the case in Scotland, Northern Ireland and the Republic of Ireland.

Policy assumptions

1.56 As well as certain issues being out of scope, there are a number of issues that have been the subject of recent judicial and legislative decisions and we will not be seeking to revisit these. As noted at the outset, in 2013 the Supreme Court articulated a very broad concept of "religion" which forms an important backdrop to this paper.[80] Similarly, the question of whether or not religious groups should be obliged to solemnize marriages of same-sex couples was recently decided by Parliament following wide public debate and will not be reconsidered as part of this project,[81] although a move away from the current buildings-based system would require the current protections to be reformulated. Where relevant, we will indicate if a particular route into marriage is not available to same-sex couples; unless this is stated it can be assumed that the same rules apply.

[77] See paras 4.64 to 4.67 below.

[78] See N Doe, *The Legal Framework of the Church of England: A Critical Study in a Comparative Context* (1996) pp 358 to 362; M Hill, *Ecclesiastical Law* (3rd ed 2007) para 5.34. The general duty to marry couples is also specifically excluded in a number of situations where the parties are free to marry each other, for example where one of the parties is divorced or in relation to the marriage of same-sex couples: N Doe, *The Legal Framework of the Church of England: A Critical Study in a Comparative Context* (1996) pp 362 to 365; M Hill, *Ecclesiastical Law* (3rd ed 2007) para 5.35.

[79] Ecclesiastical law ceased to exist as law in Wales after the Welsh Church Act 1914. This means that any Measures passed by the General Synod of the Church of England – which, when approved by both Houses of Parliament and given Royal Assent have the force and effect of an Act of Parliament – do not apply in Wales. On at least two occasions it has been necessary for the Church in Wales to gain both the time and support to change the law by a Private Members' Bill in order to be governed by the same rules. For discussion see F Cranmer, "Wales and the law of marriage "vestiges of establishment" revisited" (2015) 174 *Law & Justice* 96.

[80] *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 610.

[81] Marriage (Same Sex Couples) Act 2013, s 2.

1.57 There have also been recent changes to the procedure for giving notice of an intended marriage,[82] and we understand from registrars that these are working well. Our discussion of possible models for reform therefore assumes that the process of giving notice will continue to be an integral part of the system. Similarly, we have been mindful of the need to guard against sham and forced marriages. We would like to draw attention to the valuable work being done by registrars in detecting such marriages and have assumed for the purposes of this project that the current structures and protections in place will continue.

1.58 These exclusions and policy assumptions, together with those identified in Chapter 4,[83] establish the parameters that we propose should apply to future work on marriage law reform. They are discussed further, alongside the issues that we propose should be reviewed and consulted on, in Chapter 4.

STRUCTURE OF THE PAPER

1.59 This paper reports on the scoping phase of the project. Chapter 2 sets out why we think there is a need for law reform, identifying the antiquity, undue complexity, uncertainty, potential unfairness and inefficiencies of the current system. Chapter 3 then examines the key principles that should underpin a revised law of marriage and analyses three different ways in which the project of reform could proceed. Chapter 4 explains our conclusions on the parameters of further work to reform the law of marriage and sets out the detailed issues that would need to be considered in relation to each stage of the marriage process in order to reformulate the law.

1.60 In a relatively short scoping paper of this kind it is not possible to provide a comprehensive overview of the law. There is an extraordinary amount of complex detail underpinning the legal requirements that are set out in Chapter 2. In order to make the case for reform most succinctly we have undertaken a thematic analysis according to particular problems rather than describing each element of the law in turn.[84]

[82] See paras 2.27 to 2.29 below.

[83] See paras 4.61 onwards below.

[84] For ease of reference, a timeline of key legislative developments can be found in Figure 8: Legislation governing the solemnization of Marriages and Civil Partnerships at pp 36 to 37.

1.61 We are grateful to all of the following for their input at the scoping phase of the project: the Association of British Muslims, the Association of Independent Celebrants, Dr Samia Bano, the Baptist Union of Great Britain, Anne Barber, the Board of Deputies of British Jews, the British Humanist Association, the Catholic Bishops' Conference, the Churches' Legislation Advisory Service, the Church in Wales, the Church of England, the Church of Jesus Christ of Latter-day Saints, the Church of Scientology, the Church of Scotland, Professor Norman Doe, Professor Gillian Douglas, the Fellowship of Professional Celebrants, the Forced Marriage Unit, the General Register Office, the Government Equalities Office, Richard Green, Dr Maebh Harding, the Hindu Council UK, Stephen Hockman QC, Humanist Society Scotland, the Jain Network, Dr Wendy Kennett, Aina Khan, Professor Jane Mair, Melissa Maynard, the Methodist Church, the Muslim Women's Network, the National Panel for Registration,[85] National Records of Scotland, the National Spiritual Assembly of the Baha'is, the Network of Buddhist Organisations, the One Spirit Interfaith Foundation, the Pagan Federation, the campaign "Register Our Marriage", the registration services serving Caerphilly, Cardiff, Edinburgh, Glasgow, Hackney, Lancashire, Newport and Oxford, Dr Russell Sandberg, the Scottish Council of Jewish Communities, the Scottish Government, the Sikh Council UK, the Society of Friends, the Spiritualists' National Union, Stonewall, the Unitarian and Free Christian Churches, the United Reformed Church, Vishal Vora and Professor Thomas Watkin.

[85] A local authorities' forum designed to lead and influence the development of national strategy and policies for local registration services.

CHAPTER 2
WHY IS THERE A NEED FOR LAW REFORM?

INTRODUCTION

2.1 If we test the current rules regulating how couples can marry against the criteria that the law should be fair, modern, simple and as cost-effective as possible, it is clear that they fail to meet those standards in a number of respects. The current law is of considerable antiquity and has become unduly complex. There is both a high level of uncertainty on key aspects of the law and a concern that the current requirements are overly restrictive. There are also indications that it does not operate as efficiently or fairly as it both could and should.

2.2 Before examining these problems, a brief sketch of the current law is necessary. Very broadly, for opposite-sex couples the law recognises three routes into marriage.

(1) A religious route into marriage where Anglican preliminaries are followed by an Anglican ceremony.

(2) A civil route into marriage where civil preliminaries are followed by a civil ceremony either in a register office or on approved premises.

(3) A mixed route into marriage where civil preliminaries precede one of four types of religious ceremony. The ceremony can be:

(a) "according to the usages of the Jews";

(b) "according to the usages of the Society of Friends" (Quakers); or

(c) "such form and ceremony" as the parties wish, in a place of religious worship registered for the solemnization of marriage; or

(d) "according to the rites of the Church of England".[1]

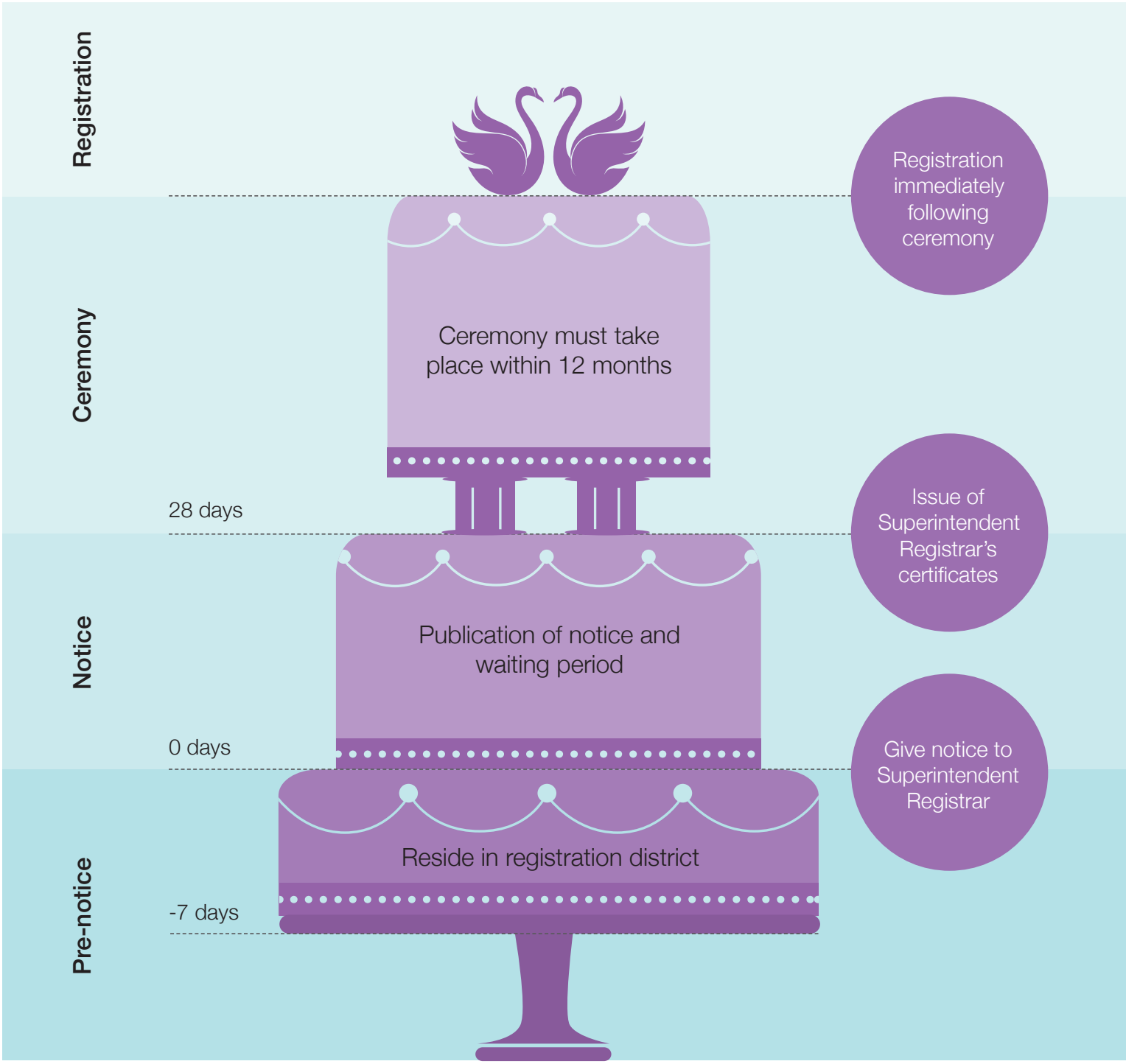
2.3 The steps and their timings for two common marriage situations – Anglican ceremonies following the publication of banns, and civil ceremonies and all other religious ceremonies following civil preliminaries – are illustrated in Figure 6: The Standard Steps for Marrying, on the following page. Following after that, Figure 7: Routes to Marriage illustrates the different routes to marriage, or the different types of marriage ceremonies – Anglican, civil in a register office and on approved premises, Society of Friends, Jewish, and other religions. For each route to marriage the figure shows the governing part of the Marriage Act 1949 and the legal requirements for the ceremony.

[1] Marriage Act 1949.

Figure 6

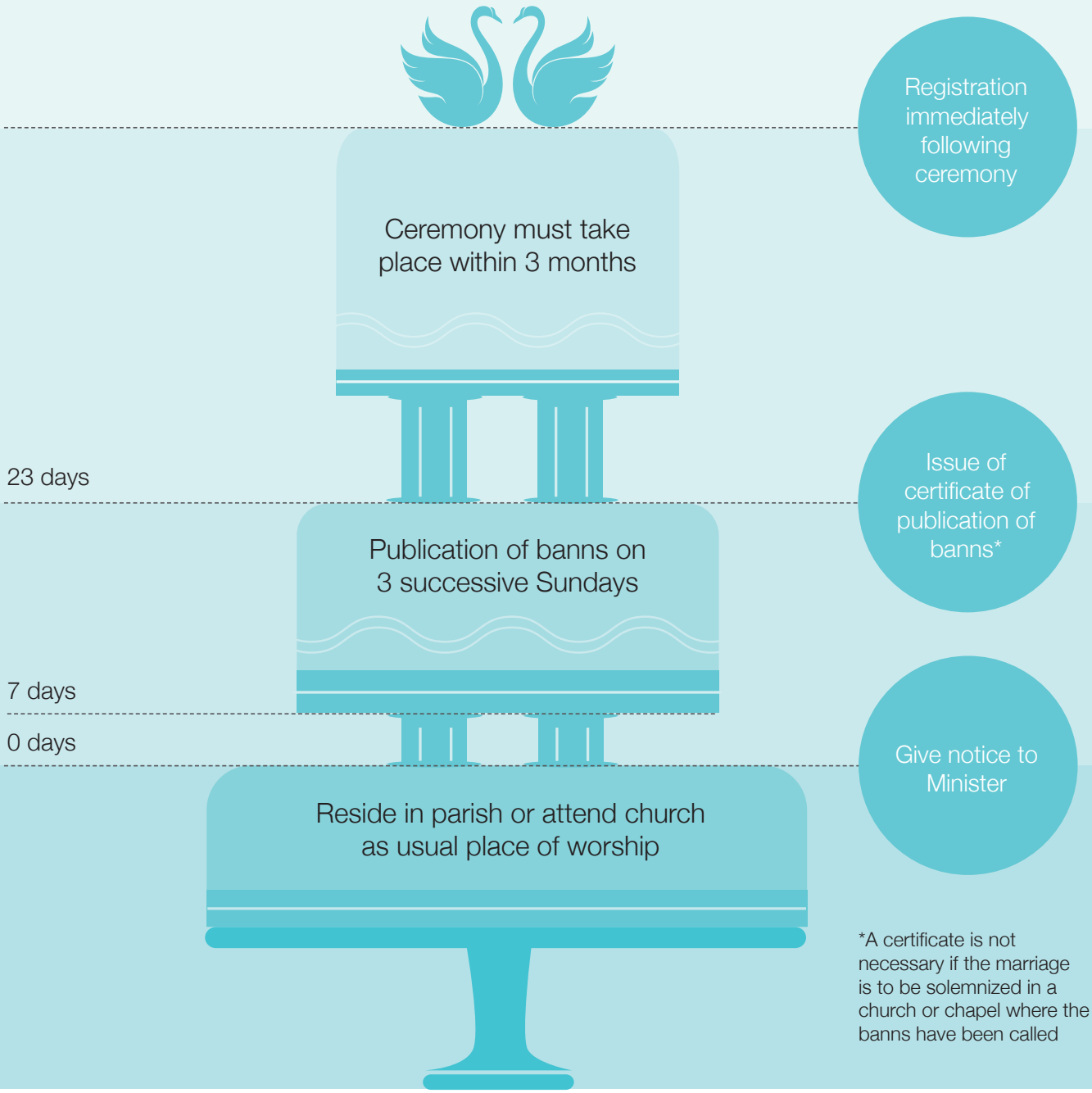
THE STANDARD STEPS FOR MARRYING

Civil and Religous*



* Other than Church of England and Church in Wales

Church of England and Church in Wales

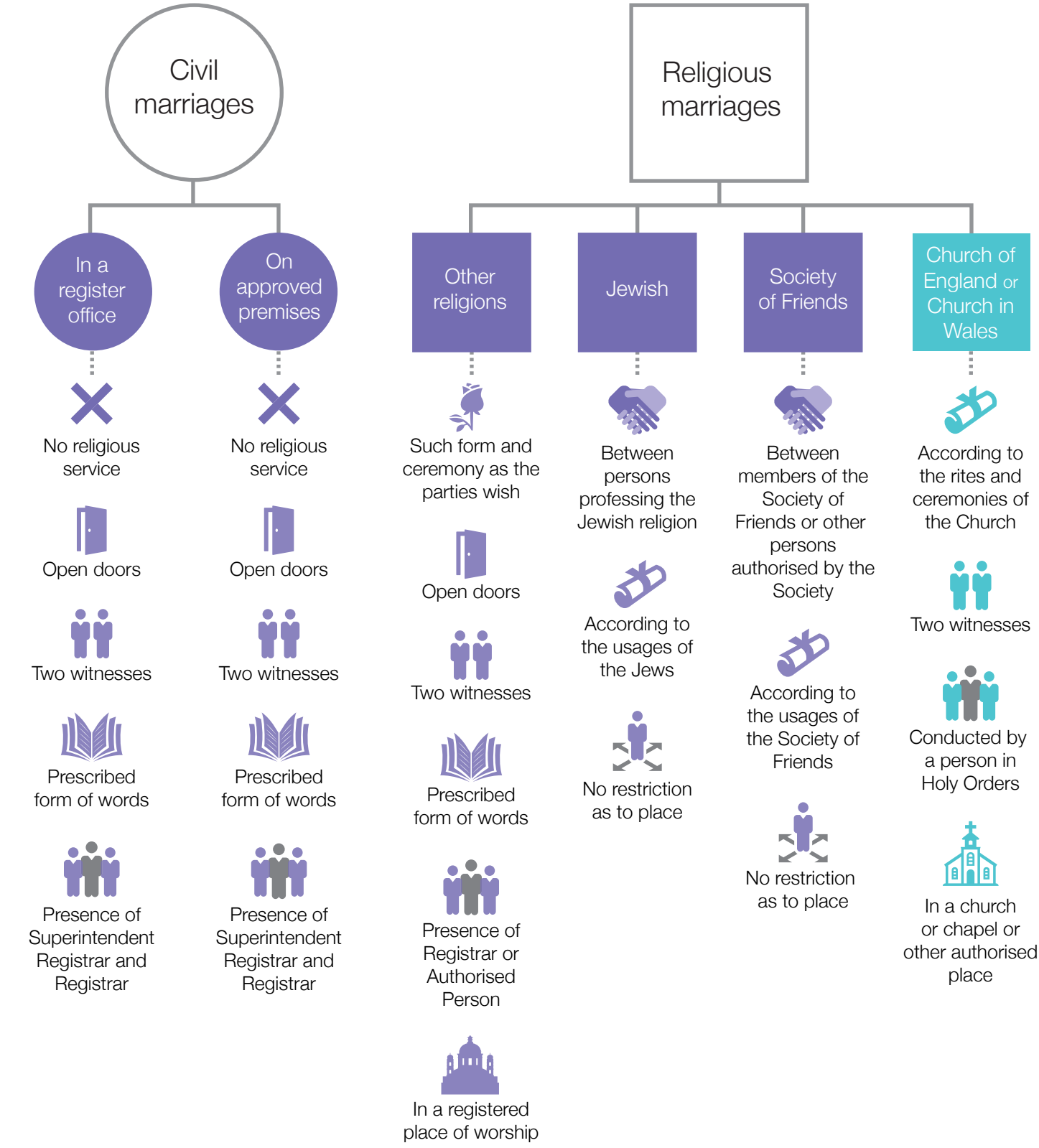


This diagram shows the steps for the solemnization of a civil marriage in a register office or on approved premises or a religious marriage in a registered building, and a Church of England or Church in Wales marriage in a church or chapel in which one of the parties usually worships or in a parish where at least one of the parties resides, after the publication of banns. The steps set out are those that would apply where both parties are British citizens, EEA nationals or nationals of Switzerland.

Figure 7

ROUTES TO MARRIAGE

Solemnization of marriages under the Marriage Act 1949



◆ Under Part III of the Marriage Act 1949: Marriages under Superintendent Registrar's Certificate

◆ Under Part II of the Marriage Act 1949: Marriage according to the rites of the Church of England

2.4 For same-sex couples there is no purely religious route into marriage, as marriage within the Anglican church is not an option. The civil routes into marriage are the same as for opposite-sex couples, and exactly the same venues will be available. Marrying according to the usages of Jews or Quakers, or according to the rites of any other recognised religion, may be possible but depends upon the exercise of an opt-in by the religious body in question, and there is no compulsion to opt-in.[2]

2.5 Each of these different routes, whether for same-sex couples or opposite-sex couples, is subject to different kinds of requirement. These differences make it difficult to identify what our law regards as key to a marriage. Virtually every legally valid marriage will involve some form of notice to the state or the Anglican church and a ceremony, and will involve some third person in either celebrating or registering the marriage, but that is all that they can be said to have in common.

