The Law Commission

(LAW COM. No. 53)

FAMILY LAW

REPORT ON SOLEMNISATION OF MARRIAGE IN ENGLAND AND WALES

Laid before Parliament by the Lord High Chancellor pursuant to section 3 (2) *of the Law Commissions Act* 1965

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Commissioners are—

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CONTENTS

REPORT OF THE LAW COMMISSION

ANNEX

THE LAW COMMISSION

Item XIX of the Second Programme

SOLEMNISATION OF MARRIAGE IN ENGLAND AND WALES

To the Right Honourable the Lord Hailsham of Saint Marylebone,
Lord High Chancellor of Great Britain

INTRODUCTION

1. As part of our comprehensive examination of family law under Item XIX of our *Second Programme of Law Reform*[1] we instituted in 1969 a study of the formal requirements for the solemnisation and registration of marriages in England and Wales. Acting jointly with the Registrar General we set up, under the chairmanship of Sir Leslie Scarman, a Working Party which prepared a consultative document, distributed in June 1971 as a Working Paper[2]. The joint Working Party considered the replies to that Working Paper and in January 1973 presented their Report to the Law Commission and the Registrar General.

2. By agreement with the Registrar General the Report of the Working Party is set out in full as an Annex to this Report[3]. We are greatly indebted to the Working Party for their extensive and careful investigations. In this Report we draw attention to those matters which seem to us of particular importance, and we also express certain views of our own.

Extent of the enquiry

3. This Report is concerned with the formal aspects of getting married: what preliminary requirements the law should impose before a marriage is solemnised, whether the form of the ceremony should be laid down by law, where and when marriages may take place, how they are to be registered and what the effects of non-compliance with rules laid down by the law should be. The present law as to these matters is mostly to be found in the Marriage Acts 1949 to 1970. We have concentrated on questions relating to formalities and procedure rather than on questions of capacity because it appears to us that it is in respect of formalities and procedure that the law is most in need of reconsideration. However, like the Working Party[4], we have considered questions relating to parental consent to the marriage of a person under the age of majority[5].

4. We shall not in this Report review again all the ground covered by the Working Party. We shall deal with the preliminaries to marriage; the place, time and method of solemnisation; offences; and other matters.

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[1] Law Com. No. 14 (1968).
[2] Working Paper No. 35, *Solemnisation of Marriage in England and Wales.*
[3] See p. 12 below. Membership of the Working Party is set out on p. 80 below.
[4] See paras. 50, 54, 64(*k*) and 64(*m*) of the Working Party's Report.
[5] See para. 12 below.

PRELIMINARIES TO MARRIAGE

The present law

5. The present law is set out in paragraphs 7 to 14 of the Report of the Working Party. We may summarise the position by saying that, in every case, before a marriage is celebrated certain preliminary steps must be taken. These preliminary steps involve either giving notice to a superintendent registrar or certain ecclesiastical preliminaries.

Civil preliminaries

6. Notice to a superintendent registrar is necessary except where the marriage is to take place according to the rites of the Church of England (which expression throughout this Report includes the Church in Wales). Varying with the form in which notice is given, the superintendent registrar will, if all is in order, issue a certificate or a certificate and licence, or the Registrar General will issue a licence. These preliminaries can then be followed by a civil or a religious ceremony. The differences between these preliminaries seem almost arbitrary.

7. The Registrar General's licence was introduced as from 1971[6] to enable marriages other than those according to the rites of the Church of England or according to the usages of the Quakers or the Jews to take place elsewhere than in a register office or registered building. It can only be issued if one of the persons to be married is seriously ill and is not expected to recover and cannot be moved to a register office or registered building. There is no statutory waiting period for the Registrar General's licence—it may be issued on the same day as the notice is given—and there is no residential qualification. The fee is £15, though this may be remitted in whole or in part.

8. The superintendent registrar's certificate is subject to a seven-day residential qualification for each party[7], involves a waiting period of 21 days before the certificate can be issued, and costs either £1 or £2. The superintendent registrar's certificate and licence is subject to a 15-day residential qualification for one party[8], involves a waiting period of only one whole day, and costs £6.

Ecclesiastical preliminaries

9. If the marriage is to be celebrated according to the rites of the Church of England it may be preceded by a superintendent registrar's certificate[9] or by preliminaries administered by the Church itself. As with the civil preliminaries, there are three forms: banns, common licence and special licence.

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[6] Marriage (Registrar General's Licence) Act 1970.
[7] See para. 8 of the Working Party's Report for details.
[8] See *ibid.*, para. 9, for details.
[9] But not by a certificate and licence nor by the Registrar General's licence. As the 1971 statistics in Appendix 1 to the Working Party's Report (p. 79, below) show, civil preliminaries before a Church of England wedding are rare.

10. Banns are subject to no minimum residential qualification, involve a minimum waiting period of 15 days, and cost a minimum of £1.05[10]. A common licence is subject to a 15-day residential qualification for one party unless the marriage is to be celebrated in a church or chapel which is the usual place of worship of one or both of the parties, involves no statutory waiting period, and costs £4.50. A special licence is issued by the Archbishop of Canterbury[11], is subject to no residential qualification or waiting period, enables the marriage to be solemnised according to the rites of the Church of England at any time or place, and costs £25, which may be waived; its grant is entirely discretionary, but in practice it is granted only in exceptional circumstances or in emergencies[12].

Working Party's proposals

11. We entirely accept the Working Party's views that in so far as the central function of the preliminaries to marriage is to ensure that there is no impediment to the celebration of a valid marriage the safeguards imposed by these preliminaries should not be capable of being by-passed merely by paying an extra fee, and that these preliminaries fall properly within the sphere of the civil authorities.

12. The Working Party propose that as a general rule there should be one, and only one, formal preliminary to a marriage: the superintendent registrar's licence. To this general rule, it is proposed that the Archbishop of Canterbury's special licence[13] and the Registrar General's licence should, in very limited circumstances, provide exceptions. The superintendent registrar's licence would be subject to a seven-day residential qualification for each party[14] and would normally involve a waiting period of 15 days. The form of notice and declaration, and the superintendent registrar's power to insist on supporting evidence, would thus be uniform in respect of all marriages. We believe that this would be very desirable and, subject to the comments below, support the recommendations of the Working Party summarised in paragraph 64 of their Report[15].

Dispensation in special cases

13. In 1971 nearly half of all civil marriages, and over 37 per cent. of all marriages preceded by civil preliminaries, were celebrated on the authority of a superintendent registrar's certificate and licence which, at the expense of a longer residential qualification for one party and a higher fee, reduced the waiting period from 21 days to one day[16]. It is not known what delay then ensued before the celebration of the marriage, nor how many of the applications

[10] See para. 12 of the Working Party's Report for details.
[11] Special licences originate in the Papal powers conferred on the Archbishop of Canterbury by the Ecclesiastical Licences Act 1533, preserved by s.79(6) of the Marriage Act 1949.
[12] See para. 14 of the Working Party's Report.
[13] See below, para. 20.
[14] See paras. 43–45 of the Working Party's Report for details.
[15] See p. 36 below.
[16] See the statistics in Appendix 1 to the Working Party's Report (p. 79 below). Under 5 per cent. of Church of England marriages were celebrated after a common licence which involved no waiting period.

for a certificate and licence were prompted by the desire for a speedy authorisation rather than the other advantages of the certificate and licence over a certificate.

14. The Working Party propose[17] that the Registrar General should be empowered to authorise the issue of a licence by the superintendent registrar before the expiration of the 15-day waiting period if he is satisfied *inter alia* that the parties could not reasonably have been expected to have given earlier notice and that hardship would be caused by delaying the marriage. As this is conditional on the Registrar General finding, within whatever time is necessary to accomplish this, that there is no lawful impediment and that any requisite consents have been given or dispensed with, the safeguards in the new system will be effectively preserved. We therefore support this proposal, and agree with the Working Party that the Registrar General should be specifically authorised to delegate his power of expedition to superintendent registrars[18].

15. Two special cases need separate consideration. The first is the person who is temporarily resident abroad. He or she may wish to be married here during a short period of leave. At the present time there are several convenient methods of arranging this. A superintendent registrar's certificate and licence[19] involves a waiting period of only one whole day and, provided that one party has resided in the district in which notice is given for not less than 15 days, will cause no difficulties. If both parties have their usual residence abroad, however, neither can apply for the superintendent registrar's certificate and licence until at least one has obtained a 15-day residential qualification, and there is no way that civil preliminaries can be complied with on a residence qualification of less than seven days[20]. If the marriage is to be celebrated in accordance with the rites of the Church of England, a common licence may be obtained with little or no delay; moreover this might be a situation in which the Archbishop of Canterbury issues a special licence.

16. Under the new scheme, leaving aside the Archbishop's special licence, all applications for the superintendent registrar's licence will be subject to a seven-day residential qualification for both parties. The Working Party's Report[21] accepts that the "seven-day rule" might be thought to cause hardship in the case of persons temporarily resident abroad but points out that it would be possible for a person coming from abroad to apply to the Registrar General, after having given notice, for expedition of the licence. This, however, still imposes on that party the need to obtain a seven-day residence, and this would involve a waiting period of seven days in a single registration district during which time nothing can be done by the registrar, no enquiries can be made, and no publicity obtained. Only after this period can notice be given: and then expedition involves curtailing the publicity and speeding up the enquiries. It is arguable that the seven days would be better spent after giving notice, not before. We therefore suggest that the Registrar General's power to expedite the

[17] See para. 34 of the Working Party's Report.
[18] See para. 35 of the Working Party's Report.
[19] See para. 8 above.
[20] The Registrar General's licence is, of course, not relevant to this situation.
[21] Para. 60.

issue of a licence should be accompanied by a discretionary power to authorise a superintendent registrar to receive a notice notwithstanding that the party giving notice had not resided in the registration district for the previous seven days. The Registrar General should only have this power if he is satisfied that hardship would be caused if the giving of notice had to be delayed until the seven-day residential qualification had been acquired, and he could be expected not to exercise this power unless he was satisfied that there was good reason for the marriage to take place here; it would not be exercised merely in order to expedite the marriage of a visitor from abroad. Like the power to expedite the licence, the Registrar General should be authorised to delegate this power to superintendent registrars in appropriate classes of case.

17. The second situation we wish to consider separately is where the birth of a child is expected immediately after the date of a decree absolute of divorce or nullity[22]. We entirely accept the view of the Working Party that no recommendation for the giving of conditional notice of marriage before the decree absolute is granted is called for. Nevertheless, we are concerned that the new scheme should not cause serious inconvenience to the admittedly few people likely to be affected in such circumstances by the abolition of the superintendent registrar's certificate and licence and the (ecclesiastical) common licence, both of which reduce the delay in getting married once the parties are free to marry to a bare minimum. We have already referred[23] to the Working Party's proposal that the Registrar General should be empowered to authorise the issue of a licence before the expiration of the usual 15-day waiting period. We believe that this would enable the Registrar General to approve the issue of a licence in a very short time, bearing in mind that this type of case—and certainly the case where the judge has made an order expediting the decree absolute—would be appropriate for the delegation of the power of expedition to superintendent registrars.

Abolition of ecclesiastical preliminaries

18. The Working Party's proposed new scheme would introduce a welcome simplication and uniformity into the present complex preliminaries to marriage. We endorse the Working Party's reasons for recommending such a scheme. This involves the abolition of banns as a legally recognised preliminary[24] but we have no doubt that banns will continue to be required by those ecclesiastical authorities who desire them.

Archbishop of Canterbury's special licence

19. The Working Party propose that the power of the Archbishop of Canterbury to issue a special licence should be retained[25]. The retention of the Archbishop's special licence leaves a small but significant gap in the idea that the preliminaries to marriage are a matter for the civil authorities. We therefore considered whether the continuation of this special licence was justified. We do

[22] Working Party's Report, paras. 36–38.
[23] See para. 14 above.
[24] The reasons are fully given in paras. 15–23 of the Working Party's Report.
[25] See *ibid.*, para. 24.

not consider that administrative simplicity would justify interference with this particular privilege of the Church of England to which members of the Church attach great importance. Moreover, this special licence is matched under the new scheme by the discretionary powers to be conferred on the Registrar General which will, we think, to some extent confer similar privileges on all, whether or not they are members of the Church of England.

PLACE, TIME AND METHOD OF SOLEMNISATION

PLACE AND TIME OF MARRIAGE

The present law

20. At the present time a marriage must take place in the office of a superintendent registrar, in a parish church or authorised chapel[26], or in a registered building[27]. Marriages may only be solemnised between 8 a.m. and 6 p.m.[28] Marriages may, however, be solemnised at any place or time—

(i) pursuant to a Registrar General's licence[29],

(ii) pursuant to a special licence of the Archbishop of Canterbury[30] or

(iii) according to the usages of the Quakers and Jews[31].

Working Party's proposals

21. The Working Party's Report proposes that the restriction of marriage to prescribed places should remain[32], though changes should be made in the rules relating to registered buildings[33] and it should no longer be necessary for the parties to marry within the parish or district in which one of them resides[34]. The Working Party also propose that the rule that marriages may only be solemnised between 8 a.m. and 6 p.m. should remain[35]. The Working Party propose that the Quakers and Jews should not continue to enjoy their present privileges as to place and time of marriage[36]. The exceptions to the general rules at present provided by the Registrar General's licence and the Archbishop's special licence would, however, remain.

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[26] See Marriage Act 1949, s.20, as to authorised chapels, and see s.21 as to other churches and chapels.
[27] *ibid.*, s.41.
[28] *ibid.*, ss.4 and 75(1)(*a*).
[29] Granted only if one of the persons to be married is seriously ill and is not expected to recover and cannot be moved to a place where the marriage could otherwise be solemnised: Marriage (Registrar General's Licence) Act 1970, ss.1(2) and 16(4).
[30] See para. 10 above.
[31] Marriage Act 1949, s.75(1)(*a*) and (2)(*a*).
[32] Working Party's Report, para. 74.
[33] *ibid.*, paras. 75–80.
[34] *ibid.*, para. 81.
[35] *ibid.*, para. 101.
[36] *ibid.*, paras. 84 and 101.

Discussion and conclusions

22. We record with regret that we ourselves are unable to reach agreement on whether to support the proposals of the Working Party. Some of us take the view that if the preliminaries laid down by the law are complied with, and if there is present at the wedding at least one person qualified to supervise the solemnisation of the marriage and see that it is duly registered then the law need require no more and that the actual place where or time when the marriage is solemnised is unimportant. Others share the view of the Working Party that all marriages should be celebrated at a place prescribed by law within permitted hours, subject to the discretionary powers of the Archbishop of Canterbury and the Registrar General to deal with exceptional cases. We are conscious of the fact that this is not a question on which our views, even if unanimous, would end debate, and are therefore content to express the different views in the hope that others may continue the discussion and arrive at an agreed basis for legislation.

Registrar General's licence

23. There is, however, one matter on which we are all agreed. If the decision is taken that marriages should be solemnised only at prescribed places and hours, we believe that a strong case exists for conferring a wider discretion on the Registrar General to authorise a wedding at a place other than a prescribed place or outside the normal hours than is given by the Marriage (Registrar General's Licence) Act 1970[37]. The Archbishop of Canterbury has an unfettered discretion in the present law when granting a special licence, and we have accepted the Working Party's view that this power need not be curtailed[38]. While we do not think that an unfettered discretion need be conferred on the Registrar General we propose that the powers to dispense with other requirements[39] might extend to the place and hours of marriage too.

24. Basing ourselves on the proposal in paragraph 34 of the Working Party's Report we therefore suggest that the Registrar General should be empowered to authorise a superintendent registrar to issue a licence before the expiration of the 15-day waiting period[40] and to receive a notice notwithstanding the fact that a party has resided in the registration district for less than seven days[41], and to issue the Registrar General's licence permitting a marriage other than between the prescribed hours or at a prescribed place, if it appears to the Registrar General on the evidence before him and after making any enquiry that he considers necessary—

(*a*) that there is no lawful impediment to the marriage and that any requisite consents have been given or dispensed with, and

(*b*) that in all the circumstances the parties could not reasonably be expected to comply with the requirements of the law as to the matter or matters in question and that hardship would be caused unless the dispensation is given.

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[37] See para. 7 above.
[38] See para. 19 above.
[39] See para. 14 above; and see also para. 16.
[40] See para. 14 above.
[41] See para. 16 above.

Registered buildings

25. Accepting the principle that (subject to exceptions) marriages must be solemnised only at prescribed places, we support the conclusions reached by the Working Party in their discussion of the rules relating to "registered buildings"[42].

26. In addition to the matters on which they submitted recommendations, the Working Party referred to the Places of Worship Registration Act 1855 and concluded that amendment of this Act was not within their terms of reference[43]. They did however doubt whether any useful purpose is still served by retaining the dual requirement of registration under the 1855 Act followed by registration under section 41 of the Marriage Act 1949.

27. Under section 41 of the Marriage Act the proprietor or trustee of a separate building[44] may apply for the building to be registered for the solemnisation of marriages. Two conditions must be satisfied: the building must be registered under the Places of Worship Registration Act 1855, and a certificate must be signed in duplicate by at least twenty householders stating that the building is being used by them as their usual place of public religious worship and that they desire that the building should be registered for the solemnisation of marriages.

28. We need express no view in this Report as to the function of the Places of Worship Registration Act 1855, but we see no reason why registration under that Act need be a pre-condition of registration under the Marriage Act. Before registering a place under the 1855 Act the Registrar General has to consider whether it is, as claimed in the certificate which constitutes the application for registration[45], intended to be used as a place of meeting for religious worship[46]. We see no reason why, as far as the Marriage Act is concerned, an application to register a building for the solemnisation of marriages should not, if supported by the necessary certificate of twenty or more householders, be made if—

(i) the building has been registered under the Places of Worship Registration Act 1855 or

(ii) the Registrar General is satisfied that the building is a place of meeting for religious worship.

Method of solemnisation

29. There is no need for us to review in detail the Working Party's findings on the method of solemnisation of marriages. We share their view that both civil ceremonies conducted by the superintendent registrar and religious ceremonies should continue, and endorse their recommendations[47]. In particular we agree that the Registrar General should have a greater measure of supervision over "authorised persons"[48].

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[42] Working Party's Report, paras. 75–80. The recommendations are summarised in para. 103(*b*).

[43] Working Party's Report, para. 75.

[44] It need not be a separate building if it is a church building to which a sharing agreement relates: Sharing of Church Buildings Act 1969, ss.6(1), 12(1) and Schedule 1, para. 1, nor if it is used exclusively as a Roman Catholic Chapel: Marriage Act 1949, s.41(7). And see the recommendation in para. 79 of the Working Party's Report.

[45] 1855 Act, Schedule A.

[46] *R.* v. *Registrar General, ex parte Segerdal* [1970] 2 Q.B.697.

[47] Summarised in the Working Party's Report, para. 103(*e*)–(*j*).

[48] Working Party's Report, paras. 95 and 103(*h*).

OFFENCES

30. The Report of the Working Party draws attention to the rather haphazard formulation of maximum penalties for different offences in the present law[49]. The following short note may help to demonstrate this. The Acts referred to are the Marriage Act 1949 ("1949") and the Marriage (Registrar General's Licence) Act 1970 ("1970").

Maximum term of imprisonment or fine	Nature of offence
14 years	Knowingly and wilfully solemnising a marriage: —outside permitted hours (1949, s.75(1)(*a*)) —C. of E., without banns (1949, s.75(1)(*b*)) —C. of E., wrong place (1949, s.75(1)(*c*)) —C. of E., falsely pretending to be in Holy Orders (1949, s. 75(1)(*d*))
5 years	Knowingly and wilfully solemnising a marriage: —wrong place (1949, s.75(2)(*a*)) —in absence of registrar or authorised person (1949, s.75(2)(*b*)) —in register office, in absence of registrar (1949, s.75(2)(*c*)) —pursuant to premature superintendent registrar's certificate, within 21 days of notice (1949, s.75(2)(*d*)) —after superintendent registrar's certificate has expired (1949, s.75(2)(*e*))
5 years	Superintendent registrar who knowingly and wilfully: —issues a certificate prematurely (1949, s.75(3)(*a*)) —issues a certificate or licence after three months from notice (1949, s.75(3)(*b*)) —issues a certificate after it has been forbidden (1949, s.75(3)(*c*)) —solemnises or permits solemnisation of a marriage void under Part III of 1949 Act (1949, s.75(3)(*d*))
5 years	Registrar who knowingly and wilfully: —registers a marriage which is void under Part III of 1949 Act (1949, s.76(3))
3 years and £500	Knowingly and wilfully: —solemnising a marriage by Registrar General's licence in wrong place (1970, s.16(1)(*a*)) —solemnising a marriage by Registrar General's licence in absence of registrar (1970, s.16(1)(*b*)) —solemnising a marriage by Registrar General's licence after its expiration (1970, s.16(1)(*c*)) —giving false information under s.3 of 1970 Act (1970, s.16(1)(*d*)) —giving false medical certificate (1970, s.16(1)(*e*))
3 years and £500	Superintendent registrar who knowingly and wilfully: —solemnises or permits solemnisation of a marriage by Registrar General's licence which is void under Part III of 1949 Act (1970, s.16(2)) Registrar who knowingly and wilfully: —registers a marriage by Registrar General's licence which is void under Part III of 1949 Act (1970, s.16(2))
2 years or £50 (in absence of other specific penalty)	Authorised person's failure to comply with statutory provisions (1949, s.77)

[49] Working Party's Report, paras. 134–5.

Maximum term of imprisonment or fine	Nature of offence
£50	Refusal or omission to register a marriage; carelessly losing, injuring, or allowing to be lost or injured, a marriage register book or certified copy of a marriage register book or part thereof (1949, s.76(1))
£20	Refusal or failure to deliver required copy entry or certificate to superintendent registrar (1949, s.76(2))

31. We agree with the recommendation of the Working Party[50] that offences and penalties should be rationalised. It would be premature to attempt to formulate the new offences and penalties before final decisions are taken as to the form of legislation[51].

32. We also agree with the Working Party that a number of new offences should be created. These are as follows:—

(i) solemnising a marriage without inspecting the licence, whether issued by the superintendent registrar, Registrar General or Archbishop[52];

(ii) solemnising a marriage knowing—
  (*a*) that the parties are within the prohibited degrees of relationship, or
  (*b*) that either party is under the age of sixteen, or
  (*c*) that either party is already lawfully married, or
  (*d*) that either party is not capable of validly consenting to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise[53];

(iii) performing a bogus ceremony of marriage[54];

(iv) issuing a certificate in respect of a bogus ceremony of marriage[55].

OTHER MATTERS

33. There are only two other matters on which we wish to comment. The first is that we share the desire of the Working Party to simplify and clarify the law as to the circumstances in which "disregard of certain requirements as to the formation of marriage" (to use the words in section 1 of the Nullity of Marriage Act 1971) render the marriage void. We therefore support their recommendations on the effect of irregularities[56].