2.6 The reason for the different routes is largely historical, as the first section of this chapter will show. The result is considerable complexity, as the second (and of necessity longest) section will demonstrate. The third section will show how the lack of common requirements also contributes to the lack of certainty: while at one level it is clear enough what couples should do if they wish to marry, it is far from clear what the result is if they fail to comply with certain requirements. The impact of this lack of certainty – and of the current legal restrictions – varies between different religious and indeed non-religious groups, and the fourth section will set out how the current law could be perceived to be unfair. The fifth section addresses the potential inefficiencies in the current system.

FAR FROM MODERN

2.7 Our law of marriage was designed in and for another age. The current Marriage Act, passed in 1949, was merely a consolidating measure[3] and the structure of the current law remains in essence that of the Marriage Act 1836.

[2] See Marriage (Same Sex Couples) Act 2013, ss 1(2) and 2; Marriage Act 1949, ss 26, 26A and 26B.

[3] It was one of the first measures passed under the Consolidation of Enactments (Procedure) Act 1949, which allowed legislation to be not only consolidated but also reformed in minor respects without the need for full debate by Parliament.

2.8 Nor were legislators starting with a blank slate even then. The 1836 Act preserved the possibility of a marriage being celebrated exclusively according to Anglican rites, after either the calling of the banns or the grant of either a common or special licence. These requirements had been given statutory force by legislation in 1753,[4] but had a still longer history as part of the canon law of the church. Common and special licences[5] can be formally dated to legislation passed in 1533[6] but even this legislation had an earlier precedent in papal dispensations. The calling of the banns – announcing an intended marriage in church on three occasions – has an even longer history, being required for a regular marriage since the twelfth century.[7]

2.9 Of course, the fact that elements of the current law have a long history is not in itself evidence that they are outdated; indeed, their longevity may be evidence of their efficacy. But it is worth noting the very different context in which banns were originally called: in small, rural communities in which social life focused on the church, announcing the marriage during divine service was a guaranteed way of bringing it to the attention of the community and ensuring that any potential problems were identified. No such assumption can be made today, with a population many times larger, a mostly urban society, and dwindling church attendance. Indeed, similar points were made by Lord John Russell in 1836 when proposing universal civil preliminaries, although in the event the only change made at that time was to allow for the possibility of an Anglican ceremony taking place after civil preliminaries.[8]

[4] The Clandestine Marriages Act 1753, often referred to as Lord Hardwicke's Act.

[5] A common licence allows a marriage to take place in church without the banns having been called; a special licence allows a marriage to take place anywhere: see paras 2.24 to 2.25 below. Both require the applicant to swear that there is no impediment to the marriage.

[6] Ecclesiastical Licences Act 1533.

[7] C McCarthy (ed), *Love, Sex and Marriage in the Middle Ages: A Sourcebook* (2004) p 75; RH Helmholz, *The Oxford History of the Laws of England: Volume I. The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (2004) p 524. A regular marriage was one that complied with all of the requirements of the canon law.

[8] *Hansard* (HC), 12 February 1836, vol 31, col 375; Marriage Act 1836.

2.10 At the same time, calling the banns is probably no less effective than the current civil system of publishing notices as a means of identifying potential bars to the marriage. When civil preliminaries were first introduced in 1836, notices of marriages were read out at meetings of the Poor Law guardians. This, however, created a link between civil marriage and the workhouse, which caused some dissatisfaction. The Marriage and Registration Act 1856 substituted for that practice the requirement that notices of marriage be posted outside the register office for a specified period,[9] which continues to this day.[10] We have been told that there is still no database of existing marriages against which notices can be checked,[11] and would-be bigamists who claim to be single would not be asked to verify their status.

2.11 A second element of the system as enacted in the Marriage Act 1836 – the requirement that a marriage be solemnized in a specific building – was both a historical legacy and a reflection of the social conditions then prevailing. The 1604 canons of the Church of England had stated that marriages should be celebrated in the church of a parish where at least one of the parties was resident. Marrying in the wrong church, or outside any church, rendered the marriage clandestine and potentially exposed the parties to ecclesiastical penalties but it did not render the marriage void. The late seventeenth century then saw an increasing number of marriages being celebrated in a church to which the parties did not belong, and the early years of the eighteenth saw an even more dramatic increase in the number of marriages taking place outside any church. The most notorious venue for such clandestine marriages was the area surrounding the Fleet prison in London, where less scrupulous clergymen married couples without asking too many questions about their eligibility. By the 1740s it was estimated that about half of all marriages in London were being conducted in this way. The Clandestine Marriages Act 1753 was an attempt to stamp out this practice and made marrying in church an essential part of the process.[12]

[9] It also impressed on the parties the need to give accurate information by requiring them to make a solemn declaration and criminalising the provision of false information in the notice.

[10] Marriage Act 1949, ss 27(4) and (4D) and 31. Practice does, however, vary as to how notices of marriage are publicised: see para 2.97 below.

[11] Although see para 2.28 below on the database of existing notices.

[12] See R Probert, *Marriage Law and Practice in the Long Eighteenth Century* (2009) p 228.

2.12 When the possibility of allowing a wider range of ways of creating a legal marriage was considered in 1836, little thought was given to the venue for civil marriages, it being simply proposed that the couple "should go before the chief superintendent of the district".[13] The main focus was on the marriages of Protestant dissenters.[14] The proliferation of different denominations meant that no attempt was made to authorise marriages according to the usages of particular organisations. Instead, it was provided that each dissenting chapel should be licensed on an individual basis, and only if 20 householders were willing to sign a declaration that they were "in the habit of attending the chapel, and that they knew it to be constantly used as a place of public worship".[15] In addition, given that dissenting ministers had not necessarily undergone a formal procedure of ordination, it was felt that a registrar would also have to be present at the marriage in any such chapel.[16]

2.13 This somewhat idiosyncratic buildings-based system has remained unchanged ever since. Dissatisfaction among non-conformist groups with the presence of a registrar being required did however lead to reform in the late nineteenth century. The Select Committee on Non-Conformist Marriages (Attendance of Registrars) found that strains on the system meant that registrars did not always turn up to marriages that they were due to attend. This meant that non-conformists either had to cancel the wedding at the last minute or go through with a marriage that was not legally binding.[17] In response to this, the Marriage Act 1898 introduced the possibility of the trustees of a registered building appointing an authorised person to be present at the marriage in place of the registrar. It did not, however, make it a requirement for them to do so, with the result that some places licensed for marriage still require the presence of a registrar when conducting the wedding.

2.14 There were, however, two groups to whom neither of these regulations applied. Jews and Quakers had married in this country according to their own rites since the seventeenth century and had been exempted from the Clandestine Marriages Act 1753.[18] While the Marriage Act 1836 required couples marrying according to their usages to give notice to the registrar,[19] and made provision for the registration of their marriages, it made no further attempt to regulate them.

[13] *Hansard* (HC), 12 February 1836, vol 31, col 377.

[14] Roman Catholic marriages were included in the scope of the provisions but received little independent discussion.

[15] *Hansard* (HC), 12 February 1836, vol 31, col 376.

[16] Above; Marriage Act 1836.

[17] *Hansard* (HC), 23 March 1898, vol 55, cols 631 to 640.

[18] See R Probert, *Marriage Law and Practice in the Long Eighteenth Century* (2009) Ch 5.

[19] Even this minor amendment met with opposition from no less a personage than the Archbishop of Canterbury, who described the arrangements made by the Jews and Quaker as "so perfect that it was impossible there could be any clandestine marriages among them": *Hansard* (HL), 11 July 1836, vol 35, col 83.

2.15 To sum up, the rules regulating Anglican marriages date back to before the Reformation, the specific exemption for marriages according to the usages of Jews or Quakers to 1753, and the dual system of preliminaries and the basic structure of other religious marriages, as well as civil marriages, to 1836. On the pages following, see Figure 8: Legislation governing the solemnization of Marriages and formation of Civil Partnerships, which shows the key legislative amendments to the law from the seventeenth century to the present.

UNDULY COMPLEX

2.16 The complexity of a particular area of law is not intrinsically problematic, as long as there is an underpinning rationale for the different elements of the scheme and it is understood by those affected. However, as the preceding section's brief sketch of the historical development of the law suggests, many of the complexities of the current system are the product of historic policy choices rather than current needs. The Joint Working Party that reviewed the law in 1971 felt that those affected – whether they were getting married or were involved in the administration of the law – did not always understand the law,[20] and the current rules are even more complex and confusing. Comparative research suggests that marriage law need not be so complex, and that a simpler and more easily understandable system could be devised.

2.17 In order to demonstrate the complexity of the current law, this section will examine the requirements that apply at each stage of the process of getting married and will show how they differ according to the particular route chosen.

Preliminaries

2.18 At present there is a dual system of Anglican and civil preliminaries. Anglican preliminaries can only be used if the parties are marrying according to the rites of the Church of England or the Church in Wales. Civil preliminaries may also be used to authorise an Anglican marriage,[21] and must be used for a marriage according to any other rites.[22]

Anglican preliminaries

2.19 Anglican preliminaries can take one of three different forms: the calling of the banns on three successive Sundays, the obtaining of a common licence, or the obtaining of a special licence.[23]

[20] Family Law: Solemnisation of Marriage in England and Wales (1971) Law Commission Consultation Paper No 35, para 5.

[21] Marriage Act 1949, ss 5(1) and 26(1)(e).

[22] Marriage Act 1949, s 26(1). Each party must give notice and receive a certificate to proceed. Deathbed marriages are the exception: see para 2.32 below.

[23] Marriage Act 1949, s 5(1).

Legislation governing the solemnization of Marriages and formation of Civil Partnerships

1533 **Ecclesiastical Licences Act**: provides for the issue of a special licence by the Archbishop of Canterbury.

1653 **Marriage Act**: introduces universal civil marriage and does not recognise any other form of marriage.

1657 **An Act touching several Acts and Ordinances made since the twentieth of April, 1653, and before the third of September, 1654, and other Acts**: removes the clause stating that forms of marriage other than civil marriage will be void.

1660 **Confirmation of Marriages Act**: restores church marriage; removes civil marriage as an option.

1753 **Clandestine Marriages Act**: requires all marriages to be according to Anglican rites; those outside a church, or without appropriate preliminaries, are void. Only Quakers, Jews, and members of the royal family are exempt.

1823 **Marriage Act**: provides that a marriage will only be void if both parties "knowingly and wilfully" fail to comply with the required formalities.

1836 **Births, Deaths and Marriage Registration Act**: creates the General Register Office, which is from then on the responsible state body for the registration of certain events, including marriages.

1836 **Marriage Act**: provides for civil marriage and other religious marriage; Jews and Quakers are also brought within the statutory scheme but are left relatively unregulated.

1855 **Places of Worship Registration Act**: amends the law concerning the certifying and registering of places of religious worship. In particular it provides for the certifying of places of worship of *any* religious body or denomination.

1886 **Marriage Act**: extends the hours within which marriages can be solemnized from between 8am and noon to between 8am and 3pm.

1898 **Marriage Act**: enables trustees of registered buildings to appoint an "authorised person" to ensure that the marriage is registered, meaning that a registrar need not be present at the marriage.

1919 **Welsh Church Temporalities Act**: preserves the position of the Church in Wales as the same as the Church of England under the marriage legislation despite the disestablishment of the Church in Wales by the Welsh Church Act 1914, which comes into force and takes effect in March 1920.

1934 **Marriage (Extension of Hours) Act**: further extends the hours within which marriages can be solemnized to between 8am and 6pm.

1949 **Marriage Act**: consolidates existing statutes.

1970 **Marriage (Registrar-General's Licence) Act**: allows deathbed marriages to be conducted according to non-Anglican rites.

1983 **Marriage Act**: provides for couples to marry at their current place of residence where one party is detained or housebound.

1983 **Pastoral Measure (No. 1)**: allows banns to be called in one of a group of Church of England churches for a marriage that is to take place in any church within that group

1986 **Marriage (Wales) Act**: applies to the Church in Wales the same changes made by the Church of England in the 1983 Pastoral Measure.

1994 **Marriage Act**: expands the venues for civil weddings to include "approved premises" and Register Offices in any district.

1996 **Marriage Ceremony (Prescribed Words) Act**: introduces options for the "prescribed words" that must be included in a civil or religious ceremony (other than an Anglican, Jewish or Quaker ceremony).

1999 **Immigration and Asylum Act**: imposes a standard waiting period, between giving notice and receiving authority to marry, of 15 days for all marriages.

2004 **Civil Partnership Act**: introduces civil partnerships for same-sex couples.

2007 **Forced Marriage (Civil Protection) Act**: protects individuals from being forced to enter into marriage without their full and free consent and protects those individuals who have been so forced.

2008 **Church of England Marriage Measure (No 1)**: introduces the concept of a "qualifying connection" to enable couples to marry in a wider range of Church of England churches.

2010 **Marriage (Wales) Act**: applies to the Church in Wales the same changes made by the Church of England in the 2008 Marriage Measure.

2010 **Equality Act**: enables civil partnerships to be formed on religious premises, in circumstances where the governing body of the relevant religion consents.

2012 **Protection of Freedoms Act**: removes all time limits restricting the hours during which a marriage may take place.

2012 **Church of England (Amendment) Measure**: combines the effect of the 1983 and 2008 Church of England Measures so that banns may be called in any church which is part of a group of churches, where a couple are entitled to marry in one of the churches in the group based on a qualifying connection.

2013 **Marriage (Same Sex Couples) Act**: allows same-sex couples to marry.

2014 **Immigration Act**: extends the standard waiting period to 28 days and provides for a separate scheme for "non relevant nationals", who may no longer marry on the authority of ecclesiastical preliminaries apart from the Archbishop of Canterbury's Special Licence.

2.20 The provisions relating to banns are particularly complex, with no fewer than 15 sections of the 1949 Act being devoted to them. The legislation goes into particular detail regarding where banns should be published.[24] Special rules apply where one of the parties is resident in Scotland or Ireland or is "an officer, seaman or marine borne on the books of one of His Majesty's ships at sea".[25] Provision is also made for the calling of the banns in a public chapel, as well as if the church is located in an extra-parochial place,[26] being repaired or rebuilt, subject to union with another parish, or, in a reminder of the age in which the 1949 Act was drafted, injured by war damage.[27]

2.21 More recent reforms allow banns to be called in one of a group of churches for a marriage that is to take place in any church within that group.[28] In addition, following the introduction of the possibility of marrying in a parish on the basis of a qualifying connection, rather than solely on the basis of residence, banns are also to be called in the parish where the parties are planning to marry.[29]

2.22 Further provisions deal with the manner in which banns are to be published, and with the means by which the fact of the banns having been called is to be certified to the person solemnizing the marriage.[30] There is also a considerable body of case law, albeit now of some antiquity, on the interpretation of the requirement that banns must be "duly published":[31] historically, a number of marriages were invalidated on account of the true names of the parties not being used.[32]

[24] Marriage Act 1949, s 6.

[25] See respectively Marriage Act 1949, ss 13 and 14.

[26] This is a place that is not part of any parish.

[27] See respectively Marriage Act 1949, ss 20, 21, 23, 10 and 19. The last two of these provisions do not apply in Wales or Monmouthshire: see s 80(3) and Sch 6.

[28] Pastoral Measure 1983, Sch 3, para 14(4); Marriage (Wales) Act 1986, s 1.

[29] Church of England Marriage Measure 2008, s 1(5). Since such measures do not apply to the Church in Wales it was necessary for the latter to gain both the time and support to change the law by means of a Private Members' Bill: see now the Marriage (Wales) Act 2010, s 2(5).

[30] See respectively Marriage Act 1949, ss 7 and 11.

[31] See R Probert, *Marriage Law and Practice in the Long Eighteenth Century* (2009) Ch 8.

[32] Since the Marriage Act 1823, a marriage will only be void if both parties knew that the banns had not been duly published. As a result, it is very rare for a marriage to be annulled on this basis: see above. Where a court annuls a marriage it is declaring that a marriage was not legally valid or has become legally invalid.

2.23 The minimum period that must elapse between the couple indicating their desire to marry and the marriage taking place is in theory 16 days, since the banns must be called on three successive Sundays.[33] However, members of the clergy are not required to publish the banns unless they have been given seven days' notice,[34] and we have been told that in practice the calling of the banns will be completed some weeks before the marriage takes place. A marriage must be solemnized within three months of the completion of the publication of banns.[35]

2.24 A common licence allows a marriage to take place in church without the banns having been called. In order for a common licence to be granted, application must be made to the registry for the diocese where the wedding is to take place. One of the parties must declare that there is no impediment to the marriage, that at least one of them can satisfy the requirements as to either residence or a qualifying connection, and, if either is under the age of 18, that the requisite consents have been obtained.[36] Given that a common licence may permit the marriage to take place more or less immediately, the fact that there is no need to satisfy the residential requirements as long as a qualifying connection can be established makes this an attractive option for those resident outside the jurisdiction[37] (an option that would not, it should be noted, be available to those wishing to marry according to other rites). A marriage must be solemnized within three months of the grant of a common licence.[38]

2.25 Special licences, meanwhile, remain governed by the Ecclesiastical Licences Act 1533. Application must be made to the Faculty Office of the Archbishop of Canterbury, whose website explains that such licences are granted "at the discretion of the Archbishop and in accordance with criteria personally set down by him".[39] A marriage authorised by a special licence, which removes the need for banns to be called, can take place anywhere, but a connection with the intended place of marriage must be shown. For example the couple must have worshipped there, or in the case of a school or college chapel, studied or worked there – and certain personal conditions must also be satisfied.[40]

[33] Marriage Act 1949, s 7(1).

[34] Marriage Act 1949, s 8.

[35] Marriage Act 1949, s 12(2).

[36] Marriage Act 1949, s 16; Church of England Marriage Measure 2008, s 2; Marriage (Wales) Act 2010, s 3.

[37] At least as long as they are "relevant nationals" within the terms of the Marriage Act 1949, s 78 (as amended by the Immigration Act 2014, Sch 4, para 17). Those who are not may not marry by common licence: see Marriage Act 1949, s 5(3)(b).

[38] Marriage Act 1949, s 16(3).

[39] The Faculty Office, *Would I be eligible to get a Special Licence?*, http://www.facultyoffice.org.uk/special-licences/would-i-eligible-to-get-a-special-licence/ (last visited 4 December 2015).

[40] These include the approval of the parties' families, and the consent of both the minister of the church where the service is to be held and the minister who is to conduct the service. The minister(s) of the parish(es) where the parties reside should also have been consulted. See above.

2.26 Within this system, much is taken on trust, although amendments made by the Immigration Act 2014 do now require "specified evidence" that both of the persons marrying are "relevant nationals".[41] Members of the clergy are not obliged to publish the banns of matrimony unless written notice of the parties' names and place of residence has been provided,[42] but there is no statutory power to call for documentary evidence of these details. Similarly, obtaining a common licence requires a declaration rather than documentary evidence.[43]

Civil preliminaries

2.27 Civil preliminaries, meanwhile, have been subject to increasing regulation. Notice must be given by each party in the registration district in which he or she has been resident for at least seven days (to meet the required period of residence).[44] The original twin-track procedure whereby different fees were payable depending on whether the waiting period between giving notice and authorisation for the marriage to go ahead was one day or 21 days[45] was abolished by the Immigration and Asylum Act 1999, which required all non-Anglican marriages to be preceded by a superintendent registrar's certificate and imposed a standard waiting period of 15 days.[46] The Immigration Act 2014 subsequently extended the waiting period to 28 days.[47] Once granted, a superintendent registrar's certificate remains valid for 12 months.[48] Since each party needs a valid certificate for the marriage to proceed,[49] these stipulations as to time need to be satisfied in relation to each.

41 Immigration Act 2014, s 57(3) and (4), amending Marriage Act 1949, ss 8 and 16. Those who are not either British citizens, EEA nationals, or nationals of Switzerland must give notice to a superintendent registrar or apply to the Faculty Office of the Archbishop of Canterbury for a special licence.