34. The other matter relates to the form of the legislation to implement those proposals that are accepted. We have not, in this Report, followed our usual practice of appending draft clauses. We are conscious of the fact that reform in this particular field is a topic on which personal views and religious opinions

[50] Working Party's Report, paras. 135 and 140(*a*).
[51] See para. 34 of this Report, below.
[52] Working Party's Report, para. 63.
[53] *ibid.*, para. 135.
[54] *ibid.*, para. 138. We have not attempted at this stage to define the offence with any precision.
[55] *ibid.*, para. 139.
[56] *ibid.*, para. 133.

influence the decisions to be made, and also that much of the legislation will be concerned with administrative detail. It seems to us proper, therefore, to publish the Working Party's Report in full, with our comments but without clauses. We agree with the Working Party that it is essential that there should ultimately be a new, comprehensive Marriage Act[57].

(*Signed*) SAMUEL COOKE, *Chairman.*
CLAUD BICKNELL.
AUBREY L. DIAMOND.
DEREK HODGSON.
NORMAN S. MARSH.

J. M. CARTWRIGHT SHARP, *Secretary.*
10 *April* 1973

[57] Working Party's Report, para. 142.

ANNEX

SOLEMNISATION OF MARRIAGE IN ENGLAND AND WALES

Report of Joint Working Party of the Law Commission and the Registrar General

PART 1

INTRODUCTORY

Scope of the Report

1. In December 1969 we were established by the Law Commission and the Registrar General as a small Working Party:

> "to enquire into the formal requirements for the solemnisation and registration of marriages in England and Wales and to propose what changes are desirable."

2. This enquiry forms part of the review of family law under Item XIX of the Law Reform Programme of the Law Commission. It follows an enquiry by a Departmental Committee under the Chairmanship of Lord Kilbrandon into the marriage law of Scotland, the Report[1] of which has been invaluable to us in our deliberations. In June 1971 the Law Commission published a Working Paper[2] which contained our provisional proposals for reform and in which we sought the opinions of those with an interest in this area of the law. We are grateful to all those who sent us their observations. We have found their comments most helpful to us in reaching the conclusions set out in this Report. We have tried in the Report to eliminate any needless differences between the marriage law of England and Wales and that of Scotland but there are such differences of law, practice and tradition that uniformity has not proved possible. The Report represents the agreed view of the Working Party; it does not necessarily represent the views of the Law Commission or any Government Department.

3. Our terms of reference limit the enquiry to the formalities of marriage[3]; we are not here concerned with questions of capacity to marry such as minimum age or the prohibited degrees of relationship. After outlining the purposes of the law of marriage, the Report sets out the present law and practice, discusses the problems and difficulties which have arisen, and makes a number of recommendations for reform, under the following headings:—

(*a*) Preliminaries,

(*b*) Place and method of solemnisation,

(*c*) Registration,

(*d*) Irregularities,

(*e*) Offences.

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[1] (1969) Cmnd. 4011.
[2] Published Working Paper No. 35.
[3] This includes the requirement of parental or other consents in the case of minors aged 16 or 17.

The purposes of formalities

4. In reviewing the law relating to the preliminaries to, and the solemnisation and registration of, marriages we have assumed that the purpose of a sound marriage law is to ensure that marriages are solemnised only in respect of those who are free to marry and have freely agreed to do so and that the status of those who marry shall be established with certainty so that doubts do not arise, either in the minds of the parties or in the community, about who is married and who is not. To this end it appears to us to be necessary that there should be proper opportunity for the investigation of capacity (and, in the case of minors, parental consent) before the marriage and that the investigation should be carried out, uniformly for parties to all marriages, by persons trained to perform this function. We suggest that the law should guard against clandestine marriages, that there should be proper opportunity for legal impediments to be declared or discovered, that all marriages should be publicly solemnised and that the marriage should be duly recorded in official registers. At the same time we recognise that a marriage ceremony is an important family and social occasion and we feel that unnecessary and irksome restrictions on its celebration should be avoided.

5. Moreover, since nearly every person who attains maturity marries at least once and attends numerous marriages of friends and relations and since the marriage creates a status which vitally concerns the public, the law of marriage should be as simple and easily understood as possible.

6. It is with these objectives in mind that we have examined the present law under the various headings set out in paragraph 3. And it may be helpful if we summarise the result of the discussion which follows by saying that the law falls short of the optimum attainment of these objectives—particularly, perhaps, as regards simplicity and intelligibility. The present law is the product of history. Although most of it is now to be found in the Marriage Act 1949[4], that was merely a consolidating (not a reforming) Act which re-enacted the substance of statutory provisions dating back to 1823 (which in turn were based on still earlier legislation). There are now two main forms of solemnisation of marriage —civil and religious. The former is relatively straightforward in that the preliminaries, celebration and subsequent registration are all handled by the civil authorities of the State. Even so, there are different types of preliminaries, differences which are not based on any very rational principle. In the case of ecclesiastical marriages there is a bewildering mixture of civil and religious administration at all stages. Except in the case of Church of England[5] marriages, the preliminaries (of which there are various types) are handled by the civil authorities and they can be so handled in the case of Church of England marriages also. The ceremony is left largely to the religious body concerned but, except in

[4] As amended and supplemented by the Marriage Act 1949 (Amendment) Act 1954, the Marriage Acts Amendment Act 1958, the Marriage (Secretaries of Synagogues) Act 1959, the Marriage (Enabling) Act 1960, the Marriage (Wales and Monmouthshire) Act 1962 and the Marriage (Registrar General's Licence) Act 1970. The formalities prescribed by the Marriage Act, as so amended, apply to all marriages solemnised in England, including, in view of the decision in *Radwan* v. *Radwan* [1972] 3 W.L.R.735, those solemnised in foreign consulates and, probably, embassies situated in England.

[5] Throughout this Report this expression includes the Church in Wales.

the case of Church of England, the Jews and the Quakers, it must be in a building registered by the civil authorities, at some stage in the service particular words prescribed by statute must be used, and either a registrar or an "authorised person" certified by the Church to the civil authorities must be present. The marriage must in all cases be subsequently recorded in civil registers provided by the Registrar General. With this proliferation of procedures it is hardly surprising that the law is not understood by members of the public or even by all those who have to administer it. To make matters worse, there is a bewildering diversity in the consequences of a failure properly to comply with the rules. In some cases the marriage is ineffective; in others the only sanction is a criminal penalty. Whether the marriage is effective or not may depend on the knowledge of the parties regarding the failure. Nor can it be said that the sacrifice of simplicity and intelligibility has enabled the other objectives to be achieved; on the contrary, the system manifestly does not promote the uniform or effective investigation of capacity and consents by trained personnel and does not afford an adequate opportunity for objections to be declared and considered. The most that can be claimed for it is that it prevents the celebration of certain irregular marriages and provides a reasonably effective method of recording marriages which have taken place. Rationalisation is clearly long overdue and should be attainable. Simplicity may be more difficult to achieve since complications are inevitable if proper precautions are to be preserved. However a measure of complication is acceptable so long as it affects only those who are professionally trained to deal with it and so long as the system is made more intelligible to members of the public so that they know what is required of them.

PART 2

THE PRELIMINARIES TO MARRIAGE

A. THE EXISTING PROCEDURES

Civil preliminaries

7. All marriages other than those of the Church of England must be preceded by civil preliminaries; *ie.*, by giving notice to a superintendent registrar and obtaining an authorisation from him[6]. There are, however, three different types of authorisation which may be obtained, namely, superintendent registrar's certificate, superintendent registrar's certificate and licence, and Registrar General's licence. In all these cases if a party, not being a widow or widower, is under the age of 18[7] (but over 16—the minimum age for marriage)[8] the consent of the parent or other persons specified in Schedule 2 to the Marriage Act 1949 must be given unless the court consents or the superintendent registrar or the Registrar General dispenses with the consent on the ground that it

[6] Appendix 1 gives the number of marriages which took place in 1971 after each of the different forms of preliminaries.

[7] The new age of majority: Family Law Reform Act 1969, ss. 1 and 2. The words of the Marriage Act 1949, s. 3 are "Where the marriage of an infant . . . is intended to be solemnised." Presumably therefore consents are not needed if the minor will be of full age before the authorisation is granted.

[8] Marriage Act 1949, s. 2.

cannot be obtained because of absence, inaccessibility or disability[9]. If, however, a marriage is in fact solemnised despite non-compliance with this formality the marriage is valid.

Superintendent registrar's certificate

8. This was intended to be the procedure adopted save in exceptional circumstances (in fact, however, the alternative of a certificate and licence is chosen in about 30 per cent. of civil marriages). Notice in the prescribed form[10] must be given to the superintendent registrar of the registration district in which the parties have lived for the preceding seven days[11]. If they live in different districts notice must be given in each[12]. It must be given personally by one or other of the parties and no other person can lawfully do it for them, but when two notices are needed either party can give both. The notices must be accompanied by a solemn declaration that there are believed to be no lawful impediments to the marriage, that the residential requirements have been satisfied and that, if one party is a minor and not a widow or widower, the requisite consents have been given or dispensed with[13]. A wilfully false statement in the declaration is an offence under the Perjury Act 1911[14]. Where the marriage is to be a Quaker one, both parties must be Quakers or authorised to be married under a general rule of the Society of Friends and there must be a declaration or certificate to that effect[15]. In the case of Jewish weddings, although both parties must profess the Jewish religion[16] there is no similar requirement for a declaration or certificate. The notice is entered in a marriage notice book which is open to public inspection[17] and is displayed for 21 days on a notice-board in the superintendent registrar's office[18]. Any person may enter a caveat at the office[19] and any person, whose consent is required to the marriage of a minor, may forbid the issue of a certificate by writing "forbidden" by the entry and signing it with a statement of the capacity in which he purports to forbid[20]. Forbidding the issue of a certificate avoids all further proceedings on the notice. If a caveat is entered the certificate cannot be granted until the objection is withdrawn or found to be invalid. But even though neither of these steps has been taken the superintendent registrar is not to issue a certificate if "any lawful impediment . . . has been shown to his satisfaction"[21]. Otherwise he must, after the expiration of the 21 days, issue a certificate in the prescribed form[22] which must be produced to the person before whom the marriage is solemnised. In practice before issuing a certificate the superintendent registrar seeks to satisfy himself that there is no

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[9] Marriage Act 1949, s. 3.
[10] The Registration of Births, Deaths and Marriages Regulations 1968 (S.I. 1968/2049) Forms 15 and 16.
[11] Marriage Act 1949, s. 27(1)(*a*).
[12] *ibid.*, s. 27(1)(*b*).
[13] *ibid.*, s. 28.
[14] Perjury Act 1911, s. 3.
[15] *ibid.*, s. 28.
[16] *ibid.*, s. 26(1)(*d*)
[17] *ibid.*, s. 27(4).
[18] *ibid.*, s. 31(1).
[19] *ibid.*, s. 29. This may be entered either before or after notice has been given.
[20] *ibid.*, s. 30 (no fee). This, of course, cannot be done until after notice has been given.
[21] *ibid.*, s. 31(2)(*a*).
[22] *ibid.*, s. 31(2). For form of the certificate, see S.I. 1968/2049, Form 20.

impediment (for example, if one party has formerly been married, that the marriage has been ended by death or divorce) and that in the case of a minor any requisite consents have been given. It is now provided by the Family Law Reform Act 1969[23] that he may refuse to issue the certificate unless satisfied by the production of written evidence that the consent has in fact been obtained. Anomalously, however, there is no express statutory authority entitling him to demand written evidence (for example, a birth certificate) that parties who have professed that they are of full age are in fact adults[24]. The certificate is valid for three months from the date on which notice was entered in the marriage notice book[25]. Total cost of obtaining a certificate is £1, if notice to only one superintendent registrar is needed, and £2 if notice has to be given to two. It will be observed that the procedure demands a 21-day waiting period and that there must be a seven-day residential qualification before the notice is given.