42 Marriage Act 1949, s 8.

43 Marriage Act 1949, s 16(1).

44 Marriage Act 1949, s 27.

45 See Family Law: Solemnisation of Marriage in England and Wales (1971) Law Commission Consultation Paper No 35, paras 7 to 8.

46 Immigration and Asylum Act 1999, s 160.

47 The period begins the day after notice of the marriage is entered: Immigration Act 2014, s 62; Marriage Act 1949, s 31. It may be extended to 70 days where the marriage is suspected of being a sham: see Marriage Act 1949, s 28H and Sch 3A (as inserted by Immigration Act 2014, Sch 4, paras 8 and 9).

48 Marriage Act 1949, s 33(3)(b). A shorter period of validity of three months is prescribed in relation to the marriages of the housebound or detained: Marriage Act 1949, s 33(3)(a).

49 Marriage Act 1949, s 26(1).

2.28 In addition, as part of the process of giving notice the parties will be required to produce a considerable amount of documentary evidence. The Immigration and Asylum Act 1999 finally gave superintendent registrars a statutory power to ask for documentary evidence confirming the age, identity and marital status of the parties seeking to marry,[50] while the Immigration Act 2014 additionally required specified evidence of residence and nationality.[51] We have been told that all the information provided by the parties will be entered onto an online database. This is useful in avoiding duplication of certain details where the parties have given notice separately. It can also identify whether either of the parties has given notice of their intention to marry anyone else, and whether any legal objections have been lodged.

2.29 We understand that registrars are also trained in the detection of sham and forced marriages. Even if the couple attend to give notice together, they will be interviewed separately in order to verify that both wish to proceed with the marriage. Those who are not relevant nationals and who are subject to immigration control are required to give notice at a designated register office.

2.30 As a result of these successive changes, the differences between civil and Anglican preliminaries are bigger than ever before. The minimum period required for banns to be called or a common or special licence to be issued is less than for a superintendent registrar's certificate (and significantly so in the case of a licence). Registrars will as a matter of course require to see a wide range of documentation and have legal powers to call for it if it is not forthcoming; Anglican clergy, by contrast, do not, save in relation to the parties' immigration status. As a result, it may be easier for couples marrying in the Anglican church to enter into marriages that do not comply with the legal requirements. Inconvenience may also be caused where the form of authorisation has lapsed, which is more likely to be the case for Anglican preliminaries, because these are only valid for three months.

2.31 Additional evidence must be provided in relation to the marriages of those who are either housebound on account of their illness or disability or detained in a prison or hospital. Notice must still be given by each party to a superintendent registrar,[52] although he or she will usually go to the detained or housebound person for this purpose. In the case of the housebound, the notice must be accompanied by a statement from a registered medical practitioner that the illness or disability of the individual in question means that they ought not to be moved from their current location and that this will continue for at least the next three months.[53] Where the person is detained, there must be an accompanying statement from the responsible authority confirming that there is no objection to the marriage being solemnized in the prison or hospital.[54]

[50] This had been recommended by the 1990 White Paper (Registration: Proposals for Change (1990) Cm 939, para 3.15) and was finally implemented by s 162 of the Immigration and Asylum Act 1999.

[51] Marriage Act 1949, s 28B (as inserted by Immigration Act 2014, Sch 4, para 7).

[52] Marriage Act 1949, s 26(1)(dd).

[53] Marriage Act 1983, s 1(2); Marriage Act 1949, s 27A(2) and (7).

[54] Marriage Act 1983, s 1(3); Marriage Act 1949, s 27A(3) and (7).

2.32 There is also a separate procedure for deathbed marriages. It has always been possible for such marriages to be authorised by the Archbishop of Canterbury's special licence, but it was not until 1970 that specific provision was made for the Registrar General to grant a licence for non-Anglican ceremonies to be used in this context.[55] The essential condition for the grant of such a licence is that one of the parties is seriously ill and not expected to recover, and is unable to be moved to one of the places where marriages are permitted to be solemnized under the Marriage Act 1949.[56] This of necessity requires the modification of the usual rule that both parties are required to give notice in their district of residence; instead, one alone will give notice.[57] The matter will then be referred to the Registrar General and evidence may be required to show that there is "sufficient reason" to grant the licence and that the other party "is able to and does understand the nature and purport of the marriage ceremony".[58] Once issued, the licence is valid for one month.[59]

2.33 On the following page, Figure 9: Legal Authority illustrates the current dual system of preliminaries. Starting with the two broad categories under the Marriage Act 1949 – Anglican and all other marriages – the infographic divides those categories into the locations where marriage ceremonies can take place. Following from there, it illustrates the different types of legal authority that can authorise a marriage in those locations. The figure illustrates the complexity of the system as well as the wider range of preliminaries available to authorise Anglican marriages compared to all other types of ceremony.

Location

2.34 The rules as to where a marriage can take place are even more complex, regulating both the district and the venue, and differing not only between civil and religious marriages but also between different religious groups.

District

2.35 The simplest rules are those that apply to civil marriages and to marriages according to the usages of the Jews and the Quakers. A civil marriage, whether in a register office or on approved premises, can take place in any registration district,[60] while the legislation does not stipulate any conditions on the district in which marriages according to the usages of the Jews or Quakers may take place. This is therefore simply a matter for the usages of these particular groups.

[55] Marriage (Registrar General's Licence) Act 1970.

[56] Marriage (Registrar General's Licence) Act 1970, s 1(2).

[57] Marriage (Registrar General's Licence) Act 1970, s 2(1), requiring notice to be given to the superintendent registrar "of the registration district in which it is intended that the marriage shall be solemnized".

[58] Marriage (Registrar General's Licence) Act 1970, s 3(c) and (d). Evidence from a registered medical practitioner will be accepted as proof that the conditions for a deathbed marriage are met and that the sick person has the relevant capacity to marry.

[59] Marriage (Registrar General's Licence) Act, s 8.

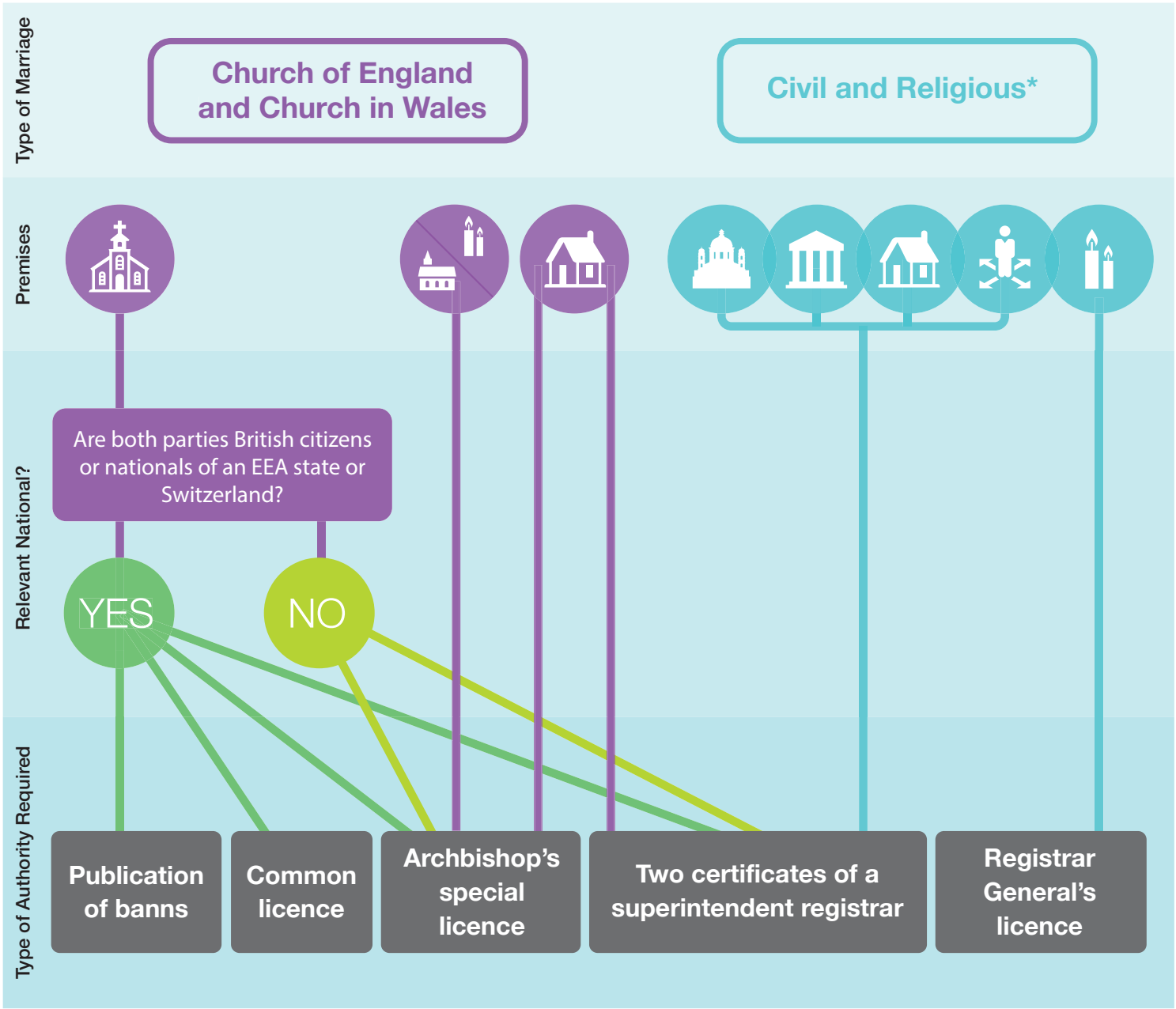
[60] See Marriage Act 1949, s 35(2A) and (2B) (as amended by the Marriage Act 1994).

Figure 9

LEGAL AUTHORITY

Which form of legal authority can be used to authorise a marriage?

- In an Anglican church or chapel
- In a registered place of worship
- In a register office or on approved premises
- In any location, often in a university or private chapel or a private residence of a person who is near to death
- In a place of residence, where the person is housebound or detained, eg a hospital or prison
- In any location, for marriages according to the usages of the Jews or the Society of Friends
- In any place other than at a registered building, register office or approved premises, when one of the parties is seriously ill and is not expected to recover and cannot be moved



* Other than Church of England and Church in Wales

2.36 Marriages according to Anglican rites are subject to rather more regulation. The Marriage Act 1949 envisaged that such marriages would take place in the parish where at least one of the parties was resident. Since 2008,[61] however, it has been possible for a couple to marry in a parish to which at least one of them has a qualifying connection. Such a connection can be established by one of the parties' own residence, worship, baptism, or confirmation in that parish, by a parent's residence, worship or marriage, or by a grandparent's marriage.[62]

2.37 A marriage according to the rites of any other religious organisation is even more restricted. The basic rule is that it must take place in the registration district in which at least one of the parties resides.[63] Two narrowly defined alternatives exist. One is if they declare at the time of giving notice that "to the best of their belief" there is no registered building linked to their particular religious body in their registration district(s) and state both the nearest registration district in which there is such a registered building and the particular building in which the marriage is intended to be solemnized.[64] The second is that the registered building identified is the usual place of worship of at least one of the persons intending to marry.[65] Even with these alternatives, the choice of location is clearly more limited for couples marrying in this way than it is for those marrying in a civil ceremony, as well as being governed by different and generally more restrictive criteria from those relating to Anglican, Jewish and Quaker weddings.

Venue

2.38 The rules relating to the regulation of the venue follow a similar pattern in that differences exist between different religious groups as well as between civil and religious ceremonies. There is now an additional complication in that while all venues that are available for civil ceremonies will be equally available to opposite-sex and same-sex couples, this is not the case for religious buildings. The availability of any particular religious building will depend on an "opt-in" being exercised by those concerned.

[61] Or 2010 for those in Wales.

[62] Church of England Marriage Measure 2008, s 1(3); Marriage (Wales) Act 2010, s 2(3). Where the connection is based on residence or worship (current or past), this must have been for not less than six months. Confirmation is a service at which a person who is already baptised affirms their Christian faith.

[63] Marriage Act 1949, s 34.

[64] Marriage Act 1949, s 35(1).

[65] Marriage Act 1949, s 35(2). This particular possibility was introduced by the Marriage Act 1949 (Amendment) Act 1954.

CIVIL MARRIAGES

2.39 Civil marriages may take place in any register office or approved premises in England and Wales.[66] The latter are subject to detailed regulation set out in the Marriages and Civil Partnerships (Approved Premises) Regulations 2005,[67] supplemented by guidance issued by the Registrar General. It will be for the local authority to decide whether the regulations are satisfied[68] and whether approval should be granted.[69] The conditions can be broadly grouped into three types.

(1) *Structural*: premises are defined as a "permanently immovable structure comprising at least a room, or any boat or other vessel which is permanently moored".[70] The room(s) for proceedings must also be identifiable as a distinct part of the premises.[71]

(2) *Suitability*: the premises must be a "seemly and dignified venue for the proceedings".[72] They must not be religious premises or a register office.[73] There are also detailed requirements relating to health and safety.[74]

[66] Marriage Act 1949, s 26(1)(b) and (bb).

[67] SI 2005 No 3168. All non-religious premises approved for the solemnization of marriages must also be approved for the formation of civil partnerships. Applications may be made for religious premises to be approved for the formation of civil partnerships.

[68] Application must be made by a proprietor or trustee of the premises to the proper officer of the authority. Above, regs 3 and 3A.

[69] Marriage Act 1949, s 46A(2).

[70] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, reg 2(1).

[71] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, Sch 1, para 5. These structural requirements have been broadly interpreted as discussed at para 1.28 above.

[72] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, Sch 1, para 1.

[73] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, Sch 1, para 4. However, approved premises may be located in premises that also contain a register office so long as the proposed room(s) for the proceedings is separate from the register office.

[74] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, Sch 1, para 3. In addition, reg 5(1)(c) permits local authorities to impose such additional requirements relating to suitability as they see fit.

(3) *Availability*: the premises must be regularly available to the public for use for the solemnization of marriages and the formation of civil partnerships.[75] An authority may however refuse an application if it considers that having regard to the number of other approved premises in the area, the superintendent registrar and a registrar, or the civil partnership registrar, are unlikely to be available to regularly attend.[76]

2.40 A number of standard conditions will be imposed as part of the approval. The holder of the approval must ensure that there is at all times an appropriately qualified[77] individual who is responsible for ensuring compliance with the conditions. This person, or an appropriately qualified deputy, must be present on the premises for a minimum of one hour prior to and throughout the proceedings. During this period a notice stating that the premises have been approved for the proceedings and identifying and giving directions to the proceedings room must be displayed at each public entrance to the premises.[78] Any changes to the layout or use of the premises must be notified to the authority, and the premises must be made available at all times for inspection by the authority.[79]

2.41 A grant of approval will be for a period of at least three years.[80] Approval may, however, be revoked if the holder fails to comply with the conditions attached to the approval or if the use of the premises has changed so that they are no longer suitable for the proceedings.[81] In addition, if the Registrar General is of the opinion that there have been breaches of the law in respect of the proceedings on the premises, the authority may be directed to revoke its approval.[82]

[75] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, Sch 1, para 2. See also Registrar General, *The Registrar General's Guidance for the Approval of Premises as Venues for Civil Marriages and Civil Partnerships* (HM Passport Office, June 2015) para 3.2 and Annex F. However, the use of the premises can be refused on the grounds of sexual orientation where the premises are owned or controlled by a religious organisation and where certain criteria are met (see Equality Act 2010, s 196 and Sch 23, para 2).

[76] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, reg 5(2).

[77] An individual's "qualification" relates to his or her occupation, seniority and position of responsibility in relation to the premises or other factors that indicate he or she is in a position to ensure compliance with the conditions.

[78] No food or drinks may be sold or consumed in the proceedings room for up to one hour before or during the proceedings, with the exception that non-alcoholic drinks may be consumed prior to the proceedings.

[79] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, reg 6 and Sch 2.

[80] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, reg 7(1). The holder may request an earlier revocation: reg 8(10).

[81] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, reg 8(1).

[82] Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, regs 8(6) to (9).

RELIGIOUS MARRIAGES

Jewish marriages

2.42 Marriages according to the usages of the Jews are subject to no formal legal restrictions on the venue for the marriage. In practice, these usages require membership of the synagogue by which the marriage is to be registered. The actual ceremony need not take place in that synagogue, however, and we have been told of ceremonies taking place in private homes, on approved premises, and in the open air.

2.43 Where a same-sex couple profess the Jewish religion, they may marry according to the usages of the Jews if the "relevant governing authority" has provided written consent.[83]

Quaker marriages

2.44 Marriages according to Quaker usages are not subject to any formal legal restrictions on the venue for the marriage either. In practice, however, the small number of weddings that take place according to these usages are carried out in meeting houses or similar venues. Same-sex couples may marry according to Quaker usages, the recording clerk of the Society having given written consent.[84]

Anglican marriages

2.45 Anglican marriages, meanwhile, must be celebrated in "a church or other building in which banns may be published".[85] This phrasing dates back to the Clandestine Marriages Act 1753 and was intended to exclude private chapels, such as those of Oxbridge colleges or the Inns of Court. It is possible to have an Anglican marriage in these places, or in fact anywhere, but a special licence will be required to authorise this.[86]

[83] Marriage Act 1949, s 26B(4)(b). The identity of the relevant governing authority is determined by who has responsibility for registration of the marriage: see s 25B(5).

[84] Marriage Act 1949, s 26B(2) and (3).

[85] Marriage Act 1949, s 25(2)(a). See also ss 12(1) and 15. Under s 6(4) banns may be published in any parish church or "authorised chapel".

[86] See para 2.25 above.

Marriages according to the rites of other religions

2.46 Those marrying according to the rites of any other religion must marry in a place that is both certified as a place of worship and registered for marriage. The former is governed by the Places of Worship Registration Act 1855. It has been held that the term "religious" was intended to have, and should be given, a "broad sweep",[87] and as a result a broader range of religious groups are now able to have their buildings certified under the Act. Registration for the solemnization of marriage still requires essentially the same process as in 1836, with the support of at least 20 householders who use the building for public religious worship being required. If the building is to be registered for the solemnization of marriage of same-sex couples, the relevant governing body's consent will be required in addition to such support.[88]

2.47 The range of religions that have buildings certified as places of worship and registered for the solemnization of marriages is shown in Figure 10: Certified places of worship and those registered for the solemnization of marriage,[89] on the following page.

MARRIAGES OF THOSE WHO ARE HOUSEBOUND, DETAINED, OR TERMINALLY ILL

2.48 Again, special provision is also made for deathbed marriages and for those of the housebound and detained. A marriage on the authority of the Registrar General's licence should be solemnized in the place stated in the notice of marriage, and the same principle applies to the marriages of the housebound and detained.[90]

MARRIAGES IN CHAPELS OF THE ARMED FORCES

2.49 Special provision is also made for serving or former members of the armed forces or members of their family to marry in a chapel that has been certified as a naval, military or air force chapel.[91] The chapel may be licensed to solemnize marriages according to Anglican rites[92] or the rites of other religions.[93]

87 *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, [2014] AC 610 at [56].

88 Marriage Act 1949, s 26A(3). The "relevant governing authority" is "the person or persons recognised by the members of the relevant religious organisation as competent for the purposes of giving the consent": s 26A(4).

89 Source: HM Passport Office, *Places of worship registered for marriage* (2015), using data available as at 30 July 2015, https://www.gov.uk/government/publications/places-of-worship-registered-for-marriage (last visited 4 December 2015).

90 Marriage (Registrar General's Licence) Act 1970, s 9; Marriage Act 1949, s 27(3).

91 Marriage Act 1949, s 68.

92 Marriage Act 1949, s 69. An application must be made either by the Admiralty (for naval chapels) or the Secretary of State (for military and air force chapels).

93 Marriage Act 1949, ss 70 (opposite-sex marriages) and 70A (same-sex marriages). In the case of the latter the application to license the chapel must be made by the Secretary of State. The Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2014, SI 2014 No 815 provide that the Secretary of State must consult the relevant governing authority of the religious organisation and sets out the matters to which he or she must have due regard when deciding whether to make the application.

Certified places of worship and those registered for the solemnization of marriage

This table shows the range of religions that have buildings certified as places of worship, many of which are also registered for the solemnization of marriages.

The Supreme Court recently considered what amounts to a religion for these purposes; the following description was given by Lord Toulson in *R (Hodkin) v Registrar General of Births, Deaths and Marriages* ([2013] UKSC 77 at [57]):

"*…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. By spiritual or non-secular I mean a belief system which goes beyond that which can be perceived by the senses or ascertained by the application of science…Such a belief system may or may not involve belief in a supreme being… .* "

Religion	Number of places of worship	Registered for marriage of opposite-sex couples	Registered for marriage of same-sex couples
Aetherius Society	4	1	0
Bahai	7	1	0
Brahma Kumaris	7	0	0
Buddhist	88	14	1
Christian*	26,867	22,071	54**
Congregation of Yahweh	5	3	0
Das Dharam	3	1	0
Faithist	3	2	0
Hare Krishna	5	1	0
Hindu	201	97	0
Jain	6	4	0
Jewish	369	0	0
Kshatrya Sabna London Bhagat Namdev Mission	1	1	0
Mixed religion	11	3	0
Muslim	1,242	270	0
Objection to any particular religious appellation	47	14	0
Other	8	0	0
Pagan	2	1	1
Raman	1	0	0
Rastafarian	1	0	0
Ravidassia	12	11	0
Saint Nirankari	6	5	0
Sathya Sai Baha	1	0	0
Scientologist	10	9	0
Sikh	252	195	0
Spiritualist	450	335	24
Sri Chinmoy	3	0	0
Subud	7	0	0
Sukyo Mahikari	1	0	0
Taoist	1	0	0
Theosophy	8	0	0
Valmiki	7	5	0
Zoroastrian	2	2	0
Total	**29,638**	**23,046**	**80**

*Anglican churches are not included within this figure as they are not required to be certified as places of worship; Quaker places of worship are included. **Unitarian churches account for 40 of the 54.

Source: HM Passport Office

Given the number of certified places of worship it would not have been feasible to list them all individually; for that reason we have grouped the places of worship into categories of religion. The groupings are for illustrative purposes only and are in no way meant to be definitive.

"Mixed religion" comprises religious organisations that appear to combine elements of more than one established religious tradition. "Objection to any particular religious appellation" comprises religious organisations that are listed as such in the source document. "Other" comprises religious organisations about which we have been unable to find sufficient information to include them properly in any other category, and religious organisations which do not appear to follow any established religious tradition.

Person responsible

2.50 The role of the person or persons responsible for overseeing the marriage and ensuring that it is properly registered also differs between different groups.

Religious marriages

ANGLICAN MARRIAGES

2.51 Anglican marriages will be conducted by a clerk in Holy Orders, who is responsible for conducting the ceremony and ensuring that it is registered.[94] In the case of marriages in chapels belonging to the armed forces, the chaplain will be appointed by either the Admiralty (for naval chapels) or the Secretary of State (for military or air force chapels).[95]

JEWISH AND QUAKER MARRIAGES

2.52 The conduct of Jewish and Quaker weddings is left up to the religious organisations in question. The legislation does identify who is responsible for registering the marriage,[96] but their presence at the marriage is not explicitly required.

MARRIAGES ACCORDING TO THE RITES OF OTHER RELIGIONS

2.53 By contrast, the presence of either an authorised person or a registrar is needed at any marriage celebrated according to the rites of other religions or denominations. An authorised person is appointed to a specific building, but may also register marriages at other registered buildings within the same registration district.[97] As this indicates, under the terms of the legislation the role of the authorised person is not necessarily to conduct the marriage ceremony. The guidance issued by the Home Office makes it clear that "the responsible authorised person does not need to be the person who solemnizes the marriage; it may be anyone connected with the church".[98]

[94] Marriage Act 1949, ss 22 and 78(1). See also s 25(3).

[95] Marriage Act 1949, s 69(4).

[96] Marriage Act 1949, s 53(b) (the registering officer of the Society of Friends appointed for the district in which the marriage is solemnized) and 53(c) (the secretary of the synagogue of which either spouse is a member).

[97] Marriage Act 1949, s 44(2). The procedure is that two trustees or members of the governing body of the building in question complete the relevant form and send it to the General Register Office: ss 43 and 43B.

[98] General Register Office, *A Guide for Authorised Persons* (HM Passport Office, February 2015) para 1.31, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408482/APsGuideFebruary15final.pdf (last visited 4 December 2015). As noted above, the "authorised person" was conceived as a replacement for the registrar rather than as a celebrant.

Civil marriages

2.54 Marriages celebrated either on approved premises or in a register office require the presence of both the superintendent registrar and the registrar.[99] It is the responsibility of the former to conduct the wedding and the latter to register it.[100] This is the only form of marriage for which two persons with legal authorisation are required.

Marriages of those who are housebound, detained, or terminally ill

2.55 Again, special provisions apply to deathbed marriages, and those of the housebound or detained.[101] A clergyman is not permitted to solemnize a marriage on the authority of the Registrar General's licence,[102] but can solemnize a marriage in a prison or hospital on the authority of a superintendent registrar's certificate.[103] Jews and Quakers, by contrast, are not obliged to have any particular person present.[104] If the parties choose a civil ceremony then both the registrar and superintendent registrar must attend the ceremony.[105] If the marriage is according to some other form or ceremony then the registrar must attend.[106]

Ceremony

2.56 The legislation sets out prescribed declarations and words of contract that must be included in marriages in registered buildings, in register offices, on approved premises, in prisons or hospitals, and in those marriages solemnized on the authority of the Registrar General's licence.[107] These prescribed words must be included and cannot be varied, although since 1996 there has been a choice between three alternative authorised versions.[108]

[99] Marriage Act 1949, s 49(g) (register office) and 49(gg) (approved premises).

[100] Marriage Act 1949, s 53(f) (register office) and 53(g) (approved premises).

[101] Under the Marriage (Registrar General's Licence) Act 1970 and the Marriage Act 1949 ss 26(1)(dd) and 45A respectively.

[102] Marriage (Registrar General's Licence) Act 1970, s 10(4). The Act deliberately preserved the role of the Archbishop of Canterbury's special licence in this context.

[103] Marriage Act 1949, s 17.

[104] Marriage (Registrar General's Licence) Act 1970, s 10(2); see also Marriage Act 1949, s 26(1)(dd) making it clear that this provision does not apply to Jewish and Quaker weddings.

[105] Marriage (Registrar General's Licence) Act 1970, s 10(2); Marriage Act 1949, s 45A(3).

[106] Marriage (Registrar General's Licence) Act 1970, s 10(2); Marriage Act 1949, s 45A(2). This means that the presence of an authorised person is not sufficient in this context.

[107] See respectively Marriage Act 1949, ss 44(3) and (3A) (religious marriages in registered buildings), 45 (register offices), 46B(3) (approved premises), and 45A(2) and (3) (prisons or hospitals) and Marriage (Registrar General's Licence) Act 1970, s 10(3).

[108] Marriage Ceremony (Prescribed Words) Act 1996, which came into force on 1 February 1997.

Civil marriages

2.57 Aside from the prescribed declarations and words of contract, there is generally scope to personalise the content of the civil ceremony by adding readings and music. This will however be subject to the approval of the superintendent registrar. It is also specifically provided that the proceedings shall not be religious in nature.[109]

Religious marriages

ANGLICAN MARRIAGES

2.58 The legislation does not set out specific words to be used in an Anglican service, but Anglican canon law requires ministers to use authorised forms of service. Those currently authorised are the services set out in the 1662 *Book of Common Prayer*, the 1965 alternative,[110] and the more modern texts of *Common Worship*.[111] These services cannot be used where the marriage is solemnized on the authority of the Registrar General's licence[112] but can be used where the marriage is solemnized in a prison or hospital on the authority of a superintendent registrar's certificate.[113]

JEWISH AND QUAKER MARRIAGES

2.59 Where the marriage is celebrated according to the usages of Quakers or Jews, there are no legally prescribed words and no equivalent of an authorised liturgy.

[109] The legislation simply states that no religious service shall be used: Marriage Act 1949, ss 45(2) (register office) and 46B(4) (approved premises). The relevant regulations in addition state that readings, songs, or music that contain an incidental reference to a god or deity in an essentially non-religious context are permitted, but the proceedings may not include extracts from an authorised religious marriage service or from sacred religious texts; be led by a minister of religion or other religious leader; involve a religious ritual or series of rituals; include hymns or other religious chants; or include any form of worship: Marriages and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005 No 3168, Sch 2, para 11(3).

[110] "Series 1: Form of Solemnization for Matrimony", authorised by the Prayer Book (Alternative and Other Services) Measure 1965.

[111] See S Farrimond, "Church of England Weddings and Ritual Symbolism" in J Miles, P Mody and R Probert (eds), *Marriage Rites and Rights* (2015).

[112] Marriage (Registrar General's Licence) Act 1970, s 10(1)(a). A special licence would, however, be available to authorise a marriage in circumstances where the Registrar General's licence would otherwise have to be used: see The Faculty Office, *Would I be eligible to get a Special Licence?*, http://www.facultyoffice.org.uk/special-licences/would-i-eligible-to-get-a-special-licence/ (last visited 4 December 2015).

[113] Marriage Act 1949, ss 17 and 26(1)(dd).

MARRIAGES ACCORDING TO THE RITES OF OTHER RELIGIONS

2.60 Similarly, marriages in registered buildings may be celebrated according to "such form and ceremony" as the parties choose.[114] How the prescribed words are integrated into the service will differ between different faiths and denominations. Within the Sikh ceremony of marriage, for example, the parties do not make specific vows to each other, and so the prescribed words are repeated after the religious rituals have been completed. From our meetings, however, it would seem that the possibility of integrating the required words into the religious service is not always appreciated.

2.61 We have been told that some denominations offer couples considerable scope to design their own ceremony. The Unitarian church, for example, has no formal rites and their marriage ceremonies may combine elements of different faiths, humanist beliefs or other forms of self-expression. Baptist churches offer a selection of service outlines to enable a degree of personalisation.

MARRIAGES IN CHAPELS OF THE ARMED FORCES

2.62 Where marriages are solemnized in a naval, military or air force chapel the provisions of the Marriage Act 1949 governing marriage according to Anglican rites or marriages in registered buildings, whichever are relevant to the marriage in question, apply with specific exclusions and modifications. Those exclusions and modifications are set out in schedule 4 of the Marriage Act 1949.

Registration

2.63 The one element that does unite all marriages is that they are required to be registered with the civil authorities. As noted above, a particular person will be responsible for ensuring that the marriage is registered and that a copy of the entry is sent to the local register office, as part of the system of quarterly returns instituted in 1837.[115]

[114] Marriage Act 1949, ss 26(1)(a) and 44(1).

[115] See Marriage Act 1949, ss 53, 55 and 57. Detailed guidance is set out by the General Register Office, *A Guide for Authorised Persons* (HM Passport Office, February 2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408482/APsGuideFebruary15final.pdf (last visited 4 December 2015).

2.64 However, the sanctions that reinforce the need for compliance with the requirements relating to registration are far from simple and differ according to the form of marriage. It is an offence for any person who is required to register a marriage to refuse or omit to register it within a certain period of time, or to carelessly lose or injure a marriage register book (or a copy of the same) or to carelessly allow the book (or copy) to become lost or injured.[116] It is also an offence to refuse or fail to submit returns to the registrar within a certain period of time.[117] Conviction for either of these offences may result in a fine. There is then a further offence that applies only to registrars of knowingly and wilfully registering a marriage which is void.[118] Given that this is punishable by up to five years' imprisonment it is significant that there is no equivalent for those appointed by a religious organisation.

LACK OF CERTAINTY

2.65 The complexity of the current system might still be acceptable if it achieved a high level of certainty, but this is not the case. At the most basic level, nowhere in the legislation is it stated exactly when a couple are married. Nor is it clear when a marriage will not be valid, since the consequences of failing to comply with a particular requirement are not always specified. Even when it is stated that a marriage may be void, this depends on the subjective state of mind of the parties. These gaps in the legislative scheme have led to considerable uncertainty in recent case law.

2.66 Underpinning the status of the various requirements is a basic distinction between requirements that are mandatory and requirements that are merely directory. Mandatory requirements are those that are fundamental to a marriage; directory requirements, by contrast, aim to channel marriages into a standard form but a failure to comply with them does not invalidate the marriage.

Non-compliance explicitly stated not to affect validity

2.67 The legislation sets out certain factors which need not be proved in order for the marriage to be valid, so a failure to comply with these factors has no impact on the status of the marriage. These are:

(1) prior residence in the district where notice was given, the banns called, or the marriage solemnized on the authority of a common licence;[119]

(2) the consent of a parent or guardian to the marriage of a 16- or 17-year-old;[120] and

[116] Marriage Act 1949, s 76(1).

[117] Marriage Act 1949, s 76(2).

[118] Marriage Act 1949, s 76(3).

[119] See respectively Marriage Act 1949, ss 48(1)(a) and 24. Similarly, in relation to Anglican weddings, the lack of a qualifying connection will not invalidate a marriage: Church of England Marriage Measure 2008, s 4(2); Marriage (Wales) Act 2010, s 5(2).

[120] Marriage Act 1949, s 48(1)(b) (and see s 3 on the persons whose consent is required in any given situation).

(3) the registered building in which the marriage took place having been certified as a place of worship, being the usual place of worship of the parties, or the nearest one available for the purpose.[121]

Non-compliance explicitly stated to affect validity

2.68 The Marriage Act 1949 also sets out certain examples of non-compliance with the required formalities that potentially render the marriage void.[122] These can be broadly grouped into three categories.

(1) Preliminaries, for example marrying in an Anglican ceremony without banns having been duly published, a licence obtained or two superintendent registrar's certificates issued, marrying after any of those forms of authorisation has lapsed, or marrying in any other form of ceremony without two valid superintendent registrar's certificates.

(2) Place where the marriage is to be celebrated, for example marrying in an Anglican ceremony in a church other than one where banns may be published or marrying in a place other than that specified in the superintendent registrar's certificates.

(3) Official personnel present at the ceremony, for example where an Anglican ceremony is conducted by someone who is not in Holy Orders or (for other marriages) in the absence of a registrar or superintendent registrar (where required).

2.69 However, even a failure to comply with the mandatory requirements only renders the marriage void if it was "knowing and wilful". This particular qualification was introduced in 1823 as a response to a growing number of cases in which one of the parties to a marriage tried to argue that it was void on account of some minor technicality many years after the ceremony had taken place.[123] The qualification thereby removed the risk of a marriage being declared void where one of the parties was unaware of any defect in the marriage.

[121] See paras 2.37 and 2.46 above on these requirements, and see Marriage Act 1949, s 48(1).

[122] Marriage Act 1949, ss 25 (Anglican marriages) and 49 (all other marriages).

[123] See R Probert, *Marriage Law and Practice in the Long Eighteenth Century* (2009) p 309.

The concept of "non-marriage"

2.70 It is clear, however, that in 1823 the legislators were only contemplating marriages in which the parties had failed to comply with some of the required formalities.[124] No consideration was given to how the law should deal with ceremonies that failed to comply with *any* of the legal requirements. This question has become increasingly pressing in recent years as the courts have been asked to adjudicate on the validity of ceremonies that were not preceded by any of the requisite preliminaries, were not conducted in an authorised place or by or in the presence of any person with legal standing to register the marriage, and were not registered. These have almost always been ceremonies involving Muslim, Hindu and Sikh couples.[125] Examples include Islamic ceremonies of marriage that were held in a private flat, a hotel, and the Moroccan consulate;[126] a Hindu ceremony of marriage in a restaurant;[127] and a Sikh ceremony of marriage in a temple that may or may not have been registered for marriage.[128]

2.71 Faced with the prospect of effectively deregulating marriage by holding such marriages to be valid, and in the absence of any provision stating such marriages to be void, the courts developed the concept of the "non-marriage". The main practical consequence is that the parties do not have the right to apply for financial provision from a court, which they would (perhaps unexpectedly) have had if the marriage had been void.[129] This has the potential to create hardship for those who discover after the event that their ceremony had no legal status.

[124] At the time, the only way of marrying set out in the legislation was according to the rites of the Church of England. The provision was extended to the new methods of marrying introduced by the Marriage Act 1836.

[125] Although see *Hudson v Leigh (Status of Non-Marriage)* [2009] EWHC 1306 (Fam), [2013] Fam 77 (Christian ceremony that was intended to precede a civil ceremony held to be a non-marriage).

[126] See respectively *A-M v A-M (Divorce: Jurisdiction: Validity of Marriage)* [2001] 2 FLR 6; *Sharbatly v Shagroon* [2012] EWCA Civ 1507, [2013] Fam 267; *Dukali v Lamrani (Attorney-General Intervening)* [2012] EWHC 1748 (Fam), [2012] 2 FLR 1099. In all three cases the English ceremony was held to be a non-marriage, although in *A-M v A-M* it was presumed that a valid marriage had taken place overseas.

[127] *Gandhi v Patel* [2002] 1 FLR 603. The ceremony was held to be a non-marriage.

[128] *CAO v Bath* [2000] 1 FLR 8. The marriage in this case was presumed to be valid.

[129] See eg J Masson, R Bailey-Harris and R Probert, *Cretney's Principles of Family Law* (2008) s 2-056.

2.72 Judges have found it difficult to delineate the boundary between ceremonies that result in a non-marriage and those that result in a valid marriage.[130] If such disputes were either rare or unpredictable, then dealing with them on a case-by-case basis might well be the only way of proceeding. There have, however, been a number of reported cases in recent years and there are reasons to believe that the problem is more widespread.[131] Nor can it be said that these are problems with the legislation that could not have been anticipated; rather, the issues arising are implicit within the structure of the existing legislation (in particular the condition that a marriage is only void where the failure to comply is "knowing and wilful" and the lack of any minimum criteria for validity).

Failure to specify the legal consequences of non-compliance

2.73 A final element of uncertainty arises because the legislation does not always state the effect of failing to comply with a particular requirement. The assumption has always been that a marriage will only be void for non-compliance if the legislation explicitly states that to be the case. Where the requirement is relatively minor – for example that marriage be witnessed by two persons[132] – this would seem uncontroversial. Similarly, although registration might be seen by many as the "official" part that is necessary to make the marriage "legal", technically it occurs after the marriage has been solemnized; [133] consequently, non-registration cannot affect the validity of a marriage.[134] However, the consequences of failing to meet other requirements are less clear.

2.74 First, a failure to include either the prescribed words[135] – or indeed any vow on the part of the couple – is not stated as rendering the marriage void. This is all the more surprising given it is generally assumed that the couple are married after vows have been exchanged,[136] although the precise point in the ceremony at which the couple are married is not specified. It may be that the absence of any statements whereby the couple agreed to marry would result in a non-marriage.[137]

[130] See R Probert, "The evolving concept of non-marriage" [2013] *Child and Family Law Quarterly* 314.

[131] See paras 1.33 to 1.35 above.

[132] The Marriage Act 1949 states this as a requirement for marriages in the Church of England (s 22), marriages in a registered building (s 44(2)), marriages in a register office (s 45) and marriages on approved premises (s 46B(1)(a)). It is not explicitly stated as a requirement applicable to Jewish or Quaker marriages, but every entry in a marriage register book must be signed by two witnesses; Marriage Act 1949, s 55(2).

[133] This is implicit in the requirement in s 55(1) of the Marriage Act 1949 that the particulars of the marriage shall be registered "immediately after the solemnization of the marriage".

[134] Although note that the absence of the person required to register the marriage may: Marriage Act 1949, s 49(f) (registered building), 49(g) (register office) and 49(gg) (approved premises).

[135] See para 2.56 above.

[136] Based on the Australian case of *Quick v Quick* [1953] VLR 224.

[137] See the discussion of the importance of this element in *Hill v Hill* [1959] 1 WLR 127.