Superintendent registrar's certificate and licence

9. As we have seen, this was intended to be an exceptional procedure but is in fact used quite frequently. It enables the parties, by paying extra (bringing the total payment for the certificate and licence to £6) to avoid the 21-day waiting period and the publicity involved in the display of the notice on the notice-board. If the one party has lived in a registration district for fifteen days (as opposed to the seven days in the case of a certificate alone) and the other party is resident in England or Wales, either party can give notice to the superintendent registrar of that district[26]. The notice is entered in the marriage notice book[27], but not displayed on the notice-board[28], and unless the marriage is effectively forbidden[29], or any lawful impediment is shown to the satisfaction of the superintendent registrar, he must, on request, after the expiration of one whole week-day, issue his certificate and licence[30]. In all other respects the requirements are the same as those for a certificate alone; for example, the notice must be accompanied by a declaration and there are the same provisions regarding entering a caveat. Obviously, however, there is far less opportunity of checking the accuracy of the notice and declaration and little time for anyone to raise an objection. The authorisation remains effective for three months from the giving of the notice[31].

Registrar General's licence

10. The issue of a superintendent registrar's certificate or certificate and licence may be followed by the lawful solemnisation of either a civil marriage in the register office or a religious marriage[32]. Until 1st January 1971 when the

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[23] s. 2(3).
[24] There is no statutory requirement that the age of the parties must be stated either in the notice or the declaration but the prescribed form of notice requires age to be stated.
[25] Marriage Act 1949, s. 33.
[26] *ibid.*, s. 27(2). For forms, see S.I. 1968/2049. Forms 17 and 18.
[27] *ibid.*, s. 27 (4).
[28] *ibid.*, s. 32(1).
[29] *i.e.*, under *ibid.*, s. 30, para. 8 above.
[30] *ibid.*, s. 32(2). For the form of a certificate and licence, see S.I. 1968/2049, Form 21.
[31] *ibid.*, s. 33.
[32] *ibid.*, s. 26.

Marriage (Registrar General's Licence) Act 1970 came into force, there was no power for the civil authorities to authorise a marriage at any convenient time and place; the marriage had to be in the register office or in a registered building or in a church or chapel of the Church of England or according to the usages of the Jews or Quakers. Members of the Church of England could obtain a special licence from the Archbishop of Canterbury enabling them to be married at any time and place according to the rites of the Church of England but all other marriages (except Jewish and Quaker ones) had to be celebrated between the hours of 8 a.m. and 6 p.m.[33] in a registered building or a register office. This caused hardship in the case of people who were seriously ill and not expected to recover. To meet this situation the Marriage (Registrar General's Licence) Act 1970 conferred on the Registrar General a power, not unlike that enjoyed by the Archbishop of Canterbury, to license a marriage to be solemnised elsewhere than in a registered building or a register office[34]. Notice may be given by either of the parties to the superintendent registrar of the district in which the marriage is intended to be solemnised, stating the place where it is to be solemnised[35]. With minor modifications, the normal provisions relating to entry in the marriage notice book[36] and to the declaration to accompany the notice must be complied with[37], and such evidence has to be produced as the Registrar General may require to satisfy him—

(*a*) that there is no lawful impediment to the marriage,

(*b*) that the requisite consents have been given,

(*c*) that there is a sufficient reason why the licence should be granted,

(*d*) that one of the persons to be married is seriously ill and is not expected to recover and cannot be moved to a place at which a normal marriage could be solemnised, and

(*e*) that the person who is ill is able to and does understand the nature and purport of the marriage ceremony[38].

A medical certificate is sufficient evidence of (*d*) and (*e*). Upon receipt of the notice and evidence, the superintendent registrar notifies the Registrar General and must comply with any direction he gives regarding investigation of the evidence[39]. Again with minor modifications, the normal provisions apply regarding caveats[40] and forbidding by any person whose consent is required[41]. But unless the marriage has been effectively forbidden or lawful impediment shown, the Registrar General must, if satisfied that sufficient grounds exist, grant a licence[42]. This enables the marriage to be solemnised, at any time[43]

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[33] Marriage Act 1949, s. 4.

[34] Marriage (Registrar General's Licence) Act 1970, s. 1(1). But the marriage must not be solemnised according to the rites of the Church of England: *ibid.*

[35] *ibid.*, s. 2(1).

[36] *ibid.*, s. 2(2).

[37] *ibid.*, s. 2(3).

[38] *ibid.*, s. 3.

[39] *ibid.*, s. 4.

[40] *ibid.*, s. 5.

[41] *ibid.*, ss. 6 and 7(*b*).

[42] *ibid.*, s. 7.

[43] *ibid.*, s. 8(1). This presumably means (though this is not wholly clear) that s. 4 of the Marriage Act 1949 prescribing that marriage must be solemnised between the hours of 8 a.m. and 6 p.m. does not apply.

within *one* month of the day when the notice was entered in the marriage notice book[44], at the place stated in the notice of the marriage[45]. The licence costs £15 but the Registrar General has power to remit this in whole or in part if it would cause hardship to the parties[46]. It will be observed that in this case there is no prescribed waiting period at all—not even the one clear day required in the case of the superintendent registrar's certificate and licence.

Ecclesiastical preliminaries

11. Ecclesiastical preliminaries are used only in the case of Church of England weddings, and not always then, for a superintendent registrar's certificate can be used instead[47] (though this is very unusual). As in the case of civil preliminaries there are three types, *viz.*, banns, common licence and special licence[48]. The main contrasts with civil preliminaries are that, except in the case of common licences, the provisions of section 3 of the Marriage Act 1949 relating to parental or other consents in the case of minors between the ages of 16 and 18 do not apply, that no declaration is required, and that there is no legal obligation on the ecclesiastical authorities to satisfy themselves regarding the absence of impediments.

Banns

12. The publication of banns is overwhelmingly the most commonly used preliminary, only about 6 per cent. of church weddings being after common or special licence. The banns must be published on three Sundays preceding the marriage[49]. If the parties reside in the same parish the banns must be published in the parish church or authorised chapel; if in different parishes, in each parish church or chapel[50]. They may also be published in any parish church or authorised chapel which is the usual place of worship of one or both of the parties[51] and this will be necessary if the parties are to be married there[52]. A clergyman is not obliged to publish banns unless the parties deliver or cause to be delivered[53] seven days' notice in writing with their full names, place of residence and the period during which each has resided there[54]. But this is the only information which the clergyman is legally entitled to require and no minimum period of residence is prescribed. The banns are entered in a register book[55]. Parental or other consent is not required in the case of minors but, if any person whose consent would have been required had the marriage been intended to be solemnised on the authority of a superintendent registrar's certificate or certificate and licence or of a common licence publicly declares his dissent at the time of

[44] Marriage (Registrar General's Licence) Act 1970, s. 8.
[45] *ibid.*, s. 9.
[46] *ibid.*, s. 17(1).
[47] Marriage Act 1949, ss. 5(*d*) and 17. But not a certificate and licence: *ibid.*, s. 26(2) proviso.
[48] *ibid.*, s. 5.
[49] *ibid.*, s. 7.
[50] *ibid.*, s. 6(1)–(3).
[51] *ibid.*, s. 6(4).
[52] *ibid.*, s. 12(1).
[53] *i.e.*, personal attendance of the parties is not required.
[54] *ibid.*, s. 8.
[55] *ibid.*, s. 7(3).

publication of the banns, their publication is ineffective[56]. When the marriage is celebrated in a parish other than that in which both parties reside certificates of publication of banns in the other parish or parishes must be produced to the clergyman who is to officiate[57]. The marriage must be celebrated in one of the churches or chapels in which the banns have been published within three months of the completion of their publication[58]. The cost of each set of banns is currently £1.05 with an extra 70p for the certificate required if one set of banns is read in a church other than that in which the marriage is to be celebrated. It will be observed that the waiting period for a marriage after banns corresponds approximately with that of a marriage after a superintendent registrar's certificate (21 days) though it may in practice be longer if seven days' notice is insisted upon or shorter if it is waived and the marriage takes place immediately after the third Sunday.

Common licence

13. Common licence corresponds to a superintendent registrar's certificate and licence; it enables the parties to marry in the Church of England without waiting for banns to be published. The licence is issued under the authority of the bishop of the diocese by the diocesan registrar (who is normally a solicitor) or a surrogate (who may be the incumbent of the parish). It can be granted only for the marriage in a church or chapel of an ecclesiastical district in which one of the parties has had his or her usual place of residence for fifteen days immediately before the grant of the licence[59], or a parish church or chapel which is the usual place of worship of one or both of the parties[60]. Application for a licence must be accompanied by an affidavit (corresponding to the declaration required in the case of civil preliminaries) sworn by one of the parties stating that he believes that there is no lawful impediment, that the residential qualification is complied with, and, where one of the parties is a minor and not a widow or a widower, that the requisite consents have been obtained or dispensed with[61]. There is, however, no legal power to require written evidence that consent has in fact been obtained[62]. A caveat may be entered[63] but unless it is the licence must be granted immediately; there is not even a one clear day waiting period as there is in the case of the superintendent registrar's certificate and licence. The licence lasts for three months[64]. The cost of obtaining it is £4.50.

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[56] Marriage Act 1949, s. 3(3).
[57] *ibid.*, s. 11.
[58] *ibid.*, s. 12.
[59] *cf.* the 15 days' residential requirement for a superintendent registrar's certificate and licence: see para. 9 above.
[60] Marriage Act 1949, s. 15.
[61] *ibid.*, s. 16(1).
[62] S. 2(3) of the Family Law Reform Act 1969 applied only to civil preliminaries under Part II of the Marriage Act 1949.
[63] Marriage Act 1949, s. 16(2). If so the licence must not issue until it is withdrawn or found to be unfounded by the ecclesiastical court: *ibid.* There is no procedure whereby a person whose consent is required can forbid the marriage by less formal steps.
[64] *ibid.*, s. 16(3).

Special licences

14. These are special dispensations granted by the Archbishop of Canterbury enabling marriages to be solemnised according to the rites of the Church of England at any convenient time and place. Unlike the new Registrar General's licence, designed to achieve a more limited object, the grant of a special licence is entirely discretionary[65]. In practice it is granted only in exceptional circumstances or in emergencies[66]. It costs £25 which may be waived.

B. Criticisms and Recommendations

The need for compulsory civil preliminaries

15. We have said that the primary objectives of preliminaries are to ensure that "there should be proper opportunity for the investigation of capacity (and, in the case of minors, parental consent) before the marriage, and that the investigation should be carried out, uniformly for parties to all marriages, by persons trained to perform this function," and that "there should be proper opportunity for legal impediments to be declared or discovered"[67]. The existing law does not ensure that these objectives will be achieved although, as was pointed out in consultation, there is little or no evidence of advantage being taken of the law's laxities and weaknesses. The present system of preliminaries is not uniform. It does not ensure that there is always a proper opportunity for investigation or that the investigation is carried out by those who have been trained for that role. Nor does it ensure that those whose consents are required or who may know of impediments have an adequate opportunity of stopping the marriage. These strictures are least justified in the case of a marriage after a superintendent registrar's certificate. In this case there is a three-week waiting period, an opportunity of investigation by trained personnel, and a right to demand further evidence on some points. But, even in this case, there is no method whereby those who wish to object can be sure of doing so effectively. Potential objectors may in practice have no idea where the couple propose to marry. It is impracticable to search every marriage notice book in the country; and a search will be ineffective if the couple choose to marry in Church after ecclesiastical preliminaries. Nor will there be time to make searches if the couple have paid a little extra in order to cut down the waiting period from 21 days to one day. The outstanding absurdity of the present position is, perhaps, that the payment of an extra fee enables the major safeguard of a waiting period to be by-passed.