2.75 Even more difficult perhaps are those provisions that are fundamental to the way in which the marriage is celebrated. The 1949 Act states that a marriage "according to the usages of the Jews" may take place "between two persons professing the Jewish religion";[138] it does not, however, state how this is to be assessed and what the status of the marriage would be if one or both parties to the marriage did not in fact profess the Jewish religion. In the somewhat sparse case law the view was that the marriage would be void if it did not conform to Jewish rites.[139]

2.76 There is a rather more detailed provision dealing with the eligibility of those wishing to be married according to the usages of the Society of Friends. The parties need not be members of the Society of Friends but must either declare their affiliation to the Society or have the authorisation of one of its registering officers.[140] However, there is no provision invalidating the marriage if they have not.

2.77 In short, there are three different situations of non-compliance with the law.

(1) There are some situations where non-compliance is stated not to affect the validity of the marriage. Any resulting marriage will thus be valid regardless, raising questions as to the necessity of the provision in the first place.

(2) In other situations non-compliance is stated to render the marriage void (subject to the parties' awareness of the problem). In such cases a deliberate failure to comply with the law will render the marriage void and an innocent failure is likely to result in it being held valid (assuming that there was at least some compliance with the law). However, a failure to comply with all of the legal requirements is likely to result in a non-marriage, however innocent that failure might be.

(3) In a final category of situations the legislation does not stipulate the effect of non-compliance on the validity of the marriage and judges have had to grapple with the question of how to determine validity, with the result that some marriages have been upheld as valid and others not. It seems highly inappropriate that the status of marriage should be subject to such uncertainty.

PERCEIVED UNFAIRNESS

2.78 Not only is the current law antiquated, complex, and uncertain, it is also arguably unfair in the way that it operates. Differential treatment of different groups is of course not automatically unfair, but it needs to have a clear rationale and serve a legitimate purpose.

[138] Marriage Act 1949, s 26(1)(d).

[139] See eg *Lindo v Belisario* (1795) 1 Hag Con 216, in which evidence from experts in Jewish law was heard and *Horn v Noel* (1807) 1 Camp 61, in which evidence of the Jewish marriage contract was required. In *Goldsmid v Bromer* (1798) 1 Hag Con 324 the marriage was held to be invalid as the witnesses did not fulfil the conditions of Jewish law. However, these cases predated the addition of the "knowing and wilful" criterion in 1823, with the result that the modern choice would seem to lie between validity and a "non-marriage".

[140] Marriage Act 1949, s 47(2).

Lack of an option that is neither civil nor religious

2.79 In England and Wales, the only alternative to a civil wedding conducted by an employee of the local authority is one conducted according to religious rites. Unlike in Scotland and the Republic of Ireland,[141] non-religious belief organisations do not have the authority to conduct legally binding marriages. Given that the dividing line between a religious organisation and a belief organisation may in some cases be rather tenuous, this distinction is likely to seem arbitrary and unfair to those excluded. There is clearly a considerable demand for humanist weddings, for example, and the British Humanist Association has been seeking the right to conduct legally binding ceremonies in this jurisdiction for some time.

2.80 There is of course no direct bar on incorporating non-religious material into a civil ceremony.[142] The British Humanist Association has however argued that parity of reasoning requires the existing bar on the exclusion of religious material to be extended to material incorporating humanist and other non-religious beliefs, in other words, that material that makes explicit reference to humanism should be excluded, which would mean a civil ceremony would not be capable of reflecting their beliefs. Whether or not this is the case,[143] there is clearly a difference between incorporating material into a civil ceremony and having the ceremony conducted by an individual who shares the couple's beliefs. Humanists might well feel unfairly treated if they face restrictions on the expression of their commitment to one another that those who subscribe to religious beliefs do not.

2.81 The current stark distinction between religious and civil ceremonies also overlooks the complexity and fluidity of belief and the simple fact that the parties to the marriage may have different views. If one partner does not share the religious views of the other, whether because they belong to a different faith or to none, they will usually have to choose between adopting the practices of one partner or going through a civil ceremony with minimal religious content. Some churches, in particular the Unitarian church, will celebrate interfaith weddings but whether this is an option for any given couple will depend largely on location.[144] In addition, some organisations offer ceremonies tailor-made to reflect the views of both. The One Spirit Interfaith Foundation, for example, told us that it performs around 300 marriages in Scotland in each year, but can only offer "relationship blessings" in England and Wales.

[141] See paras 1.25 and 1.27 above.

[142] Or indeed into a religious ceremony: the Unitarian church, for example, sometimes conducts humanist ceremonies. For content of civil ceremonies, see paras 2.56 and 2.57 above.

[143] The current bar on religious material would exclude prayers or hymns but permit incidental references to religion. There does not seem to be any precise humanist equivalent.

[144] The Unitarian church has only 170 congregations in England and Wales and their geographical distribution is very uneven. In the light of the residence requirements, this will restrict accessibility for some couples.

2.82 There are also many independent celebrants who provide highly personalised and individual (though not legally effective) ceremonies for couples. Such celebrants may sometimes include or allude to the beliefs of the parties, or be invited to reflect the beliefs of family members. One organisation that offers support to independent celebrants indicated that its members conducted around 800 ceremonies each year, and there are a number of such organisations. For those who regard this ceremony as their "true" marriage, the current law can be perceived as unfair.

Differential consequences of non-compliance

2.83 A further potential source of unfairness is that the types of factors that potentially[145] render a marriage void differ depending on the form of marriage.

2.84 It is a common theme across all modes of celebration that a marriage may be void if the parties fail to comply with the requisite preliminaries. However, the more complex provisions relating to Anglican preliminaries, together with their shorter period of validity, makes it more likely that issues will arise in this context.

2.85 Whether or not the location of the marriage potentially affects its validity again differs according to the way in which it is celebrated. For Anglican marriage, the possibility of invalidity arises if the marriage is celebrated "in any place other than a church or other building in which banns may be published".[146] Marriages celebrated according to the rites of other religions or denominations may be void if they take place anywhere other than the place specified in the notices of marriage and certificates of the superintendent registrar.[147] Marriages celebrated according to Jewish or Quaker usages do not seem to be exempted from this, so the differences between such marriages and those celebrated according to other non-Anglican rites may thus be less than they might at first appear.[148]

[145] Subject to the parties "knowingly and wilfully" failing to comply with the requirement in question; see Marriage Act 1949, ss 25 (Anglican marriages) and 49 (all other marriages).

[146] Unless marrying by special licence or where one party is housebound or detained; see Marriage Act 1949, s 25(2)(a). There is a long history of amending legislation being passed where it has been belatedly discovered that the place in which the banns were published was not one in which they should have been published, for eg Christ Church (Todmorden) Marriages Validity Bill 1855 and An Act to remove doubts as to the validity of certain Marriages of British subjects on board Her Majesty's ships 1879.

[147] Marriage Act 1949, s 49(e). Similar provision is made for Anglican marriages celebrated on the authority of certificates of the superintendent registrar; see Marriage Act 1949, s 25(2)(d).

[148] It is clearly assumed that a place will be specified for Jewish and Quaker marriages (Marriage Act 1949, s 35(4)), while for other religious marriages it is not necessary to give evidence that the building was certified as a place of religious worship (Marriage Act 1949, s 48(1)(c)).

2.86 Marriages celebrated either on approved premises or in a register office may similarly be void if they take place anywhere other than the place specified in the notices of marriage and certificates of the superintendent registrar.[149] In the case of the former there is an additional provision potentially invalidating marriages celebrated on "any premises that at the time the marriage is solemnized are not approved premises".[150]

2.87 Whether or not the personnel present at the marriage affect its validity similarly differs according to the way in which it is celebrated. For Anglican marriage, the possibility of validity being affected in this way arises if the marriage is celebrated "by any person who is not in Holy Orders".[151] For Jewish and Quaker weddings, by contrast, the possibility does not arise, at least within the terms of the statute. Marriages celebrated according to the rites of other religions or denominations may be void if celebrated in the absence of either an authorised person or a registrar.[152] Finally, marriages celebrated either on approved premises or in a register office may be void if they are celebrated in the absence of either the registrar or superintendent registrar.[153]

2.88 As a result of these different requirements, certain types of ceremonies are more likely to result in a non-marriage than others not simply because of their practices but also because they are subject to more requirements. It is an interesting question, for example, as to whether a Jewish or Quaker wedding would ever result in a non-marriage or whether the fact of being conducted according to their usages would automatically bring them within the scope of the Marriage Act 1949.

Different levels of regulation

2.89 There are different levels of regulation of both civil and religious marriages. For example, it would appear that the threshold for registering a building for religious weddings is rather lower than approving one for civil weddings.[154] On the other hand, the limitations on location are more onerous for those marrying in a religious ceremony,[155] and those marrying according to non-Anglican rites may find them particularly onerous in that there might well not be any buildings registered for their particular denomination within a reasonable distance.[156]

[149] Marriage Act 1949, s 49(e).

[150] Marriage Act 1949, s 49(ee).

[151] Marriage Act 1949, s 25(3).

[152] Marriage Act 1949, s 49(f).

[153] Marriage Act 1949, s 49(g) (register office) and 49(gg) (approved premises).

[154] See paras 2.46 (places of worship) and 2.39 to 2.41 (approved premises) above.

[155] See para 2.37 above.

[156] This is likely to be a particular problem for those who belong to, or choose to marry according to the rites of, one of the smaller denominations.

2.90 The fact that different religious groups are subject to different levels of regulation can also be perceived as unfair. We have heard that some other religious groups wonder why Jews and Quakers alone have the scope to conduct a legally binding marriage in accordance with their own religious beliefs and wherever they wish it to take place (subject to the rules and requirements of those organisations). Similarly, all non-Anglican religious groups may wonder whether the established status of the Church of England is sufficient reason for it alone to be entrusted with overseeing the preliminaries to the marriage.[157]

2.91 While some of the current rules could be justified by the particular practices of the religious groups in question, it is potentially unfair that the practices of other groups are not afforded equal consideration. The current system of registered buildings does not necessarily fit with the practices of minority religious groups who were not even contemplated when the legislation was drafted. We understand that a significant proportion of Muslims, for example, regard a location other than a mosque as a more suitable venue for a marriage ceremony, and the possibility of the mosque being registered to conduct marriages therefore does not meet their needs. The same is true for Jains. Overall, fewer than three thousand marriages – a little over 1% of the total – were recorded as having been celebrated according to non-Christian religious rites in 2012,[158] despite those identifying as Hindu, Muslim, Sikh or Buddhist accounting for 7.5% of the population.[159]

[157] The special status of the Church in Wales should also be noted in this connection.

[158] Office for National Statistics, "Table 1: Summary of marriage characteristics, 1981, 1991, 2002, 2002, 2007-2012" in "1. Marriage summary statistics 2012 (provisional)" in *Statistical bulletin: Marriages in England and Wales (Provisional), 2012* (11 June 2014), http://www.ons.gov.uk (last visited 4 December 2015). Around 8-900 of these would have been Jewish ceremonies, despite the relatively small Jewish population: see the Board of Deputies of British Jews, *Britain's Jewish Community Statistics* 2012 (2013) p 11.

[159] Office for National Statistics, "Religion detailed Table QS210EW" in *2011 Census, Key Statistics for Local Authorities in England and Wales Release, Religion Data from the 2011 Census* (2014), http://www.ons.gov.uk (last visited 4 December 2015).

2.92 The result of the combination of a buildings-based system and the residence requirements is that the adherents of certain faiths and denominations have little opportunity to marry according to their own religious rites. This is true even for some major faith groups. There is only one Hindu place of worship registered for marriage in the east of England, home to 54,010 Hindus. For smaller religious groups the picture is even starker: there are only four Jain places of worship registered for marriage across the entirety of England and Wales. By contrast, the ratio between Christian places of worship that are registered for marriage and the proportion of the population identifying as Christian is far lower: in Wales, for example, there is one such building for every 350 Christians.[160]

2.93 The current system can also be criticised as being unfair in terms of social status. It should not be forgotten that it has always been possible to authorise an Anglican marriage being celebrated at any hour of the day or night and in any place whatsoever by means of the Archbishop of Canterbury's special licence. Aristocrats were thus able to marry in their own homes if they so wished.[161] While the availability of such licences is no longer explicitly limited by class, the fact that they are now most commonly used to permit marriages in the chapels of Oxbridge colleges and the Inns of Court does suggest a degree of elitism.

[160] These conclusions were drawn from an analysis of General Register Office, *Places recorded by the Registrar General under the Provisions of the Places of Worship Registration Act 1855* (data available as at 30 July2015), https://www.gov.uk/government/publications/places-of-worship-registered-for-marriage (last visited 4 December 2015), "Table 7: Buildings of worship in which marriages may be solemnised: area of location as at 30 June 2011, and denomination" in "5. Marriages by Area of Occurrence, Type of Ceremony and Denomination" in *Statistical bulletin: Marriages in England and Wales (Provisional), 2012* (11 June 2014), and "Table KS209EW: 2011 Census, Religion, Local Authorities in England and Wales" in *2011 Census, Key Statistics for Local Authorities in England and Wales Release* (2012) both at http://www.ons.gov.uk (last visited 4 December 2015).

[161] See the guidance issued by the Archbishop of Canterbury in 1759 to limit such licences to "Peers, and Peeresses in their own right of Great Britain and Ireland, to their sons and daughters, to Dowager Peeresses, to Privy Councillors, to Judges of his Majesty's Courts in Westminster Hall, to Baronets and Knights and to members of the House of Commons": Lambeth Palace Library, Moore 5, fol 273.

Different penalties for non-compliance

2.94 Under the current system of offences, the penalties attaching to different actions or omissions, and even whether certain conduct constitutes an offence, differs between Anglican and other ceremonies. It is an offence punishable by up to 14 years' imprisonment to solemnize a marriage according to the rites of the Church of England either without proper ecclesiastical notice or authority, in an impermissible place, or falsely pretending to be in Holy Orders.[162] By contrast, the maximum penalty for solemnizing any other form of marriage in an impermissible place, or in the absence of a registrar, is only five years.[163] In addition, although there is an offence of solemnizing a marriage where the superintendent registrar's certificate has been issued before the end of the relevant waiting period, or for solemnizing a marriage where the certificate has expired,[164] it is not an offence to solemnize a marriage without any certificate.

2.95 Authorised persons, meanwhile, may be guilty of an offence if they refuse or fail to comply with any duties required of them by either the Marriage Act 1949 or regulations made under that Act.[165] Where no other sanction is provided the maximum penalty will be two years' imprisonment. The defendant shall also cease to be an authorised person upon conviction. Given the lack of criteria for appointing an authorised person in the first place, and the fact that training is not required, it seems odd and potentially unfair that such a wide range of duties should potentially attract criminal liability.

INEFFICIENCIES

2.96 Finally, it is worth noting that various aspects of the system require effort and expenditure without any clear countervailing benefits.

2.97 We have become aware of a variety of different practices in relation to publicising the notices of marriage as part of the process of civil preliminaries. Some registration services continue to display printed copies on a notice board outside the register office, while others have opted for an electronic display board or make the notice book available on request. Earlier surveys came to the conclusion that the current modes of publicity are not an effective way of bringing marriage to the notice of the community and uncovering any objections to the marriage.[166] This point was echoed by the registrars that we spoke to during the scoping phase of the project.

[162] Marriage Act 1949, s 75(1). In order to be convicted of falsely pretending to be in Holy Orders there has to be an intention to deceive: *R v Kemp; R v Else* [1964] 2 QB 341.

[163] Marriage Act 1949, s 75(2).

[164] See respectively Marriage Act 1949, s 75(2)(d) and (e).

[165] Marriage Act 1949, s 77, and see the Marriage (Authorised Persons) Regulations, SI 1952 No 1869 (as amended). Their duties include detailed provisions relating to the completion and custody of the registration books, as well as the making of quarterly returns (see Marriage Act 1949, ss 53, 55, 57, 59 and 60).

[166] Over 50 superintendent registrars were interviewed for the Office of Population Censuses and Surveys, *Efficiency Scrutiny Report: Registration of Births, Marriages and Deaths* (1985) and only one was aware of an objection arising from the display of a notice (see para 41.1). See also Registration: Proposals for Change (1990) Cm 939, para 3.11.

2.98 A further potential cost to the system is the requirement for both a superintendent registrar and a registrar to be present at all civil marriages. Little thought was given to the conduct of such marriages when they were introduced in 1836, the clear assumption being that relatively few couples would wish to marry in this way. It was however clear that the relationship between the two was hierarchical: Lord John Russell envisaged registrars being drawn from "Union officers" and being under the authority of a superior officer.[167] We have been told that the demarcation between the roles is no longer as clear, with many local authorities operating a system whereby there is formally one superintendent registrar and one registrar and a number of other employees who can deputise for either role. It should also be noted that other jurisdictions only require one state official to be present at a civil marriage.[168]

2.99 With civil marriages now accounting for 70% of the total,[169] it would be worth determining the financial cost to the system of requiring both to be present and whether it can be justified.[170] We have spoken to a number of superintendent registrars and registrars who have felt that the possibility of conducting a marriage with just one official present might be useful in some cases (for example a simple register office wedding with two witnesses and no other guests). Others have expressed concern about the potential challenges they would face if the roles were conflated and they were required to ensure that the prescribed words were said, fill in the marriage certificate with the details of the parties and ensure the smooth running of the event with a potentially large number of guests. Such concerns could however be mitigated if the legal requirements were simplified, for example by adopting a schedule system akin to that which operates in Scotland whereby all the details are printed out in advance on the schedule and the parties and witnesses merely need to sign their names.

[167] *Hansard* (HC), 12 February 1836, vol 31, col 370.

[168] For example, the Marriage (Scotland) Act 1977, s 19, provides for the authorised registrar to solemnize the marriage, sign the schedule and enter the marriage in the register.

[169] See Figure 1, which is explained in para 1.4 above.

[170] It should be noted that all previous reform proposals have concluded that it cannot: see eg Office of Population Censuses and Surveys, *Efficiency Scrutiny Report: Registration of Births, Marriages and Deaths* (1985) para 25.3; Registration: Proposals for Change (1990) Cm 939, paras 3.27 to 3.29; General Register Office, *Civil Registration: Delivering Vital Change: A public consultation document about proposed changes to the legislation relating to the Civil Registration Service in England and Wales by means of a Regulatory Reform Order* (2003) para 3.4.76.

2.100 In assessing the need for the presence of both a superintendent registrar and a registrar, it should also be borne in mind that demand for officials to be present at weddings is not spread evenly throughout the year. Over half of all weddings, whether civil or religious, take place from June to September.[171] In addition, Saturday is by far the most popular day, accounting for over half of civil ceremonies and 80% of religious ceremonies.[172] We have been told that, as a result, it is generally necessary to draft in temporary staff to meet demand.

2.101 A final level of bureaucracy relates to the registration of marriages. At present a £2 fee is payable to the person (other than a registrar) who is responsible for registering each marriage.[173] As a rough estimate, this means that potentially as many as 60 to 70 thousand such cheques have to be written and cashed every year.[174] The time and inconvenience on both sides is difficult to justify, and from what we have been told neither the senders nor the recipients favour the retention of this requirement.

2.102 There are other less obvious costs associated with the current system. Litigation over the existence or otherwise of a marriage can be a lengthy process requiring a considerable amount of court time. A finding of non-marriage, removing the possibility of claiming financial provision on the breakdown of the relationship, may also result in a cost to the state if one spouse was financially dependent on the other during the relationship and has to rely on state benefits in the absence of continuing support.

CONCLUSION

2.103 As noted in Chapter 1, it has long been recognised that the law is in need of reform. That need is now all the more pressing. Society has changed in ways unimaginable by the legislators of 1836, and the legal framework no longer meets the needs of a culturally and ethnically diverse society. Layer upon layer of legislation has added more and more complexity to all stages of the marriage process. It can no longer be assumed that the vast majority of the population have a shared understanding of what makes a marriage and of the formalities with which they need to comply, and recent case law has exposed the fact that the legal framework is silent on key points relating to the making of marriages.