16. Although in the case of banns there is generally an equally long waiting period it is a less effective safeguard. As we have seen, there is no legal requirement that the parties shall make any declaration about capacity, nor is there any legal duty upon the person to whom application is made for the publication of banns (who is not necessarily the incumbent himself) to satisfy himself on these matters although many clergymen do so. The historical justification for

[65] See Marriage Act 1949, s. 79(6) which simply says that nothing in the Act shall affect special licences.

[66] On average only some 250 special licences are granted each year, most of them in order to enable parties to marry in a church or chapel other than one in which they could marry after publication of banns.

[67] Para. 4 above.

banns is, of course, that their publication will give adequate advance public notice of the couple's intention to marry which will enable anyone knowing of an impediment to come forward. In social conditions which prevailed in this country before the present century this may have been sound. To-day, with the growth and increased mobility of the population and the increase in urban living, it clearly is not. Unless the banns happen to be published in a church regularly attended by the parties and their friends and relations the chances of any impediment coming to light are remote.

17. In our view, it is impossible adequately to reform the present system unless uniform civil preliminaries are made compulsory in the case of all marriages and unless the civil preliminaries are themselves reformed. Only then will it be possible to ensure that there is adequate investigation and to provide an effective system of raising objections. This is far from being a novel or revolutionary suggestion. When the Marriage Bill was introduced in 1836 it in fact provided for civil preliminaries to all marriages. The clauses which required this in the case of Church of England marriages were removed during the course of the Bill's passage in order to hasten the enactment of the Bill's major reforms. But the Government of the day then expressed the view that it would be necessary on a future occasion to carry the whole of the original plan into effect[68].

18. In our Working Paper we made the provisional recommendation that ecclesiastical preliminaries should cease to be recognised as valid by the civil law[69]. This would mean that all those who intended to marry, including those who wanted a Church of England wedding, would have to comply with the civil preliminaries. While this proposal was welcomed by most of those whom we consulted, some Church of England clergymen objected that the abolition of banns as a legal prerequisite to a Church marriage would lead to a reduction of pastoral opportunities, that no evidence had been produced to show that the banns system was ineffective and that universal civil preliminaries might lead to the eventual introduction of a compulsory civil ceremony.

19. None of these arguments has, however, persuaded us to alter or withdraw our original recommendation. We remain of the opinion that the preliminaries to marriage, the function of which is to ensure that there is no impediment to the celebration of a valid marriage, fall properly within the sphere of the civil law and the civil authorities. If universal civil preliminaries were to be introduced there is no reason why the Church of England itself should not continue to insist on the publication of banns as a condition of a Church marriage in just the same way as the Roman Catholic Church does at present. Even if this is not done, opportunities for pastoral contact and care will not necessarily be reduced. They will still occur when the parties make arrangements with the clergyman about the marriage. We note that the Church of Scotland has indicated its acceptance of universal civil preliminaries in that country.

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[68] (1836) Hansard Series 3, Vol. XXXV, Col. 1122.
[69] Paras. 16, 61(*a*), (*b*).

20. It is true that there is no reliable evidence that more invalid marriages are celebrated after ecclesiastical than after civil preliminaries. No evidence is available on this question at all. But as a matter of probabilities it seems unlikely that the calling of banns in church is as effective a way of disclosing impediments to marriage as the civil system which combines the publication of notices with the investigation of capacity by personnel specially trained for the task. And, indeed, later in this Report we make recommendations designed to ensure that civil preliminaries are more effective than they are at present.

21. One consequence of the abolition of banns might be to deprive the Church of England of the fees at present charged for their publication. It is estimated that in 1970 the Church received approximately £200,000 per annum in such fees[70]. This income would not necessarily disappear with the introduction of universal civil preliminaries since, as we have already pointed out, the Church might itself wish to retain the need for publication of banns. It is not for us to suggest how any loss of fees to the Church of England might be made up, but we would point out that the figure of £200,000 is made up of a large number of relatively small sums payable to a large number of different churches. It would therefore be possible to recover any losses by a small increase in the fees charged for the celebration of marriage.

22. If banns are to be abolished, it follows that the common licence procedure would also disappear. This would produce a total loss of revenue, on the number of common licences granted in 1970, of about £40,000. The fees which make up this sum are generally paid to Diocesan Registrars who are usually practising solicitors. We do not regard ourselves as the appropriate body to consider whether these officers should be compensated for any loss they might suffer in the event of abolition of the common licence.

23. We recommend, therefore, that the requirement of publication of banns before Church of England marriages should be repealed as a legal requirement and that marriage by common licence should be abolished[71]. All marriages should be preceded by civil preliminaries, regardless of where they are to be celebrated.

Special licences

24. We think that the Archbishop of Canterbury's right to authorise marriages to be celebrated according to the rites of the Church of England at any time or place ought to be retained. The special licence performs a useful function in cases where one or other party is unable through accident or illness to marry in Church. Its operation is not however confined to such situations and the special licence is sometimes used to authorise a marriage in a private or college chapel in which marriages could not otherwise be celebrated. To this extent the Archbishop's special licence confers a privilege on members of the Church of England which is denied members of other religious groups or of none.

[70] The fees have been increased since 1970 and so the loss would now be greater.

[71] The Kilbrandon Committee made a similar recommendation in respect of Scotland: Cmnd. 4011, para. 51.

However the Archbishop's right to grant these licences is an ancient one to which he attaches great importance; it is exercised only in a small number of cases[72].

25. If, then, civil preliminaries are to be compulsory for all marriages with the exception of those for which a special licence has been granted, what should these preliminaries be? As the foregoing discussion will have shown, a waiting period and publicity have traditionally been the basic safeguards—though the former has been easily evaded and the latter is of dubious effectiveness. In our view, it is essential to provide for an adequate waiting period which cannot be dispensed with at the whim of the parties. To this we revert later[73]. As a preliminary we consider the question of publicity.

Publicity

26. As we have seen, the present method of publicising civil preliminaries is the entry of the notice in the marriage notice book and, in the case of a certificate (without licence), display of the notice on a notice-board. Both these are open to public inspection. But in practice ordinary members of the public (as opposed to florists, photographers and the like) do not make a habit of going into register offices to see if any of their friends or relatives have given notice to marry. The publicity, such as it is, is therefore very unlikely to come to the notice of those most concerned, such as parents of a minor. They will not visit the superintendent registrar's office unless they have learnt from some other source that their son or daughter is trying to marry without their consent—and then they may not know which office to visit. Hence we doubt whether the requirement serves much purpose. We are also conscious of the fact that it can be a source of embarrassment. If, for example, a couple who have not previously been in a position to marry, have lived together as man and wife for many years, the woman having adopted the man's name, they may not want the fact that they are now about to marry to be displayed on a notice-board where it may be seen by their neighbours or a reporter from the local newspaper.

27. As against the foregoing considerations it can be argued that a marriage is a matter of public concern, that clandestinity is to be avoided and that although the extent of the publicity may in fact be slight people probably think that it is more extensive than it is in reality and that this may act as a deterrent against irregular marriages. The present popularity of marriage by licence may be partly due to the fact that people overestimate the extent of the publicity in the case of marriages by certificate alone, for there is no reason to suppose that in any but a small proportion of marriages by licence is there any genuine urgency.

28. In the circumstances we recommend no change. Our conclusion is that entry of notice in a marriage notice book open to public inspection and display on a notice-board should be retained. We think that the possible embarrassment caused to cohabiting couples by the retention of the notice-board is outweighed

[72] See Appendix 1.
[73] See paras. 29–35 below.

by its deterrent effect in discouraging the giving of false information in marriage notices. On consultation it was suggested that the notice on display should not give the age or marital status of the parties in order to minimise any embarrassment to them. We are very sympathetic to this view but we have come to the conclusion that this information may very often be of value in identifying the parties. It will also be much simpler administratively to publish the complete notice without having to edit out any part of it.

The waiting period

29. If irregular marriages are to be prevented there must, in our view, be adequate preliminary screening. This necessarily involves a period of notice of sufficient length to enable enquiries to be undertaken and for objections to be made but which is not so long as to cause inconvenience or hardship in individual cases. In our Working Paper we expressed a preference for 21 days (which may be regarded as the present norm) although we saw no objection to following, in the interests of uniformity, the 28-day waiting period recommended in the Kilbrandon Report[74]. We now understand that it is proposed not to provide for a fixed waiting period of 28 days in Scotland but that the registrar should issue the authority to marry (the "marriage schedule") when he is satisfied after necessary enquiries that the parties are free to contract a valid marriage. The approval of the Registrar General is to be required for the issue of a marriage schedule earlier than 14 days after the receipt of both notices.

30. Our present view is that a waiting period of 15 days would probably be adequate. This period would be equivalent to 14 clear days but since the latter formulation gives rise to misunderstandings we prefer to express the period as 15 days. Not only would this period conform in principle to the Scottish recommendation but it would also, as compared with a period of 21 or 28 days, reduce the number of cases in which special arrangements might have to be made to permit marriages to take place within the normal waiting period. Another argument in favour of a shorter period than 21 days is that, as we recommend below, the superintendent registrar's certificate and licence which at present requires a waiting period of only one clear day will no longer be available. It is to be emphasised that the period of 15 days which we propose will be the *minimum* period of notice; the superintendent registrar will remain at liberty to withhold the issue of his authority for the marriage beyond this period if he is not satisfied that there is no impediment to the celebration of the marriage.

31. We therefore recommend that 15 days should be the normal period between the giving of notice by the parties and the authorisation of the marriage by the superintendent registrar.

32. In proposing a waiting period of 15 days we also take the view that, in contrast with the present position, it should be a normal requirement that cannot be dispensed with by paying an extra fee. In other words, we recommend the abolition of the superintendent registrar's certificate and licence.

[74] Cmnd. 4011, para. 65.

33. If the superintendent registrar's certificate and licence is no longer to be available to those who wish to marry after a short waiting period, provision must be made for those for whom it would be a hardship to wait 15 days before their marriage could be celebrated. One such case is where one of an engaged couple is posted abroad at short notice. Another where the parties wish to be married before the birth of a child. If steps have been taken to hasten the divorce proceedings and to expedite the grant of a decree absolute, many people would think it unfortunate if the need to give two weeks' notice prevented the parties from marrying before the child was born. At present by obtaining a superintendent registrar's licence on the day when the decree is made absolute they can marry after the lapse of one clear day.

34. It was to deal with these cases of hardship that our Working Paper included a proposal[75] that the Registrar General should be given an administrative discretion to authorise the superintendent registrar to issue a licence before the expiration of the normal waiting period. We recommend that the Registrar General should be empowered to authorise the issue of a licence before the expiration of 15 days if it appears to the Registrar General on the evidence before him and after making any enquiry that he considers necessary—

(*a*) that there is no lawful impediment and that any requisite consents have been given or dispensed with[76], and

(*b*) that the parties could not reasonably have been expected to have given earlier notice, and that hardship would be caused if the marriage had to be delayed until the expiration of the full waiting period.