[171] Office for National Statistics, "Table 3.2: Marriages: month of occurrence, 1997-2007" in *Release: Marriage, Divorce and Adoption Statistics, England and Wales (Series FM2), No 35, 2007* (2010), http://www.ons.gov.uk (last visited 4 December 2015).

[172] Office for National Statistics, "Table 3.4: Marriages (numbers and percentages): type of ceremony, denomination, and day of occurrence, 2007" in *Release: Marriage, Divorce and Adoption Statistics, England and Wales (Series FM2), No 35, 2007* (2010), http://www.ons.gov.uk (last visited 4 December 2015).

[173] Marriage Act 1949, s 57(4).

[174] This figure is based on the 77,910 religious marriages celebrated in 2012, rounding down to take account of the fact that some will have been registered by a registrar. See Office for National Statistics, "Table 1: Summary of marriage characteristics, 1981, 1991, 2002, 2002, 2007-2012" in "1. Marriage summary statistics 2012 (provisional)" in *Statistical bulletin: Marriages in England and Wales (Provisional), 2012* (11 June 2014), http://www.ons.gov.uk (last visited 4 December 2015).

2.104 The differences in treatment between different religious groups, as well as between civil and religious marriages, and the lack of an option that is neither civil nor religious, are all perceived as unfair and unjustified. The current system is also inefficient in many respects: while a full impact assessment will need to wait until completion of the further phases of the project, a number of potential savings have already been identified during the scoping phase.

2.105 Identifying the problems with the law is only the first step. Depending on which are seen as the most pressing, a law reform project could have a variety of different objectives. We will now turn in Chapter 3 to consider the principles that should underpin any reform of the law in this area and set out what we think the objective of the project needs to be.

CHAPTER 3
WHAT WOULD BE THE OBJECTIVE OF A LAW REFORM PROJECT?

INTRODUCTION

3.1 The objective and scope of any law reform project will inevitably depend on the diagnosis of the underlying problem that needs to be addressed. One option would be simply to try to redress the individual problems identified in Chapter 2. The risk of such an approach is that any reform would be piecemeal and focused on the past. While any reform process could not, and should not, ignore the history of the law in this area, it would be worth thinking about the principles that should ideally underpin the modern institution of marriage. In this chapter we first set out those principles and then consider how they assist in determining what the objective of law reform in this area should be.

THE PRINCIPLES THAT SHOULD UNDERPIN REFORM

3.2 The law of marriage needs to recognize and reconcile the different and sometimes competing interests of the couple, the community (either religious or belief) to which one or both of the couple belong, and the state. The following list draws on Chapter 2's analysis of the problems with the current system but also reflects what we have learned during the scoping phase from our conversations with different groups, from our analysis of the solutions devised elsewhere, and from our experience of a range of different weddings. It starts from the basic premise that the state, the community and the couple intending to marry all value the institution of marriage and that it is important to ensure that the legal process is a positive experience and supportive of the couple's commitment.

3.3 We suggest that the guiding principles that should underpin a revised law of marriage are:

(1) certainty and simplicity;

(2) fairness and equality;

(3) protecting the state's interest; and

(4) respecting individuals' wishes and beliefs.

Certainty and simplicity

3.4 Greater certainty and simplicity would benefit both the couple and the state. At the most basic level, providing certainty as to whether and when a couple are married is crucial both for the parties involved and in determining their status and legal entitlements. Of course, "certainty" by itself is neutral as to the result: harsher rules would make the law more certain but at the risk of more marriages being invalid. We take the view that the law should minimise the risk of marriages being invalid on account of a failure to comply with the formal requirements. A simpler system could assist here too: if the system was simpler, it is likely that there would be fewer mistakes and less risk of a marriage being invalid as a result. A simpler system would also remove unnecessary hurdles and costs to getting married and would be easier to administer.

3.5 As we have noted at various points throughout this paper, the structure of our marriage law was largely established in 1836.[1] While our focus has been on what has changed since then, it is worth noting that the ambitions of those responsible for the Act were for a far simpler legal framework.

Fairness and equality

3.6 The system needs to be fair to those from different beliefs and cultures, as well as complying with legislation relating to human rights and equality. This does not mean that the system should not recognise and acknowledge differences between different religions or beliefs. Rather, it means that the level of regulation should be the same for all groups that can solemnize marriages, unless there is a good reason to depart from that. The ideal system would be one in which sufficient common ground between different religions and beliefs had been identified to enable a single framework to be put in place, but with sufficient scope for different traditions to be recognised.

3.7 It should be noted that there is a view that issues touching on personal matters such as marriage should not be dealt with by the law at all but should be determined by the religious affiliation of the parties themselves.[2] Given that the key problems that we have identified with the current law are those relating to complexity, uncertainty, and differences between different religious groups, we are strongly of the opinion that devolving responsibility to religious groups would only exacerbate the issue and would not result in either fairness or equality, let alone certainty and simplicity. While the ecclesiastical courts in this jurisdiction did once have the role of determining the validity of marriages, the state has long taken the view that it alone should be responsible for adjudicating upon such an important issue of status. Marriage still has significant legal consequences, and what makes a marriage should be clear and consistent.

[1] See paras 1.8, 1.21, 2.7 and 2.46 above.

[2] See for example J A Nichols, "Multi-Tiered Marriage: Reconsidering the Boundaries of Civil Law and Religion" in J A Nichols (ed), *Marriage and Divorce in a Multicultural Context* (2012), although compare with S Lifshitz, "The Pluralistic Vision of Marriage" in M Garrison and E S Scott (eds), *Marriage at the Crossroads: Law, Policy, and the Brave New World of Twenty-First-Century Families* (2012) pp 274 to 276.

Protecting the state's interest

3.8 A third key principle is that the state's interest in the process needs to be protected. As a result, one basic assumption of our work has been that there is a need for some legal regulation of the process of getting married. There are a number of very strong reasons for such an assumption. At the very least, the state has a role to play in checking the parties' eligibility, capacity and consent and protecting against sham and forced marriages.[3] It is vital that any new system does not undermine the current protections against sham or forced marriages in any way, or reduce the state's ability to check the parties' eligibility to marry. The state also has an interest in maintaining a record of marriages taking place since marriage affects the status of an individual and gives rise to legal rights and obligations.

Respecting individuals' wishes and beliefs

3.9 A fourth key principle is the importance of enabling couples to make their commitment to each other in a way that is meaningful for them.[4] It should be stressed that this does not and should not mean that the law should regard any expression of commitment as a marriage. Complete deregulation of the process of getting married is not an option, since it would be likely to prove problematic for the parties as well as for the state. A process that departed too radically from familiar forms might not be regarded as a marriage by the couple's community. Accounts of intercultural weddings reveal examples of misunderstandings between the couples and their families: put plainly, where the wedding was not what the wider family were expecting they did not recognise it as such.[5]

3.10 Even more seriously, an earlier consensus between the couple as to what constituted a marriage might break down later if one party wished to repudiate the marriage. In the event of such disputes, the state would need to adjudicate on whether there had been a marriage at all, but the absence of any external criteria would make it extremely difficult to do so.[6] Complete choice would therefore result in a lack of certainty for the parties as well as for the state.

3.11 Not every element of the process needs to be regulated: the state should ensure that there is space to respect the wishes and beliefs of the individuals involved while providing a legal framework that is clear and certain. When Lord John Russell introduced the Bill that became the Marriage Act 1836, his view, as reported by Hansard, was that:

[3] See for example S Poulter, *English Law and Ethnic Minority Customs* (1986) p 33.

[4] See the discussion in Ch 1 of the demand for alternative options and alternative locations for marriage at paras 1.22 to 1.32 above.

[5] W Leeds-Hurwitz, *Wedding as Text: Communicating Cultural Identities Through Ritual* (2002) pp 80 and 190.

[6] See for example B H Bix, "Pluralism and Decentralization in Marriage Regulation" and A Lacquer Estin, "Unofficial Family Law", both in J A Nichols (ed), *Marriage and Divorce in a Multicultural Context* (2012).

> If they once ascertained the parties had given due notice for the purpose, and that the marriage was settled, and that the contract was such as would be binding on the consciences of the parties – when they had ascertained this, he thought they had obtained all that it was necessary for the State to know.[7]

3.12 His framing of the question encourages us to consider how far the state should be concerned with what happens during the marriage ceremony. There is a very basic question to be answered as to whether marriage is best supported by requiring certain elements or by allowing the couple to make their commitment to each other in a way that is meaningful to them, whether religious or not.

DEVISING THE OVERALL OBJECTIVE

3.13 Having considered the principles that should underpin the law in this area, we now consider three possible approaches that have been suggested as models for reform: first, legislating solely for non-religious belief organisations; secondly, legislating for universal civil marriage; and thirdly, legislating for greater choice within a simpler legal structure. We conclude that the first two approaches are not the way forward but that the third is, and explain why below.

Legislating solely for marriages to be conducted by non-religious belief organisations

3.14 As we noted in Chapter 1, the catalyst for the reference to the Law Commission was the consultation on the potential for non-religious belief organisations to conduct binding marriages. The Government's response to the 2014 consultation concluded that the objective of enabling non-religious belief organisations to conduct legal marriages could not be adequately fulfilled merely by legislation giving power to such groups. The Government said:

> There is no option which we think can be implemented immediately which would provide for complete equality of treatment between those who have religious beliefs, those with humanist or other non-religious beliefs, and couples more generally.[8]

3.15 Nothing that we have learned in the course of the scoping study has given us any reason to disagree with this conclusion and much has reinforced its validity.

3.16 The reason for this is that the non-religious belief organisations which are seeking to be able to solemnize marriages tend not to have buildings that could be registered for that purpose. There are thus practical obstacles to treating them in the way that most religious groups are treated under the current law.

[7] *Hansard* (HC), 12 February 1836, vol 31, col 372.

[8] Ministry of Justice, *Marriages by Non-religious Belief Organisations: Summary of Written Responses to the Consultation and Government Response* (18 December 2014) para 7.

3.17 The only model under the current law that could accommodate the wishes and practices of non-religious belief organisations would be that applicable to the marriages of Jews and Quakers. As we have seen, these two groups are in a somewhat anomalous position and their marriage ceremonies are not subject to the same requirements as to location or content as other religious organisations.[9]

3.18 However, it needs to be borne in mind that the different treatment of these two groups was originally based on a number of assumptions when the law was first placed on a statutory basis in 1753. The first was that they could not be expected to comply with the law as it then stood, which required a formal ceremony in the Church of England.[10] The second was that both groups were distinctive, self-regulating, and largely married within their own group. In other words, the numbers involved were small, there was little likelihood of those who were not Quakers or Jews being able to marry according to their usages, and both communities had a long history of regulating the marriages of their members.

3.19 Not all of the elements discussed in the preceding paragraph are replicated within the non-religious belief organisations that exist and which could benefit from use of the statutory order-making power to make provision for such organisations to solemnize marriages.[11] It would therefore be anomalous and unfair to privilege these non-religious belief organisations over religious groups which are subject to greater legal regulation. In particular, it would be very difficult to justify why the fewest restrictions should be applied to the newest category. After all, over 60 years elapsed between religious rites other than Anglican, Jewish and Quaker being given legal recognition and the removal of the need for a civil registrar to attend such marriages.[12] Many other religious groups would welcome the relative lack of legal regulation currently enjoyed by those marrying according to the usages of Jews and Quakers, and would undoubtedly and justifiably resent non-religious belief organisations being accorded that privilege.

3.20 As a result, activating the statutory order-making power to permit marriages according to the rites of non-religious belief organisations is simply not, in our view, a viable option.

3.21 An alternative to the exercise of the order-making power would be to try to devise a new framework within which marriages could be solemnized according to the rites of non-religious belief organisations. It would be possible, for example, to create a wholly new category for such organisations based on authorising celebrants rather than buildings.

[9] See paras 2.14, 2.42 to 2.44, 2.52, 2.59, 2.75 and 2.76 above.

[10] Quakers and Jews were first formally exempted from the general law by the Clandestine Marriages Act 1753, which required all other marriages to take place according to the rites of the Church of England.

[11] Under the Marriage (Same Sex Couples) Act 2013, s 14.

[12] The possibility of appointing an authorised person was introduced by the Marriage Act 1898.

3.22 However, there are problems with a limited approach of this kind. It would add additional complexity to the law and would not address any of the problems with the existing law. It thus does nothing to address the aim of certainty and goes against the aim of simplicity. It would also offend against fairness and equality. The argument of the British Humanist Association that religious groups do not need to be able to marry in a wider range of places because their place of worship is the one that is meaningful for them may well hold true for some faiths and many couples. But it does need to be borne in mind that a person's religious belief is only one aspect of his or her decision regarding the marriage venue; there are also many personal, social and cultural factors. More fundamentally, as we have noted throughout the paper, a number of religious groups do not see their place of worship as the only appropriate place to get married and would also welcome a celebrant-based system.[13] As a result, while legislating solely for non-religious belief organisations to be able to solemnize marriages would respect the wishes and beliefs of those individuals who wish to be able to marry in this way, it would do nothing to respect the wishes and beliefs of other individuals who would also welcome a wider choice as to how and where marriages can be solemnized.

3.23 For all these reasons, a limited reform focusing solely on non-religious belief organisations would not be as easy to devise as it might appear. Nor would such a reform be easy to achieve. It would almost certainly attract opposition from religious groups, particularly those who would welcome greater flexibility. Its chance of becoming law would be greatly impaired if it was widely seen as unfair. And it would be a missed opportunity for a much-needed overhaul of the law: enabling non-religious belief organisations to solemnize marriage should ideally be addressed within a broader reform of the law of marriage, one that addresses a number of long-standing problems and seeks to align the ways in which people can marry as far as possible.

Legislating for universal civil marriage

3.24 An alternative objective would be to legislate for universal civil marriage. At first sight, this would seem to be the simplest option. It would increase certainty, in that no religious ceremony would be capable of creating a legally binding marriage. As a result, it would seem to achieve fairness and equality: all couples would be treated alike, since they would all have to go through the same basic form of marriage and would then be able to have such further ceremony as they wished, whether religious or not. It would protect the state's interest in marriage by ensuring that the same checks were carried out for all marriages.

3.25 However, the last of these aims could be met by the less drastic option of universal civil preliminaries. Universal civil preliminaries would have the same benefits of certainty and simplicity, and would also be in accordance with the principle of fairness and equality. Crucially, they could achieve this without removing the existing choice as to how a marriage is solemnized.

[13] See paras 1.28 and 2.91 above.

3.26 The main objection to introducing universal civil marriage, by contrast, is precisely that it removes choice and fails to respect the wishes and beliefs of the individuals getting married. It would not provide any new flexibility, but instead would take away the rights of a range of different groups to conduct marriages, and the ability of couples to choose to be married by those groups. While couples would have the freedom to express their beliefs in a subsequent ceremony of their choosing, a statement of commitment which is merely an addition to a legally binding marriage does not have the same status as one that brings the marriage into being.

3.27 Nor would universal civil marriage necessarily make the process of getting married any simpler. Indeed, it would potentially add to the cost of marrying, since many couples who currently marry in a legally binding religious ceremony would also want to have a religious dimension to their wedding even if it did not have legal status. A civil ceremony might appear to be a simple option, but would be seen by those who wanted a religious ceremony as a needless additional hurdle to getting married.

3.28 It should also be noted that although universal civil marriage is required in a number of European jurisdictions[14] these are very much in the minority. The reasons for adopting it have often been historically specific: for some, in particular those that adopted this approach at the Reformation, civil marriage had the endorsement of religious groups.[15] The same was true in this jurisdiction during Cromwell's Commonwealth, but only for a very brief period and without notable enthusiasm on the part of the population at large.

[14] Including Austria, Belgium, Bulgaria, France, Germany, Hungary, Luxembourg, the Netherlands, Romania, and Slovenia. See B Feldtmann, H Freyhold, E Vial and O Bühler, *Facilitating Life Events, Part II Synthesis Report* (2008) p 63.

[15] See J Witte, *From Sacrament to Contract: Marriage, Religion and the Law in the Western Tradition* (2012) pp 155 to 156.

3.29 By contrast, over two-thirds of the 28 EU countries recognise at least some form of religious marriage as having legal effect.[16] Precisely which religions are recognised for these purposes differs from country to country, reflecting the diversity of different religious traditions across Europe. So too does the extent to which some form of engagement with the state is needed: the validity of a marriage celebrated according to religious rites may be dependent either on advance notice or subsequent registration, or on the authorisation of the celebrant.[17] In addition, Australia, Canada, New Zealand, South Africa and most US states also allow couples to marry in a religious ceremony.[18] Introducing universal civil marriage would therefore mean that England and Wales was out of line with most other English-speaking jurisdictions.

3.30 A final and very real risk of universal civil marriage is that it would deter some couples, notably those from minority religious communities, from legal marriage. The Society of Friends, for example, indicated to us that some Quakers would choose not to have a legal marriage if they were required to go through a civil ceremony. Others would simply travel to a jurisdiction that did recognise religious weddings. The availability of a wide range of options over the border in Scotland would be likely to result in even more couples travelling to marry there.

3.31 Given these difficulties, our view is that the project should not be considering universal civil marriage as an option. Universal civil marriage would go against the whole genesis of this project, which was about extending the right to solemnize marriages, not taking it away.

Legislating for greater choice within a simpler legal structure

3.32 We are of the view that the project should address all of the ways in which people can marry rather than considering universal civil marriage as an option or simply how to enable non-religious belief organisations to conduct marriages within the current framework. The project would set out reforms that were informed by the guiding principles identified at the outset of this chapter, aiming to find ways of streamlining the current routes into marriage in a way that could accommodate religious and non-religious marriages. This could include the introduction of universal civil preliminaries. The project would clarify what was required for a valid marriage and determine the regulation necessary to meet the concerns of the state. It would also aim to maximise the degree of choice for couples within that legal framework.

[16] Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, Spain, and Sweden, as well as the UK. See B Feldtmann, H Freyhold, E Vial and O Bühler, *Facilitating Life Events, Part II Synthesis Report* (2008) p 63.

[17] For a helpful overview see N Doe, *Law and Religion in Europe: A comparative introduction* (2011) Ch 9.

[18] Marriage Act 1961 (Australia), s 32; for Canada see for eg Marriage Act 2011 (New Brunswick), s 2 and Solemnisation of Marriage Act 1989 (Nova Scotia), ss 4(2) and 5; Marriage Act 1955 (New Zealand), ss 8 and 9; for the US see for eg 2015 Minnesota Statutes, Domestic Relations Ch 517, ss 517.04 and 517.18, California Family Code, s 402 and the 2015 Florida Statutes, Title XLIII, Ch 741, s741.07.

3.33 So far in this scoping paper, Chapter 2 has focused on the detail of the current law and the problems that it poses, while Chapter 3 has highlighted the high-level objectives that a law reform project would need to address. The final chapter will now bring these two elements together and prepare the ground for the consultation phase by identifying the questions that would need to be asked in formulating proposals on what preliminaries should be required, who should have the authority to solemnize marriages, where marriages should be able to take place, what should be required of the marriage ceremony, how marriages should be registered, how the law should deal with the consequences of non-compliance and what offences and sanctions might be needed to uphold the law of marriage.

CHAPTER 4
FRAMING A LAW REFORM PROJECT

INTRODUCTION

4.1 Having identified the problems with the current law and the principles that should underpin a revised system, the aim of this chapter is to identify the questions that would need to be asked during the consultation phase of the project. In doing so, we unpack each stage of the marriage process. We also identify where changing one stage of the process would have implications for other stages and where changes might be considered independently of any broader reforms. We consider that any reform should address as many of the current problems and concerns as possible. The chapter also sets out the parameters within which we feel any future project should be taken forward, that is, those issues that are out of scope and the policy assumptions informing the project. It concludes with a comprehensive summary of the questions we have identified.

MARRIAGE PRELIMINARIES

4.2 There are three sets of issues that need to be considered in thinking about what preliminaries should be required. First, what, if anything, does the state need to know before people can legally marry? Second, to whom, by whom and where should that information be provided? Third, how should that information be dealt with and how should authorisation to marry be given?