This recommendation would enable the Registrar General to expedite the issue of a licence where, for instance, a member of H.M.'s Forces is suddenly posted abroad but would not avail the engaged couple who carelessly omitted to give notice 15 days before the day for which their wedding has been fixed.

35. Some of those whom we consulted suggested that the discretion to expedite should be vested in the local superintendent registrar and not in the Registrar General. However we remain of the opinion that the decision should be a central rather than a local one. This has two desirable results:

(i) it insulates local superintendent registrars from pressure by importunate couples, and

(ii) it ensures that the discretion will be exercised uniformly (a result which would be difficult to achieve if it were exercisable by several hundred different superintendent registrars).

We do not, however, see any objection to the Registrar General delegating his power to expedite to superintendent registrars in cases falling within certain clearly defined categories, on production of certain specified evidence. In such cases there would be an appeal to the Registrar General from the superintendent registrar's decision.

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[75] Paras. 23, 61(*f*).

[76] It will be observed that the discretion to expedite will be exercisable only if the Registrar General is satisfied on the evidence before him that there is no impediment and that all necessary consents have been given. This is a stricter requirement than that at present applying to the grant of a certificate or licence, and than that which we recommend should apply on the expiration of the normal waiting period. Under the latter requirement, the marriage has to be authorised unless the superintendent registrar believes that there is some obstacle.

36. In relation to the timing of giving notice there is one further matter which we considered. It arises in those cases where the birth of a child is expected immediately after the date of a decree absolute of divorce or nullity. In these circumstances great pressure will inevitably be exerted to obtain a licence to marry at the earliest possible date and it may be difficult to resist the pressure especially in cases where the divorce judge has expedited the decree in order to enable a marriage to take place before the birth. It would clearly be of assistance to the Registrar General if he were able to carry out investigations prior to the decree absolute to ensure that there are no impediments other than the, as yet, undissolved prior marriage. We have accordingly considered whether parties should be able to give conditional notice prior to the decree absolute. This notice would give all the usual details concerning the parties and declare that they knew of no impediment other than the existing marriage in respect of which a decree nisi had been granted on a stated date. The normal publicity would be given to that notice and the normal enquiries could be instituted. It would then be possible for the Registrar General to authorise the marriage as soon as the decree absolute was produced if, because for example of an impending birth, that was justified.

37. The main objection to this proposal is that it would introduce a novel principle, which might be thought distasteful, that people already married should be able to give official notice of intention to marry someone else. Clearly, if it were possible to give notice prior to decree nisi, this objection would be overpowering. Hence we limited the proposal in the Working Paper to applications after the decree nisi, despite the fact that this would mean that the proposal would not help when, as sometimes occurs, leave is given at the hearing immediately to make absolute the decree nisi. The objection in principle is then much less strong; the decision of the House of Lords[77] that after decree nisi there are no considerations of public policy which prevent the making and enforcement of a promise to marry, appears to imply that there is equally nothing contrary to public policy in making arrangements for the new marriage. A subsidiary objection is that it does not necessarily follow that the decree nisi will be made absolute on the earliest day (or indeed at all). It is initially only the petitioner who can apply for it and it may well be the respondent who is anxious to re-marry immediately. Hence, it may be that the work of screening the application with a view to expediting the licence will be wasted. In practice, however, this is only likely to occur in a handful of cases and already it is not every notice that in fact leads to a marriage. It is, we think, only the objection in principle that has much weight.

38. In the Working Paper we pointed out that we ourselves were divided in opinion on the merit of this suggestion. Most of those whom we consulted were opposed in principle to the giving of conditional notice before decree absolute for the reason stated at the beginning of the preceding paragraph. We have therefore decided to make no recommendation.

[77] *Fender* v. *St. John Mildmay* [1938] A.C. 1.

Contents of notices and declarations and supporting evidence

39. We have already pointed out that it seems anomalous that the parties are not under any statutory obligation to state their ages, or to produce evidence to verify them. In fact, the present prescribed form of notice requires ages to be stated and in practice superintendent registrars often ask for supporting evidence in the form of a birth certificate or passport. We recommend that the statute (or regulations made under it) should provide for the dates and places of birth to be stated in the notice and confirmed in the declaration and that the superintendent registrar should be empowered to demand written evidence just as he now can in relation to consents[78]. The demand would normally be satisfied by production of a birth certificate although occasionally superintendent registrars would have to accept other evidence (for example, a passport or a statutory declaration) where a birth certificate is for some reason not available. We think most people would expect to have to produce their birth certificates when they get married; proof of age is of course essential if they are not obviously 18 or over. We discuss later whether there should be instituted any system of annotation of the birth registers with the fact of marriage[79].

40. Another weakness of the present legislation is that there is no express statutory authority for superintendent registrars to demand proof of the ending of a previous marriage of one of the parties. In practice they do demand this and no particular difficulty is experienced when the former spouse died in England or when a divorce or nullity was granted here. But the need to strengthen the procedure has become acute as a result of the increasing number of cases in which the validity of a foreign decree or of a possible marriage under foreign law needs to be investigated or in which the former spouse of an immigrant is stated to have died abroad. We therefore recommend that superintendent registrars should be expressly empowered to demand evidence of the effective termination of any previous marriage.

By whom notice should be given

41. At present two notices are required only if the marriage is by superintendent registrar's certificate and the parties live in different districts. Even then one party can give both notices. This arrangement lends itself to inaccuracies and makes it possible for false statements to be made, sometimes unwittingly, by one party about, for instance, the age and status of the other. It seems unreasonable to rely on the declaration by one party regarding the other; indeed, this makes it possible for one party to avoid any perjury by lying to the other and leaving the other to make the required declaration. Hence we recommend that in future each party should be required to attend before the appropriate superintendent registrar and to give notice and make a declaration which would identify the other party but deal fully only with the age and status of himself. Another factor supporting this recommendation is that our courts are sometimes asked to rule that a marriage which has been solemnised is invalid because one party did not understand that he or she was being married or was subject to improper pressure. Precautions are taken at a later stage to

[78] Family Law Reform Act 1969, s. 2(3); see para. 8 above.
[79] Para. 117 below.

ensure that such situations do not occur but if each party were required to attend to give notice their occurrence would be still more unlikely. This recommendation should not apply to marriage by Registrar General's licence under the 1970 Act; there, *ex hypothesi*, one party is not in a position to attend and give notice.

Where notice should be given

42. At present notice has to be given in the district or districts where the parties reside. We think this requirement should be retained. The place of residence is likely to be the place where they are best known and where the needful investigations can best be carried out. In so far as publicity fulfils any purpose, publicity in the place where the parties are known is likely to be more effective than anywhere else. And that is the most obvious place for lodging objections; although we recommend below that there should be a system for the central lodging of objections, this, in our view, should be additional to, and not in substitution for, the local lodging of objections.

Length of residence before notice is given

43. At present notice cannot be given until the party has "resided" in the district "for the period of seven [or fifteen in the case of a licence] days immediately before the giving of the notice." The original aim of this provision was to secure that notice was given in the district in which a person was known. The provisions requiring publicity to be given to the notice, namely, those requiring the display of the notice on a notice-board and the entry of the notice in the marriage notice book, would have been ineffective if notice could have been given in an area in which the person giving it was unknown. In our Working Paper we drew attention to the fact that the seven-day period had led to people assuming a notional residence for seven days in a district in which they were not normally resident but in which they wished to be married. If our recommendation that a marriage should no longer have to take place in a district in which notice has been given is accepted, there will no longer be the same reason for a person to "acquire" a residential qualification in a district which is not his true place of residence.

44. We have considered whether it is necessary to retain any qualifying period of residence. If no period is retained, it could be provided that notice should be given in the district in which the party is ordinarily resident or it could be provided that notice should be given in any district in which the party is present on the day of the notice. Neither of these alternatives is satisfactory. The test of residence has the advantage that notice will have to be given where a person is most likely to be known, but it has the disadvantage that it would cause inconvenience to many people. Anyone working temporarily away from home, who under the existing provisions could give notice in the district in which he is working, would be required to return to his home area to give notice; and the requirement of residence would not provide for notice to be given at all by a visitor from abroad or by someone who though resident in England has no residence in any particular registration district. The alternative of presence in the district on the day of notice is equally unsatisfactory. We

have recommended above that marriage notice books and notice boards should be retained; they would have no value if a party could give notice in any district in which he happened to be present. This alternative also has administrative disadvantages. Notices would tend to be given at register offices in the centre of large towns and the present spread of work between the districts would be changed.

45. After considering these possibilities we have come to the conclusion that some qualifying period should be retained and that notice should be given in the district in which the party has resided for the previous seven days. This would mean that people resident in England would normally be required to give notice in the district in which they are most likely to be known and it will not place any undue hardship on visitors from abroad.

Lodging of objections

46. We have already referred to the difficulties which an objector may face because, under the present system, an objection can be lodged only in the office where notice has been or will be given and because, thanks to the ease with which a residential qualification can be assumed, the objector has no means of knowing which office that is. But before dealing with means whereby these difficulties might be obviated it may be helpful to look more closely at the present law regarding parental consents for it is the absence of these which is the most common ground of objection.

47. The minimum age at which parties domiciled in England can marry anywhere or at which parties domiciled anywhere can marry in England is 16[80]. If either party is under that age the marriage is void. It is beyond the scope of our terms of reference to consider whether this rule, which relates to capacity, not to form, should be altered; it was recently considered by the Latey Committee which unanimously recommended that there should be no change[81]. If a party is aged 16 or 17[82], parental consent is normally required, but if a marriage is solemnised without that consent the marriage is valid. The statutory provisions relating to parental consents are, however, complicated and incomplete. As we have seen[83], the provisions are less strict in the case of banns than in the case of marriages after a certificate or licence, but this difference will disappear if, as we have recommended above[84], universal civil preliminaries are instituted[85]. More serious is the difficulty that is sometimes experienced in deciding who are the requisite persons to give consent. A glance at the Second Schedule to the Marriage Act, where the rules are laid down, will reveal some of the difficulties. It may, for example, be necessary to determine whether the parents are

[80] Marriage Act 1949, s. 2.

[81] *Report of the Committee on the Age of Majority* (1967); Cmnd. 3342, para. 177.

[82] A minority of the Latey Committee recommended that consent should continue to be required up to the age of 21 (*ibid.*, para. 580) but the contrary majority view was adopted in the Family Law Reform Act 1969, ss. 1 and 2.

[83] Para. 12 above.

[84] Para. 23 above.

[85] "At the moment Marriage after Banns in the Church of England seems to afford a better chance of getting round the need for consent than other modes of marriage . . . We recommend that the consent procedure should be made uniform for all modes of marriage": *Report of the Committee on the Age of Majority* (para. 185(5)). Our proposal would implement this recommendation.

"living together" and if not who has "deserted" whom; if they are divorced or separated under a court order, no provision is made for a not uncommon situation in which there is no custody order or "agreement". Consents cannot be dispensed with merely because it is doubtful who ought to consent. The power to dispense deals only with another situation in which difficulties may arise, namely, where consent of a prescribed person "cannot be obtained by reason of absence or inaccessibility or by reason of his being under any disability"[86]. In such circumstances either the consent may be dispensed with by the superintendent registrar, or the Registrar General, or the court[87] may consent[86]. If a person whose consent is required refuses, the court[87] may consent instead[88]. It will be observed that consent is required only in the case of a minor "not being a widower or widow"[89]. If, therefore, he or she has once married (with or without consent) he may marry again without consent unless the first marriage ends by divorce[90] and not by the death of the former spouse.

48. The enforcement of the rules relating to consents is notoriously difficult and it is well known that the rules can be easily evaded. If the requirement is to remain, something must be done to make evasion more difficult; the present position merely brings the law into disrepute. It could be argued, that it would be better to scrap altogether the need for parental consent. However the Latey Committee, as recently as 1967, after fully canvassing the arguments[91], unanimously recommended that it should remain[92]; indeed, two members recommended that consents should be required up to the age of 21[93]. In the face of this it is not for us to recommend the contrary.

49. It is accordingly necessary to consider how the requirement can be made more effective. The only way of making it wholly effective would be to provide that the absence of consents makes the marriage void or voidable. We doubt whether public opinion would favour such an extreme solution. Moreover, if it were adopted not only would a far more precise formulation of those whose consents are required be essential but it would seem desirable that arrangements should be made for the consents to be formally recorded and preserved and for the identity of the persons signing the consents to be established. But, even then, such a solution would be effective only in the sense that a marriage without the requisite consents would be ineffective; it would not prevent the parties from going through a form of marriage. As stressed in our statement of the objectives of a sound marriage law[94], the aim should be to prevent invalid marriages from taking place; not to allow them to take place and then treat them as void or voidable.

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[86] Marriage Act 1949, s. 3(1) proviso (*a*).

[87] *i.e.*, the High Court or the county court or magistrates' court of the district in which either the applicant or respondent resides: *ibid.*, s. 3(5) as amended by the Family Law Reform Act 1969, s. 2(2).

[88] Marriage Act 1949, s. 3(1) proviso (*b*).

[89] *ibid.*, s. 3(1).

[90] It is highly unlikely that a minor who has married could be divorced in England before he was 18 for there is a qualified ban on divorce within three years of the marriage: Matrimonial Causes Act 1965, s. 2.

[91] Except that they perhaps under-estimated the difficulties of preventing evasion.

[92] Cmnd. 3342, para. 165.

[93] *ibid.*, para. 580.

[94] See para. 4 above.

50. We consider, therefore, that the only solution is to make it more difficult for minors to marry without obtaining the needful consents. Our foregoing recommendations already go some way in this direction. If there are uniform civil preliminaries in all cases, if evidence of age and of consents has to be produced, if the trained personnel of the register offices will have 15 days in which to make enquiries, there will be far fewer loopholes than there are at present. But these precautions will not necessarily be effective if the parties are determined to marry and are prepared to commit criminal offences in the course of doing so. If a minor obtains a certificate of birth of an adult[95] and then marries in the name of that adult he may avoid any enquiry regarding consents. Even if he admits to being a minor he may produce what purports to be a written consent from his parents which he has in fact forged. If the superintendent registrar writes for confirmation to the parents he can prevent the letter reaching them—either by giving his own address instead of theirs or, if he is living with them, by collecting the post. To insist on personal attendance of the parents at the register office would often be impracticable and impersonation might escape detection. We do, however, think it would assist the enforcement of the consent requirement if the parents were required either to attend the register office personally or to have the signature to their consent witnessed by a person of standing; and we so recommend. The latter alternative, which most people might be expected to adopt, is not of course foolproof, but at least it provides an extra obstacle to a young couple who seek to evade the consent requirement.

51. A further step which seems to us to be essential is to make it easier for those who wish to prevent a marriage to lodge an effective objection. This requires a system whereby objections can be lodged centrally with the Registrar General. Hitherto this has not been a practicable course because banns, which are outside the control of the Registrar General, have been an alternative and commonly used preliminary. If, however, civil preliminaries are made compulsory as we have recommended, there should, we think, be no insuperable difficulties.

52. We considered whether it would be practicable to provide that the Registrar General should maintain a central register of objections and that superintendent registrars should not issue authorisations for a marriage until they had checked with the Registrar General to ensure that no objection had been lodged. We are satisfied, however, that this would not be possible. Several thousand authorisations are granted every week-day and an enormous staff would be needed to deal with the enquiries which would have to be made in each case. On the other hand, we think that it would be practicable for the Registrar General's department, with only a modest increase in staff, daily to circulate to all superintendent registrars a list of the objections lodged that day so that each superintendent registrar would, after only a short delay, have a complete list of objections. The number of objections lodged is very small and is likely to remain small. The expense of any modest increase in staff would be minimal in comparison with the frustations which parents frequently experience

[95] To this extent a passport, which bears a photograph, is a better piece of evidence than a birth certificate.

in attempts to prevent their minor children from marrying without their consent and in comparison with the expense to themselves and the public at present incurred when they try to do so by having their children made wards of court. As previously stated[96], we envisage this system of centrally-lodged objections as a supplement to, not a substitution for, the lodging of objections at the superintendent registrar's office. But once an objection has been lodged locally the superintendent registrar should be required to notify the Registrar General who would circulate notice of it to all other superintendent registrars. This would prevent a determined couple, whose marriage in one district had been effectively prevented by a local objection, from moving to a new district and trying again there.

53. We are convinced that the institution of such a system would make the need for parental consents a more effective safeguard and diminish the frustrations that parents often experience at present when their children seek to marry without their consent. At the same time we cannot pretend that it would (or that any system can) wholly prevent irregular teen-age marriages. It would not, for example, be effective if the minors married in assumed names so that the fact that an objection had been lodged in respect of their marriage escaped detection. Nor would it be effective if authorisation was granted before notice of the objection reached the superintendent registrar. But all one can do is to make it difficult to marry irregularly, and thus to deter young couples from trying, and to make it more likely that they will be detected in time if they do try.

54. We have already referred[97] to the difficulties flowing from the terms of the Second Schedule to the Marriage Act 1949 which defines the persons whose consent is requisite. An attempt should be made in any new legislation to make this clearer and to fill the present gaps. This, as we see it, is largely a question of drafting rather than of policy, for the basic policy seems to be clear, namely that the consent of both parents is required if both are alive and, if they are not, of the surviving parent, if any, and the guardians, if any, appointed by the deceased parent. If, however, one parent has been given, either by a court or under an agreement, the custody or the care and control of a child, or both the custody and the care and control, and the other parent has not been given either custody or care and control, then the consent of the first-mentioned parent only should be required.

55. In our Working Paper we questioned whether it was any longer desirable, having regard to the new attitudes towards illegitimacy reflected in recent reforms in the law[98], to provide as at present that the father's consent is not required when the child is illegitimate. It seemed to us that if he had contributed to the maintenance of the child, or possibly if he had merely acknowledged paternity, his consent should be needed. Most of those who commented on this suggestion were opposed to it on the ground that not only would it cause embarrassment but it would also add a further complication to the present rule which in any event did not appear to be an unjust one. We make no recommendation.

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[96] See para. 42 above.
[97] Para. 47 above.
[98] Family Law Reform Act 1969, Part II.

56. The system recommended in paragraph 52 would not, of course, be restricted to objections on the ground of absence of parental consent. It would be available also for use in cases where there is any impediment, for example, a previous (existing) marriage. In such cases, however, it is considerably less likely that any member of the public would lodge an objection (even the present spouse may have no particular inducement to do so); in practice, detection of this sort of impediment will have to be left to the vigilance of the superintendent registrar. Particular difficulty arises in the case of people coming here from abroad. Hitherto we have assumed in the course of this Report that both parties are resident in England or Wales and that no foreign element enters into the consideration of whether they are free to marry. We return now to a consideration of the intractable problems which arise when this assumption is unfounded.

Marriage of "foreigners"

57. By the expression "foreigners" we do not mean only persons of foreign nationality. We are concerned with all cases where, because of the foreign nationality, domicil or residence of one or both of the parties, the validity of a marriage here may depend upon the validity of a foreign decree of divorce or nullity, or where, although the marriage here may be valid, the parties have come here to evade restrictions upon their marriage imposed by a foreign law. It is the last of these which is perhaps the most common. Many continental countries require parental consent up to the age of 21. Now that in England it is required only to the age of 18 some influx of couples from the Continent is to be expected and there are some indications that it has already started. Previously their traditional haven was Scotland, and Gretna Green became the best known place-name in marriage folklore. This caused some international ill feeling and accordingly the Kilbrandon Committee[99] paid particular attention to the problem. They recommended the adoption of a system similar to that in force in some continental countries under which a foreigner would have to produce a certificate of capacity to marry. We gave in our Working Paper[100] the reasons why we did not feel able to recommend that this proposal should be adopted for England and Wales. We understand that the proposal has now been modified so that the procedure would be rigorously applied only to a party who is of an age at which parental consent is required in his own country and only if the country concerned wished to participate in the scheme. We have considered this modified proposal but do not recommend that it should be adopted here. The problem of young runaway couples arises on a more limited age range in England and Wales than in Scotland since a child under 18 whether English or foreign requires parental consent for marriage under English domestic law. If a potential spouse is over 18 and is able to satisfy the superintendent registrar of that fact by the production of a birth certificate or passport, we do not think that the superintendent registrar should be required as a matter of mandatory obligation to probe into the eligibility of the parties under foreign law. We consider that certificates of no impediment can be

[99] Cmnd. 4011.
[100] Paras. 46–51.

useful in some cases and should be encouraged but we do not think that their production should be required by law. The prime duty of superintendent registrars is, and ought to remain, the celebration of marriage in accordance with English domestic law. If it became apparent to a superintendent registrar in the course of his normal enquiries that one party, though over 18, lacked the parental consent required under his own law and if that law would treat the marriage as void, the superintendent registrar would not solemnise the marriage until that consent had been obtained.

58. It would be possible to tackle the problem by making it impossible to marry in England, unless the parties, or at least one of them, had a close connection with the country, and then by specifying the nature of the required "close connection". Thus, the Working Paper[1] proposed a set of rules which was designed to ensure that only those with a sufficient connection with England would be allowed to give notice here. It was proposed to help those with a real connection with England by allowing notice to be given by post. It was proposed to deter those with no connection with England by requiring a three months' residence period. On further consideration we have concluded that these rules would be over-elaborate and unnecessary. In particular, the three months' residence period unreasonably restricts the right to marry. We recommend that there should be no special rules for foreigners who, if they have capacity and comply with our formalities, should have the same right to marry here as the rest of us. Accordingly, we propose that the general rule of seven days' residence in the district where notice is to be given should apply to all, including foreigners. Thus, they will have to reside here for seven days and give notice in the district in which they have spent the previous seven days, as in the case of English residents.

59. It may be asked:—why impose a seven-day residence restriction on one who is neither making his home nor intending to do so in this country? Is it not a meaningless technicality? We have already given our reasons for proposing the "seven-day rule"[2]; we know of no reason why a foreigner should be exempt from a restriction placed on the rest of the community, and suggest that it is not unreasonable that we should require of the foreigner who seeks to be married here compliance with our formalities.

60. The "seven-day rule" may also be thought to impose a hardship on someone who, although normally resident here, is temporarily resident abroad and wishes to be married here. But, if he is coming here to get married during a short period of leave, it would be possible for him, after giving notice, to apply to the Registrar General to expedite the issue of a licence. We do not recommend that notice should be allowed to be given by post; comments on our Working Paper support the view that notice by post leads to inaccuracy and facilitates deception.