4.3 As regards the first, it seems clear that the interests of the state should prevail over the wishes of the couple. The state needs to know whether the couple in question can marry, not just whether they wish to marry. The ideal system is thus one that checks the couple's eligibility to marry and prevents forced and sham marriages.

4.4 If possible, the law should also be as simple as possible for couples to comply with and as straightforward as possible for the state to operate. These considerations should be borne in mind when reviewing the second set of issues.

Who should receive the information?

4.5 At present over three-quarters of all marriages are preceded by civil preliminaries whereby notice is given to a superintendent registrar.[1] One important issue for the consultation paper would be whether this should be required for all marriages, taking into account that the consequence of this would be to remove the particular position of the Church of England and the Church in Wales to operate their own legally effective system of preliminaries. The twin-tracks of Anglican and civil preliminaries were originally designed to operate in a similar way but, as noted above, civil preliminaries have become more rigorous in recent years and Anglican preliminaries have become more complex.[2] Given the increased waiting period for civil preliminaries, should it be possible for a marriage to be celebrated pursuant to an ecclesiastical common licence or special licence without any set waiting period at all?

4.6 Universal civil preliminaries have been proposed on a number of occasions (dating back to 1836) and would remove much of the complexity of the current law as well as ensuring that all beliefs and cultures are treated equally. In this way they would bring many of the advantages of universal civil marriage without the disadvantages identified above.[3] The consultation paper would need to consider, in discussion with stakeholders, whether there are any reasons for retention that could outweigh these advantages.[4] We note that a change in the law would not prevent the Anglican church from continuing to call banns and setting its own notice rules for couples wishing to marry in its churches.

4.7 A more specific issue would be whether the special provisions for giving notice where a person is ill and not expected to recover should be retained in their current form.[5] While a degree of adaptation is clearly needed in such a case and while some registrars clearly felt that the existing system offered a welcome element of protection, it is difficult to see why a licence from the Registrar General is required for such a marriage, when the marriage of a person who is housebound on account of their illness or disability can be celebrated on the authority of a superintendent registrar's certificate.

1 In 2012, the number of marriages solemnized in the Church of England or Church in Wales, and therefore permitting Anglican preliminaries, was 57,860. This is 22% of all marriages in 2012. See Office for National Statistics, "Table 1: Summary of marriage characteristics, 1981, 1991, 2002, 2002, 2007-2012" in "1. Marriage summary statistics 2012 (provisional)" in *Statistical bulletin: Marriages in England and Wales (Provisional), 2012* (11 June 2014), http://www.ons.gov.uk (last visited 4 December 2015). In 2007 (the latest year for which we have data) only 1.4% of Anglican marriages in England and Wales were preceded by civil preliminaries. Table 3.34: Marriages: area of occurrence, type of ceremony, denomination and type of preliminaries 2007" in Release: Marriage, Divorce and Adoption Statistics, England and Wales (Series FM2), No 35, 2007 (2010), http://www.ons.gov.uk (last visited 4 December 2015).

2 See paras 2.19 to 2.32 above.

3 See paras 3.26 to 3.30 above.

4 A Working Party of the Church of England previously concluded that the publication of banns was no longer the best way to uncover legal impediments to marriage: *Just Cause or Impediment? A report from the Review of Aspects of Marriage Law Working Group* (October 2001) para 88, https://www.churchofengland.org/media/1273290/gs1436.pdf (last visited 4 December 2015).

5 See para 2.32 above.

4.8 A further minor issue would be whether notice should have to be given to a superintendent registrar (or his or her deputy) as opposed to a registrar. In practice this might make little difference if the register office is structured so that either can deputise for the other.

Who should give the information?

4.9 In considering who should give the information, it would be necessary to consider the requirement that both parties give notice to the superintendent registrar in person. This particular requirement does however serve a clear and useful purpose and it would seem likely that we would conclude that it should be retained. While it is possible to give notice by post in Scotland, we were told by registrars in England and Wales that they felt that this would undermine the current efforts to stamp out sham and forced marriages. The only situation in which only one of the parties is required to give notice is where the other is ill and not expected to recover, where flexibility is clearly needed.[6]

4.10 If Anglican preliminaries are retained, consideration would also need to be given to whether there should be any change to require both of the parties to attend to give the required information.

Where should information be given?

4.11 The consultation paper would need to consider where notice should be given. The current residence requirements are fairly minimal – seven days prior to giving notice – and non-compliance has no effect on the validity of the marriage. The seven-day period seems to have been chosen to ensure parity with the fact that clergy are not required to publish the banns unless they have been given seven days' notice.

4.12 Couples might have very practical reasons for wishing to give notice in a register office other than that in the district where they live. It has previously been suggested that parties should be able to give notice at any register office[7] and it is difficult to see why this would be a problem. The register office in the parties' district of residence may not be the most convenient one if, for example they work in a different district or if they live in different districts but want to give notice together.

[6] Marriage (Registrar General's Licence) Act 1970, s 2. Even then the superintendent registrar may attend their place of residence to enable them to give notice, as is also the case where one of the parties is housebound or detained (see Marriage Act 1949, s 27(7) on the additional fee payable in such cases).

[7] Registration: Proposals for Change (1990) Cm 939, para 3.8; General Register Office, *Civil Registration: Delivering Vital Change: A public consultation document about proposed changes to the legislation relating to the Civil Registration Service in England and Wales by means of a Regulatory Reform Order* (2003) para 3.3.12.

4.13 The residence requirement also has implications for those resident overseas. In 2012 nine thousand overseas residents came to the UK to marry.[8] However, it is estimated that only half of those coming to the UK for this purpose get married in England and Wales.[9] While family and personal reasons undoubtedly play a part in determining where marriages take place, it seems unlikely that this entirely explains why so many marry in Scotland or Northern Ireland, given their far smaller populations. One key difference is that there is no residence requirement for marriages in Scotland or Northern Ireland.

4.14 Moreover, in 2012 an estimated 89 thousand individuals left the UK to marry abroad.[10] Given that the wedding industry has been estimated to be worth around £10 billion per year,[11] there might be very good economic reasons for facilitating the marriages of overseas residents in this jurisdiction and trying to retain the marriages of those resident here. Just as many couples travel overseas from England and Wales to be married on a beach in the sunshine, there would doubtless be many who would wish to enjoy England and Wales' rich heritage by marrying here in a castle, country house or stately home.

4.15 Depending on the conclusions as to whether Anglican preliminaries should be retained, consideration would also need to be given to where the banns should be called. This would depend on an assessment of their purpose: for example, if the aim of calling the banns is to uncover impediments then the parties' parish(es) of residence would be the appropriate place; if it is linked to the church's pastoral role then the place of celebration would seem more appropriate.

[8] Office for National Statistics, *Marriages in England and Wales: Quality and Methodology Information* (2014) p 6.

[9] Office for National Statistics, "Report: Marriages Abroad 2002-2007" (2008) 133 *Population Trends* 65, 66.

[10] Office for National Statistics, *Marriages in England and Wales: Quality and Methodology Information* (2014) p 6.

[11] This estimate is based on a survey of weddings conducted by the website www.hitched.co.uk in 2011 and the forecast of 277,736 weddings for that year; see http://hitched-wife.org/wedding-facts-economics/summary-stats/each-year-uk-weddings-are-worth-10-billion-pounds/ (last visited 4 December 2015).

How should information be dealt with?

4.16 The consultation paper would also need to consider how the information given should be dealt with. Should all or some of that information be published or made publicly available in some way? The answer would depend on an analysis of what publicity was intended to achieve and what it was capable of achieving. If the aim is to uncover impediments to the marriage, one alternative might be to have more information against which notices could be checked. The suggestion that better use should be made of technology, and that a database of marriages should be created, is one that has been voiced for some time.[12] Since a considerable amount of data is already captured as part of the process of giving notice, the consultation paper could also consider whether this could be part of a more permanent record for future marriages.

How should authorisation to marry be given?

4.17 Given the enthusiasm for the Scottish schedule system expressed by stakeholders during the scoping phase,[13] the consultation paper could give serious consideration to its adoption in England and Wales. Such a system would result in a document permitting the marriage to proceed being issued to the couple and signed by them (together with the celebrant and two witnesses) after the ceremony. Such a system would add clarity to the preliminaries and would also simplify the process of registration.

4.18 Depending on the conclusions in relation to the need for two officials to be present at a civil ceremony,[14] consideration could be given to the possibility of making it a formal requirement that notice is given to someone other than the person who is to conduct the marriage ceremony (as an additional cross-check to prevent forced and sham marriages). Similarly, if it was concluded that marriages should be celebrated in a wider range of places, thought could be given to variable fees to reflect any additional work that might have to be carried out by the registration services in ascertaining whether the intended place of marriage was suitable.

AUTHORITY TO SOLEMNIZE MARRIAGES

4.19 Since it seems unlikely that the law would be able to achieve the aims of certainty and protecting the interests of the state without identifying either the groups, types of persons or individuals able to create a legally binding marriage, we will assume that there should be at least some level of regulation around who should have authority to solemnize marriages.

[12] See for example the proposal for comprehensive "through life" records in General Register Office, *Civil Registration: Delivering Vital Change: A public consultation document about proposed changes to the legislation relating to the Civil Registration Service in England and Wales by means of a Regulatory Reform Order* (2003) Ch 5.

[13] See para 1.46 above.

[14] See the discussion of this requirement at paras 2.98 to 2.100 above.

4.20 Given the aims of simplicity, fairness and equality, the consultation paper would also need to consider whether there is any possibility of aligning the current rules. At present, as we have seen,[15] Anglican clergy and superintendent registrars are authorised to solemnize marriages as a result of their status. Authorised persons, the secretaries of synagogues and Quaker registering officers, by contrast, are simply responsible for registering the marriage and there is no further regulation of, or need for, any person responsible for conducting the ceremony.

4.21 This raises a very basic question as to what it means to have the authority to solemnize a marriage. The view of a number of religious groups is that the contract is between the parties themselves and is not dependent on a third party to "marry" them. This is an idea that is found in certain branches of Christianity, Judaism, and Islam. Conceiving of the role as creating a marriage therefore poses difficulties as it would not fit with the way in which some religious groups would see it.

4.22 It would therefore be useful to determine the role of the person tasked with conducting the marriage. There are a number of different possibilities, including:

(1) ensuring that the parties freely consent to marry each other;

(2) ensuring that any requirements as to the content of the ceremony are satisfied; and/or

(3) ensuring that the marriage is registered.

4.23 Identifying exactly the role of the person responsible for conducting the marriage will also assist with determining who should be able to take on this task. This leads on to a further question as to whether the ability to solemnize marriages should be extended beyond those who are currently able to do so, namely the state and recognised religious groups. If so, should this be limited to non-religious belief organisations, or extended to other organisations? Would it be necessary for the person responsible for conducting the marriage to be linked to an organisation at all or should the law also recognise independent celebrants?

[15] See paras 2.51 to 2.55 above.

4.24 As part of a review of who has authority to solemnize marriages, the consultation paper would have to consider how recognition could be conferred on either organisations or individuals. Comparative research could play a useful role here in offering different models as options. Scotland, as we have noted,[16] offers a number of different alternatives, combining as it does recognition of the national church, a list of specific organisations, and a broad definition of how other religious and non-religious belief organisations may qualify for recognition so as to be able to nominate celebrants. For example, in Scotland the Humanist Society Scotland nominates humanist members to be celebrants to conduct legally recognised marriages, in the same way that the British Humanist Society would seek to do here. The Republic of Ireland offers a rather different approach in which certain types of organisations are stated to be included and others are explicitly stated to be excluded. Further afield, those jurisdictions (including Australia) that recognise individual independent celebrants tend to require them to register directly with the state.

4.25 Assuming that mechanisms for the recognition of organisations or individuals could be identified, the consultation paper would also need to consider whether any further requirements would need to be met. In relation to an organisation, for example, would it be necessary for it to have identified rites, usages or customs relating to marriage? Should it have clear professional standards relating to the conduct of marriages, a clear structure within the organisation whereby authority to conduct marriages could be conferred, and specific requirements regarding the training and monitoring of those conducting marriages? In relation to an individual, should there be specific requirements in relation to training (both initial and ongoing) or any other form of ongoing regulation and supervision? In addition, what should the consequences of non-compliance be for either the individual or the organisation?

4.26 Finally, it should be noted that concerns have been expressed that extending the power to solemnize marriages beyond state officials (who are subject to specific regulations as to how much they can charge) or religious groups (many of which charge no fee) could result in commercialisation of the ceremony of marriage itself. We have given some thought to what the underlying concern is here. Given that registrars and superintendent registrars are paid for the weddings that they conduct, and that at least some religious groups charge a fee, the mere fact of payment cannot be a problem. There might however be a desire to prevent individuals from charging particularly high fees to conduct ceremonies, or alternatively from undercutting other providers by charging particularly low fees and making up the difference by the volume of weddings celebrated, or simply from making a living by conducting weddings without doing so in the context of a broader belief structure.

[16] See paras 1.25 and 1.26 above.

4.27 The consultation paper would thus need to consider whether any limitation should be placed on the fees charged by organisations or individuals or on the number of marriages any given person is permitted to solemnize within a given period. The Scottish experience does not suggest that there would be a problem with either unexpectedly high volume for individual celebrants or high fees. In any case, it would be possible to protect against these risks. It might also be questioned whether there is anything inherently objectionable in a person conducting weddings as their sole occupation: after all, most of us receive remuneration for the work we undertake. In addition, many celebrants choose this line of work out of a sense of calling and invest a considerable amount of time and effort in the ceremonies that they conduct.

4.28 There are also fears that deregulation might result in ceremonies that could be regarded as inappropriate, which would undermine the sanctity and dignity of marriage. Again, this would need to be investigated as part of the consultation phase. It should of course be borne in mind that there is already a fair degree of scope to personalise the ceremony. We were told by various registrars of their willingness to enter into the spirit of a themed wedding by donning costumes, and it was rare to hear of proposed content being vetoed on the grounds of unsuitability. Indeed, it was more common to hear of proposed content being banned from civil weddings on the basis of its religious nature. Most couples will have no wish to do anything to undermine the dignity and seriousness of their own marriage ceremony.

LOCATION

4.29 Given that officials might need to take action to prevent a sham or forced marriage, it seems likely that, at the very minimum, it might be deemed necessary to require couples to indicate when complying with the preliminaries where the marriage is to take place. This, it should be noted, is the case already even for marriages according to the usages of Jews and Quakers.

4.30 As long as the location is known, should there be any restrictions on the types of location where a marriage can be solemnized? After all, marriages according to the usages of Jews and Quakers need not take place in registered buildings. Couples may well wish to marry in a place that is personal to them rather than one generally available for marriages. Specific consideration would need to be given to the possibility of marriages being celebrated outdoors and how such an option would be identified and potentially approved. Guidance could be sought from the significant number of jurisdictions that already permit this option.[17]

4.31 If the existing restrictions on the place of marriage were to be lifted, who, if anyone, should have to agree or authorise the chosen location? The two options are either the registration services or the person responsible for solemnizing the marriage.

[17] For example, the States of Jersey have voted unanimously to agree, in principle, to the amendment of legislation to allow marriage solemnization "in the open air, including public spaces such as beaches", while in Scotland all types of marriages can take place outdoors. See *Hansard* (States of Jersey), 15 July 2015, para 1. For full debate see also *Hansard* (States of Jersey), 14 July 2015, para 17.

4.32 If the registration services were to be tasked with making the decision as to the location of individual marriages, would this need to be combined with a system of pre-approval for locations that had been used for marriage before to ease their workload? Would there need to be additional charges to cover the costs of an assessment and/or the additional cost of attendance for locations that had not been used before and were intended to be used on a one-off basis?

4.33 If it was to be left to the person responsible for solemnizing the marriage, there is also a question as to whether this should be taken into account in determining who should have the authority to solemnize a marriage.[18] In other words, if this person is to be responsible for determining where a marriage can take place, should there be more regulation and scrutiny of who should be able to exercise this responsibility? Liberalising one element of the process may require another element to be subject to more regulation.

4.34 Consideration would also need to be given to what criteria, if any, should determine whether a particular location should be approved. Comparative research could assist in evaluating practices elsewhere and analysis of the existing criteria for different types of locations could assess what the level of regulation should be.

4.35 As part of this review of the location of weddings, the consultation paper would need to consider how to address issues relating to safety, security and insurance, particularly if the proposed location were outdoors. It would also have to consider whether specific criteria would be needed to maintain the dignity and seriousness of the occasion. A related issue would be whether the law should require the venue to be publicly accessible. The 1836 Act required marriages to be celebrated with "open doors", but it is worth asking whether the public dimension of marriage is sufficiently served by giving notice, the presence of witnesses, and registration; after all, there is no requirement that Jewish and Quaker weddings be celebrated "with open doors" and the 1949 Act does not require this of Anglican weddings either.

4.36 While the possibility of conducting a marriage in private might raise concerns about forced marriages, there would still be the protection of the process of giving notice in such cases, and since all who give notice are seen separately from their future spouse, as well as together, this is likely to offer better opportunities for concerns to be raised than a public ceremony of marriage. In addition, those with abusive former partners or families might welcome the option of ensuring a private ceremony to exclude abusive persons, provided that this could be accommodated to meet the other policy considerations.

[18] Although affiliated celebrants who currently offer non-legally binding ceremonies will already have experience in making a judgement as to whether a proposed venue would be compatible with their organisation's own principles and standards.

4.37 It would also need to be asked whether any relaxation should apply to all marriages regardless of the way in which they were solemnized. The meetings that we have had with stakeholders do not suggest that the demand for any such relaxation would be limited to civil or non-religious belief weddings. Some religious groups do not regard their meeting place as necessarily being the place to marry and would be happy to conduct marriages elsewhere; others would prefer marriages to be conducted in a dedicated religious building but would be willing to countenance the possibility of conducting a marriage elsewhere. While some indicated that they would be reluctant to solemnize a marriage at any place other than their specific place of worship, there would be no question of them being required to do so. The question for the consultation paper would be what different groups could do, not what they would be required to do.

4.38 Consideration would also need to be given to whether any smaller changes might be able to make the system more rational or efficient, should it be concluded that restrictions similar to those currently in place should be retained. An example of one more minor change would be permitting couples to have a religious ceremony of marriage in any building registered for the purpose, regardless of whether it is in their district or their usual place of worship.

THE CEREMONY

4.39 In considering the regulation necessary to create a marriage, one very basic question is whether any specific ceremony is needed at all. After all, a civil partnership comes into being when the parties sign the relevant document,[19] and it is possible that this could apply to marriages too. The consultation paper should at least ask the question as to whether this should be an option.

4.40 If there is to be a ceremony, the next question is what type or types of ceremony should be permitted. In considering this question, we note that the general trend in this jurisdiction is towards permitting a greater range of ceremonies. Assuming that a variety of ceremonies would be permitted, what, if any, content or steps should be prescribed? At present certain legally prescribed words are required to be included in all marriages, save those conducted according to Anglican, Jewish or Quaker usages which have their own requirements. The argument that having such prescribed words ensures certainty is rather undermined by the fact that they are not required for all groups, but it is likely that any extension of this requirement would be unpopular and would be seen as an encroachment on religious freedom and the privileges of the Established Church. Another weakness is that there is no provision in the legislation stating that a marriage would be void if these prescribed words were not exchanged.

[19] That is the civil partnership document that is signed either at the register office or on approved premises once the necessary preliminaries have been completed; see Civil Partnership Act 2004, s 2.

4.41 The consultation paper should explore the option of requiring some statement or indication by both parties that they consented to the marriage; such statements could be drawn from different religious or belief traditions. At this stage it is worth noting that a number of religious groups indicated that they would welcome greater flexibility. In particular, the Sikh Council UK expressed the view that the current legal declarations had no meaning for them and favoured either a declaration based on appropriate words from their holy scriptures or simply signing a formal legal document.

4.42 A focus on the substance rather than the exact words of the declaration would also allow for greater flexibility in the terms used. Some people, in particular those who do not define themselves as being of either gender or whose legal gender does not match their gender identity may well prefer the neutral term "spouse" to that of "husband" or "wife".

4.43 It should also be noted that what is certain in the eyes of the law may not achieve certainty for the parties themselves: at present there is no requirement that the words be translated into and repeated in a language that the parties understand. If particular words or content are to be required, should there be a requirement that this is to be translated into a language understood by the parties?[20]

4.44 Regardless of whether or not any specific content were to be prescribed, the consultation paper would also need to consider whether there should be any restrictions on the content of the ceremony. One issue that arises here is whether the current distinction between civil and religious ceremonies should be retained. During the scoping phase we have heard arguments on both sides, with religious groups generally (although not invariably) favouring a relaxation of the current restriction on incorporating religious material into a civil ceremony[21] and some (but by no means all) registrars favouring the exclusion of such material. The need for any such change would also depend on whether other current restrictions were to be relaxed: if it were possible to have a religious ceremony conducted in a non-religious venue, there might be less demand for the incorporation of religious elements into a civil ceremony.

4.45 A final point relating to the ceremony is who should have to be present at it. The first and most obvious question here is whether it should be explicitly stated that a marriage can only be valid if both parties are present in the same room at the same time. The consultation paper would also need to consider whether the person responsible for registration should be required to be present (which is not currently the case for marriages according to the usages of Jews or Quakers), and whether witnesses should be specifically required.

THE REGISTRATION OF MARRIAGES

4.46 Given the certainty that registration provides for the couple as well as for the state, our assumption would be that the registration of marriages with the state should continue to be a necessary requirement of marriage law.

[20] Provision for this contingency is made in Scotland (Marriage (Scotland) Act 1977, s 22), Northern Ireland (Marriage (Northern Ireland) Order 2003, s 28), and the Republic of Ireland (Civil Registration Act 2004, s 51(6)).

[21] See para 2.57 above for the details of what may be excluded.

4.47 If so, what should be the process of registration? The consultation paper would need to consider whether the current model is still fit for purpose. One option that could be considered is the schedule system that currently operates in Scotland. This allows more detail to be entered. It would also have more immediate benefits in reducing the need to copy out crucial details by hand in duplicate or triplicate. While this was clearly the only option in 1836, that is hardly the case today.

4.48 Following on from the process of registration is the question of who should be responsible for registering a marriage. This is linked to but not necessarily the same as the question of who should be entitled to solemnize a marriage. It would, for example, be possible to conceive of a system in which religious and other belief groups were recognised for the purposes of conducting the marriage but the presence of a registrar was required in order to register the marriage.

4.49 It is highly unlikely that we would recommend that every wedding should have to be attended by a registrar because this would potentially add to both bureaucracy and costs and would be seen as an encroachment on the role of those religious groups who currently have the responsibility of registering their own marriages. But the attendance of a registrar could remain an option for those groups which would prefer the state to perform this role, or where the group is not large enough to justify the appointment of a specific person, or for a trial period where a particular organisation had not previously been able to conduct marriages.

4.50 Even if no other changes were envisaged, consideration should be given to the current processes for appointing authorised persons.[22] At present there is not necessarily any formal training for the role, and there are no specific criteria as to the individual's qualifications. While there might be some initial cost in making the process of appointment more demanding, or subject to higher levels of scrutiny, these might well be offset by the reduction in the time spent dealing with mistakes and other problems. This would however need to be evaluated as part of a full impact assessment.

4.51 Finally, once the marriage has been registered, who should be responsible for keeping the record? This could, but need not, be the person responsible for registering the marriage. The need to keep a record would also depend on the method of registration adopted. A schedule system, for example, would reduce the need for the storage of register books.

THE CONSEQUENCES OF NON-COMPLIANCE

4.52 The consultation paper would also need to consider what the minimum requirements for a marriage to be recognised as legally valid should be. Certain elements might well be necessary to the smooth operation of the system but their lack should not necessarily invalidate the marriage altogether. In legal terms, the question is which requirements should be mandatory and which merely directory.

[22] See para 2.53 above.

4.53 A good example of the type of issue that would need to be considered here is whether there should be a specific legal provision that a ceremony would not be recognised as a valid marriage unless the ceremony included certain stipulated elements. Another question that would arise is whether signing some official document (whether a certificate or schedule) should be required in order for a marriage to be valid. This has never been a mandatory requirement, although it is often popularly seen as the step that makes the marriage "legal". It should of course be borne in mind that the relevant law dates from a time when a significant section of the population could neither read nor write.

4.54 At present, of course, whether or not a marriage is void depends not only on the level of non-compliance but also on the state of mind of the parties.[23] So a further question for the consultation paper would be whether the knowledge of the parties should matter, or whether a marriage should automatically be void if certain fundamental requirements had not been observed.

4.55 The current condition that a marriage should only be void if both parties "knowingly and wilfully" failed to comply with the law has been in effect for almost two centuries. It should however be noted that the motivation for introducing this condition was the strategic use of the law to annul long-standing marriages at a time when divorce was limited. As explained above,[24] the existence of this condition has led in turn to the creation of a new category of non-marriage, which is now being used as a strategic means of escaping the obligations that might otherwise attach even to a void marriage. The resulting cases of hardship are just as compelling as were those in the early nineteenth century, and the reason for the earlier reform is therefore being undermined. The consultation paper would therefore need to consider not only the factors that should render a marriage void, but also whether there should be any circumstances in which the law should deem a ceremony to be a non-marriage.[25]

4.56 A further question that arises in this context is how far reliance could and should be placed on presumptions to minimise the risk of challenges to the validity of a marriage. Historically, there were two distinct presumptions in favour of marriage, the first arising where the parties had gone through a ceremony of marriage and had subsequently lived together and been assumed to be married, and the second where a couple lived together and were reputed to be married. In the first case the presumption was that the ceremony had been duly performed, while in the second it was that the parties had in fact gone through a valid ceremony of marriage at some point. The consultation paper would need to give careful consideration to the precise scope of these presumptions and whether they might benefit from statutory clarification.

[23] Marriage Act 1949, ss 25 and 49. See para 2.69 above.

[24] See paras 2.70 to 2.72 above.

[25] Should non-marriage remain a possibility, then the case for implementing the Law Commission's earlier recommendations on cohabitation becomes even more compelling. For those recommendations see Cohabitation: The Financial Consequences of Relationship Breakdown (2007) Law Com No 307.

ARE ANY OFFENCES OR SANCTIONS NEEDED TO UPHOLD THE LAW OF MARRIAGE?

4.57 Invalidating a marriage for failing to comply with certain legal requirements is not, however, the only way of encouraging compliance. A system of offences or sanctions also serves to emphasize the importance of key requirements.

4.58 The current offences that may be committed by those responsible for authorising, solemnizing or registering a marriage have been dealt with at various points[26] in this paper. When reviewed as a whole, however, it is clear that the current coverage is problematic. While a number of specific acts or failures to act are addressed, there are some surprising gaps and some equally surprising inclusions. There is little sense of a coherent and carefully calibrated set of offences.

4.59 The consultation paper would need to consider what offences or sanctions would be needed. It is possible, for example, that a model of marriage law that offered more flexibility and greater clarity could be underpinned by tougher penalties on those who fail to comply with the obligations laid upon them. As part of this review of offences and sanctions it would be necessary to consider what behaviour should be criminalised and what behaviour should be deterred in other ways. Consideration could be given to whether there should be provisions to deal with incompetence as well as wilful non-compliance, and whether softer options such as disqualification from celebrating further marriages might be preferable.

4.60 In the context of any new system, or indeed in the current system, some stakeholders have argued that it should be an offence for a celebrant to conduct a non-legally binding marriage ceremony without a prior legally binding ceremony having taken place. This offence has been suggested to address the problem of individuals (usually women) being pressured into entering a non-legally binding marriage and then being left vulnerable on the breakdown of their relationship because it is not recognised as a marriage by the state. However, there may be legitimate reasons why a couple might choose a non-legally binding ceremony. If both parties agreed that they wanted such a ceremony, whether religious or not, then this should arguably be a matter for them. But in circumstances where one or both of the parties is deceived by the celebrant as to the legal effect of the ceremony the state should, arguably, criminalise that deception.

THE ISSUES THAT SHOULD BE OUT OF SCOPE

4.61 We outlined in paragraph 1.53 a number of areas of marriage law that were agreed with the Government from the outset as being outside the scope of this scoping phase and so of any subsequent consultation paper.

(1) Issues of capacity: who can be married, including the age of consent or the restrictions on marrying within prohibited degrees.

(2) The question of whether or not religious groups should be obliged to solemnize marriages of same-sex couples.

[26] See paras 2.64, 2.94 and 2.95 above.

(3) The rights or responsibilities which marriage imparts, such as the financial entitlements of surviving spouses or the consequences of divorce.

4.62 In addition to these areas, we have concluded as a result of our initial work that a number of other issues should be excluded from the scope of future law reform work and so should not be consulted on. Some of these are implicitly out of scope because of the focus of the project on entry into marriage. As previously discussed at paragraph 1.54 above, the grounds on which a marriage may be void or voidable are out of scope, save in so far as they relate to a failure to comply with the required formalities. Similarly, although in the course of discussions with stakeholders we were alerted to the problems that arise where a civil divorce has been granted but a religious one has not,[27] the law of divorce is also out of scope.

4.63 The focus is also specifically on the formalities for entry into marriage. As a result questions about the status of civil partnership also fall outside the scope of this project, including whether civil partnership should continue to exist as a status, what should happen to existing civil partnerships (should civil partnership cease to exist as a status), whether couples should continue to be able to form new civil partnerships and who can enter into a civil partnership. The Government has recently consulted on the future of civil partnership and the issues listed are similar to the type of capacity issues that we are not considering in relation to marriage.[28] However, excluding these issues would not necessarily preclude an investigation of whether any proposed reforms to the law governing the solemnization of marriage would be capable of extending to civil partnerships; for example, whether civil partnerships could also be entered into outdoors.

4.64 We have concluded in light of our scoping work that certain other issues that could in theory be included in a review of marriage law should be expressly excluded from the scope of any future Law Commission project.

4.65 We have discussed at paragraph 1.55 above the Church of England's and Church in Wales's duty to marry their parishioners: this goes to the established status of the Church of England and the special legal position of the Church in Wales.

[27] The Matrimonial Causes Act 1973, s 10A allows a court to withhold the religious divorce until the civil divorce has been granted but at present this applies only to Jewish divorces. The Muslim Women's Network raised the question of whether this could be extended to Islamic divorces.

[28] Department for Culture, Media and Sport, *Civil Partnership Review (England and Wales): consultation* (2014) and Department for Culture, Media and Sport, *Civil Partnership Review (England and Wales) – Report on conclusions* (2014).

4.66 We also do not propose to consider how English law deals with marriages that have taken place overseas,[29] although there may be a case for the law to deal with the situation of those who wish to confirm such a marriage by registration or a further ceremony in this jurisdiction.[30] It will be necessary to consider certain cross-border issues – for example, how the preliminaries are managed where one partner lives in England and the other in Scotland or Northern Ireland[31] – but the substantive law of other jurisdictions is obviously a matter for them.

4.67 The final area that we consider to be out of scope is the question of whether or not non-religious belief groups should be obliged to form civil partnerships or solemnize marriages of same-sex couples. A separate policy decision needs to be taken by the Government on this question, and this decision is best taken when the shape of any recommended new system of marriage law is known, with a fuller understanding of how the protections for religious groups would operate in a new system.

THE POLICY ASSUMPTIONS ON WHICH WE WOULD PROCEED

4.68 In addition to matters which we think should be outside the scope of future work, there are a number of areas in which the Commission would work on the basis that reform should be cast within pre-established policy parameters. Some of these have been clear from the outset of the scoping phase and some have emerged through the work that we have done. We would propose to proceed on the following assumptions.

(1) The project should not look to introduce universal civil marriage. As discussed at paragraphs 3.24 to 3.31, universal civil marriage would remove choice rather than accommodating it and would potentially add to the cost of marrying, by requiring a couple to have both a civil and a religious (or non-religious belief) ceremony of marriage. This may deter more couples from legal marriage.

(2) There should be no change to the principle that, provided that other requirements are met, religious groups should be able to marry people. This has been a long-standing feature of marriage law in England and Wales, and we have seen no widespread appetite to overturn it.

[29] The basic rule is that the marriage will be valid if the parties had capacity to marry according to the law of their country of domicile and if they complied with the formal requirements of the local law of the place of marriage.

[30] At present those who have married in another jurisdiction have no way of recording the fact of that marriage in this jurisdiction. The consequences of this are two-fold: first, difficulties may arise where the existence of the marriage is challenged at a later date; second, estimates of how many couples have travelled out of the jurisdiction to marry have to be based on sources such as passenger surveys. Considering whether a form of registration or acknowledgment of a prior marriage could be devised to address such problems would, however, be a separate project.

[31] Marriage Act 1949, s 13.

(3) There should be no change to the law determining what amounts to a religion for the purposes of the solemnization of marriage. This was recently considered and determined by the Supreme Court in the case of R *(Hodkin) v Registrar General of Births, Deaths and Marriages*.[32] This question involves value judgements that it would not be appropriate for the Commission to make, the ramifications of which would be likely to reach beyond the law of marriage.

(4) The project should not re-examine the changes to marriage law enacted by the Immigration Act 2014, which extend the length of the waiting period that must elapse between parties to an intended marriage giving notice and the authority for the marriage being granted, and prescribe a different route for individuals who are not relevant nationals. In designing a new system of marriage law, the project should replicate these provisions, and any other immigration provisions introduced by the Government to protect against sham marriages.

(5) The provisions of the civil and criminal law[33] dealing with the issue of forced marriages should not be undermined by any changes to the law.

(6) The principles identified at paragraph 3.3 above that we have suggested should underpin a reformed marriage law.

KEY POLICY ISSUES FOR THE GOVERNMENT

4.69 The Law Commission is an expert organisation whose projects involve detailed study of law and practice in this country and overseas and wide independent consultation with relevant groups and the general public. As a result, the Commission has been entrusted with the task of making recommendations for reform in a wide range of areas which have involved not only consideration of technical legal issues, but also an assessment of social policy issues. Nevertheless, there are some issues that are generally considered unsuitable for a law reform body. The Commission identified when asked to review the law of marriage that decisions about reform would potentially engage some questions involving broad issues of social policy that went beyond its usual boundaries. There could be concern about the legitimacy of a group of legal experts making judgements about such issues. Beyond that, there would be a risk that the Government might make different policy choices, undermining the recommendations we made.

4.70 The Government will always, ultimately, have to take a view on the issues considered in a Law Commission project when it decides whether or not to accept our recommendations. But we wish to highlight two key policy areas that would be engaged in the reform of marriage law on which the Government would need to decide. They are:

[32] [2013] UKSC 77, [2014] AC 610.

[33] Contained in the Family Law Act 1996 (as amended by the Forced Marriage (Civil Protection) Act 2007) and the Anti-Social Behaviour, Crime and Policing Act 2014.

(1) Whether the class of groups able to conduct legally binding marriages should be expanded and, if so, how far. Although categories could be drawn up in many ways, the types of organisation and individuals that would need to be considered are:

(a) Non-religious belief organisations, such as the British Humanist Association, which have a belief system which seeks to explain mankind's place in the universe and how we should behave, but (in contrast to religions) seek to do so without going beyond that which can be perceived by the senses or ascertained by the application of science.

(b) Other organisations that do not have a belief of the sort described in (a). Assuming that the Government would want to limit those organisations within this category in some way, the defining characteristics of this category would need to be established.

(c) Independent celebrants, such as those who currently conduct funerals, naming ceremonies and some non-legally binding marriages. As this category could in theory include anyone, regulation would be required so as to ensure that only suitable individuals could act.

(2) How far the rules for the formation of a civil partnership should be aligned with any reformed rules for marriage. This includes relatively uncontroversial issues such as whether any greater choice as to the location of a marriage should also be made available to those entering a civil partnership. It also engages more fundamental questions such as whether, given their civil nature, civil partnerships should be able to be conducted by anyone other than state officials, and, if so, who?[34]

4.71 While further Law Commission work would be able to comment on the legal consequences of those policy decisions and the way the law could be structured to give effect to them, we will not be in a position to give the Government the answers to these questions. We plan to discuss with the Government how the project can be designed so as to enable the project to proceed against this policy backdrop.

4.72 In the event that the Law Commission and the Government agree that the Commission should undertake further work on the reform of the law of marriage, we will publish terms of reference so that the basis on which we are proceeding is clear.

[34] It should be noted that at least some of the current differences between solemnizing a marriage and forming a civil partnership were unintended. The law governing the formation of a civil partnership was developed at the same time that the Government was proposing reform to the law of marriage, with the two reforms intended to mirror each other. However, those reforms to the law of marriage did not go ahead (see paras 1.14 to 1.17 above). Since its introduction, the law of civil partnerships has developed to permit their formation on religious premises with the consent of the governing authority of the religious organisation; Civil Partnership Act 2004, s 6 (as amended by the Equality Act 2010, s 202).

SUMMARY OF THE SCOPE OF THE PROJECT

4.73 Having undertaken the scoping phase it is clear that the law governing how and where couples marry is in dire need of reform and that the consultation phase of the project would need to consider a wide range of issues. Given that we have identified a large number of specific questions in this chapter, it may be useful to summarise the broad overarching questions here.

4.74 In relation to the preliminaries, we would be considering:

(1) What does the state need to know before people can legally marry?

(2) To whom, how and where should that information be provided?

(3) Should all or any of that information be made publicly available?

(4) How should authorisation to marry be given?

(5) Should all couples have to follow the same system of marriage preliminaries?

4.75 In relation to the question of who should be able to solemnize marriages, we would be considering:

(1) Is there any scope for greater coherence in the current rules as to who can solemnize a marriage?

(2) What is the role of the person responsible for conducting the marriage?

(3) Should the ability to solemnize marriages be extended beyond those currently able to do so? The answer to this question will be a policy decision for Government.

(4) If so, who else should be permitted to solemnize marriages and how could recognition be conferred? The answer to the first question would again be a matter of policy to be decided by Government.

(5) What should be the consequences of a person solemnizing a marriage without the authority to do so?

(6) Should there be any limitations applied to the fees that can be charged to solemnize a marriage or the number of marriage ceremonies that can be solemnized by any one person?

4.76 In relation to the question of where marriages can take place, we would be considering:

(1) Should all marriages have to take place in a stated location?

(2) Should there be any restrictions as to the types of location where a marriage can be solemnized? For example, should marriages be able to take place outdoors?

(3) Who, if anyone, should have to agree or authorise the chosen location and what, if any, criteria should apply?

(4) If the current restrictions were retained, are any smaller changes needed to make the system more rational or efficient?

(5) Should marriage ceremonies have to take place with open doors?

4.77 In relation to the ceremony, we would be considering:

(1) Is a ceremony necessary to solemnize a marriage?

(2) What types of ceremony should be allowed?

(3) What, if any, content or steps should be prescribed?

(4) Should there be any restrictions on content?

(5) Should there be a requirement that any prescribed content is translated into a language understood by the parties?

(6) Who should have to be present at the ceremony?

4.78 In relation to registration, we would be considering:

(1) Assuming marriages have to be registered with the state, what should be the process of registration?

(2) Who should be responsible for registering a marriage? Who should hold the official record?

4.79 In relation to the issue of validity we would be considering:

(1) What are the minimum requirements for a legally valid marriage?

(2) In what circumstances should non-compliance render a marriage void?

(3) Should there be a category of non-marriage?

(4) When should a couple be presumed to be married?

4.80 In relation to the possible offences that might underpin the system, we would be considering:

(1) What, if any, offences and sanctions are needed to uphold the law of marriage?

(2) What behaviour should be criminalised and what behaviour should be deterred in other ways, and how?

4.81 In relation to the formation of civil partnerships, we would be considering:

(1) Should aspects of the law governing the formation of civil partnerships be aligned with the law governing the solemnization of marriages? It will be for Government to make a policy decision on how far alignment is necessary or desirable.

(2) Are any changes needed to the rules governing the process of the conversion of a civil partnership to a marriage?