61. Although we consider that the seven-day period should operate satisfactorily in the case of parties coming from outside the United Kingdom we think that special provision should be made for cases in which one or both of

[1] Paras. 55–57.
[2] Paras. 44 and 45 above.

the parties are resident in Scotland or Northern Ireland. We do not think that it should be necessary that someone living in Scotland or Northern Ireland who wishes to be married in England or Wales should have to spend a week here in order to give notice of the marriage. He should be allowed to give notice in Scotland or Northern Ireland. There is provision at present[3] enabling a person resident in Scotland or Northern Ireland who wishes to be married in England to a person resident in England to give notice to a registrar in Scotland or Northern Ireland. We recommend that this should be continued. We also recommend that there should be a new provision which would enable notice to be given to a registrar in Scotland or Northern Ireland where a marriage is intended to be solemnised in England and both parties reside in Scotland or Northern Ireland. It would still be necessary for enquiries to be made in England to ensure, for instance, that any consent required by English law had been obtained. Under the Scottish proposals special provision is to be made to enable persons living in England who wish to be married in Scotland to give notice of marriage in England.

Exchange of information between superintendent registrars

62. At present, by administrative arrangement, where notice is required to be given in two districts, copies of the notices are exchanged between the superintendent registrars. This procedure has been found necessary to ensure that both notices are in fact given and to enable discrepancies between the two notices to be cleared up before the wedding day. In addition, if the marriage is to take place in a registered building in a third district, copies of both notices are sent to the superintendent registrar of that district, so that he can ascertain whether a registrar's presence at the marriage is required and, if so, make the necessary arrangements. This last precaution will be even more essential for this practical purpose if the facilities for out-of-district marriages are widened and also extended to civil marriages. We recommend that provision for these exchanges of notice be made by statute or regulations.

Grant of authorisation to marry

63. On the expiration of the prescribed period of notice we recommend that the superintendent registrar (or registrars) to whom notice has been given should be required to issue his authorisation to each party unless, on the evidence before him, it appears that there might be an impediment to the marriage or that any of the requisite consents have not been given. We prefer this formula to that of the present law under which the superintendent registrar is required to issue his certificate unless he is satisfied that there is an impediment. If the enquiry procedure which we have suggested is to serve its purpose the authorisation should not be granted until the enquiries have been answered and any serious doubts allayed. At present the authorisation may either be a certificate or a certificate and licence. We have already recommended that the latter should, as such, disappear[4]. Nevertheless, we think that "licence" is a more appropriate description than "certificate". It better describes what

[3] Marriage Act 1949, ss. 37 and 38.
[4] See para. 32, above.

the authorisation is, it is the expression used and understood by the public and it avoids confusion with other certificates (*e.g.*, marriage certificate) which are issued in connection with marriages. The licence should state the place where the marriage is to be solemnised—although we consider that in certain limited cases, such as the destruction by fire of the original place of marriage, the superintendent registrar should be empowered to amend the licence by substituting a different place. To aid identification, the licence should also state the date and place of birth of each of the parties. As at present, a licence should remain valid for three months from the giving of notice; but we recommend that the Registrar General should be given power, on application made before the expiry of the licence, to extend the period of validity for a limited period of not more than, say, fourteen days if he considers that in the circumstances of the case it is reasonable to do so. Also as at present[5], both licences should be delivered to the person responsible for the registration of the marriage and we suggest that it should be made clear that it is an offence for any person to officiate at the wedding unless they have been so delivered.

Summary of recommendations on preliminaries

64. Our recommendations under this head are:—

(*a*) There should be uniform civil preliminaries for all marriages regardless of where they are to be celebrated (paragraphs 17 and 23).

(*b*) The requirement of publication of banns before Church of England marriages should be repealed as a legal requirement (although the Church may wish to retain it as an ecclesiastical preliminary) (paragraphs 18, 19 and 23).

(*c*) Marriage by common licence should be abolished (paragraph 22).

(*d*) Entry of notice in a marriage notice book and its display on a notice board should be retained (paragraph 28).

(*e*) Fifteen days should be the normal waiting period between the giving of notice and the issuing of authorisation to marry (paragraphs 31 and 32).

(*f*) The Registrar General should be empowered to authorise a superintendent registrar to permit a marriage before the expiration of fifteen days if it appears to the Registrar General on the evidence before him and after making any enquiry that he considers necessary—

(i) that there is no lawful impediment, and that any requisite consents have been given or dispensed with, and

(ii) that the parties could not reasonably have been expected to have given earlier notice and that hardship would be caused if the marriage had to be delayed until the expiration of the full waiting period (paragraph 34).

(*g*) Each party should be required to state in the notice his date and place of birth and to confirm it in the declaration; the registrar should be empowered to demand evidence to support these statements (paragraph 39).

[5] Marriage Act 1949, s. 50.

(*h*) Superintendent registrars should be expressly empowered to demand evidence of the effective termination of any previous marriage (paragraph 40).

(*i*) Each party should be required to attend before the appropriate superintendent registrar to give notice and to make a declaration which would identify the other party but deal fully only with the age and status of himself (paragraph 41).

(*j*) Notice should be given in the district in which the party has resided for the previous seven days (paragraph 45) but special provision should be made for cases in which one or both parties are resident in Scotland or Northern Ireland (paragraph 61).

(*k*) Parents who consent to the marriage of a minor should be required either to attend the register office personally or to have the signature to their consent witnessed by a person of standing (paragraph 50).

(*l*) There should be provision for the lodging of objections at the office of the Registrar General (paragraph 52).

(*m*) The statutory provisions defining the consents required on the marriage of minors should be clarified (paragraph 54).

(*n*) Provisions should be made for the exchange of notices between superintendent registrars (paragraph 62).

(*o*) On the expiration of the waiting period the superintendent registrar should be required to issue an authorisation, to be known as a "licence", to marry unless on the evidence before him it appears that there might be an impediment to the marriage or that any of the requisite consents have not been given (paragraph 63).

(*p*) A licence should state the place where the marriage is to take place but the superintendent registrar should be empowered to amend this in certain limited cases (paragraph 63).

(*q*) A licence should be valid for three months from the giving of notice, but the Registrar General should be given power to extend this period by not more than fourteen days if he considers that it is reasonable to do so (paragraph 63).

PART 3

PLACE AND METHOD OF SOLEMNISATION

A. THE EXISTING PROCEDURES

Types of marriage

65. At present a marriage may be solemnised in any of the following places and ways:—

(*a*) by a civil ceremony in a superintendent registrar's office[6],

[6] Marriage Act 1949, s. 26(1)(*b*).

(*b*) after the grant of a Registrar General's licence (which, as we have seen, can be granted only in very special circumstances)[7] at any place by a civil ceremony or by such form or ceremony (other than that of the Church of England) as the parties see fit to adopt[8],

(*c*) according to the rites of the Church of England in any church or chapel in which banns may be published[9],

(*d*) after the grant of an Archbishop's special licence (which, as we have seen, is granted only in exceptional circumstances) at any place according to the rites of the Church of England[10],

(*e*) in a registered building according to such form and ceremony as the persons to be married see fit to adopt[11],

(*f*) according to the usages of the Society of Friends (Quakers) at any place[12],

(*g*) between two persons professing the Jewish religion, according to the usages of the Jews at any place[13].

There are also special provisions relating to marriage in naval, military or air force chapels[14] but only service personnel or their daughters may marry therein[15]. We do not in this Report deal further with these latter provisions though doubtless they will be reviewed by the authorities concerned to see whether any modernisation is needed in any legislation which may result from our deliberations.

Places of marriage

66. It will be observed that in cases (*a*), (*c*) and (*e*) the place where the marriage takes place is prescribed, *i.e.*, it must be a register office, a church or chapel of the Church of England, or a "registered building". Quakers and Jews, on the other hand, can marry at any place; members of the Church of England or other religions can do so only if they obtain a special licence or a Registrar General's licence. Where a marriage is preceded by the reading of banns, the ceremony must be in one of the churches or chapels in which banns were read[16]. Where it is by common licence[17], Registrar General's licence[18], or superintendent registrar's certificate (with or without licence)[19] the church, chapel, registered building, register office or other place in which it is to be celebrated will be stated in the licence or certificate and the marriage is invalid if knowingly and wilfully celebrated anywhere else[20]. Normally, the place of solemnisation must

[7] Para. 10 above.
[8] Marriage (Registrar General's Licence) Act 1970, s. 10(1).
[9] Marriage Act 1949, ss. 12, 15, 17.
[10] See para. 14 above.
[11] Marriage Act 1949, s. 26(1)(*a*).
[12] *ibid.*, s. 26(1)(*c*).
[13] *ibid.*, s. 26(1)(*d*).
[14] *ibid.*, Part V.
[15] *ibid.*, s. 68.
[16] *ibid.*, s. 12(1).
[17] *ibid.*, ss. 15 and 16.
[18] Marriage (Registrar General's Licence) Act. 1970, s. 9.
[19] Marriage Act 1949, s. 27(3), 31(3), 32(3) and 35.
[20] *ibid.*, ss. 25 and 49(*e*).

be in the district or parish in which one of the parties resides[21]. Hence, generally speaking, whether a marriage be preceded by banns, licence, or certificate and licence, parties can marry only in the parish or district in which one (or both) is resident. This, however, does not apply to Quaker and Jewish weddings[22].

Nature of ceremony

67. In the case of all religious weddings other than those of the Church of England, the Quakers or the Jews, the ceremony must be attended either by a registrar or an "authorised person"[23], and in some part of the ceremony each party[24] must make the declaration and statement in the prescribed statutory words declaring that he or she knows no impediment and saying that he or she takes the other to be his or her lawful wedded wife or husband[25]. These words must also be used at any civil ceremony[26]. At a Church of England wedding there must, in addition to the officiating clergyman, be present at least two witnesses[27]. At any civil ceremony there must be the superintendent registrar, the registrar, and at least two witnesses[28]. At a marriage in a registered building there must be either a registrar or an "authorised person" and at least two witnesses[29]. In the case of a marriage in a registered building or register office the marriage must be celebrated "with open doors"[30], *i.e.*, the public must be allowed in.

Hours

68. Marriages must be solemnised between the hours of 8 a.m. and 6 p.m.[31] This appears to apply to all marriages, other than those by Archbishop's special licence or, less clearly, by Registrar General's licence[32]. Whether Quaker or Jewish weddings are intended to be included is not certain since the only express sanction in the event of a breach is that the solemniser incurs the risk of prosecution and this expressly does not apply to Quaker or Jewish weddings[33]. In practice, this requirement is not regarded as applying to Jewish weddings and it is not uncommon for some of them to be celebrated after 6 p.m.

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[21] Marriage Act 1949, ss. 16(1)(*b*) and 34. For the very limited exceptions see s. 35(1), (2) and (3) as amended by the Marriage Act 1949 (Amendment) Act 1954.

[22] *ibid.*, s. 35(4).

[23] *ibid.*, s. 44(2). On "authorised persons" see para. 71 below. Marriages under a Registrar General's licence (except, again, in the case of Quakers or Jews) must be attended by a registrar: Marriage (Registrar General's Licence) Act 1970, s. 10(2).

[24] It is implicit in this that both parties must be present.

[25] Marriage Act 1949, s. 44(3).

[26] *ibid.*, s. 45(1); Marriage (Registrar General's Licence) Act 1970, s. 10(3). No religious service may be used at a marriage solemnised in a register office: *ibid.*, s. 45(2). But the marriage may be followed by a religious ceremony elsewhere: *ibid.*, s. 46 and Marriage (Registrar General's Licence) Act 1970, s. 11.

[27] Marriage Act 1949, s. 22.

[28] *ibid.*, s. 45(1); Marriage (Registrar General's Licence) Act 1970, s. 10(3).

[29] Marriage Act 1949, s. 44(2). S. 55(2) implies that witnesses are required for Quaker and Jewish weddings also.

[30] *ibid.*, ss. 44(2) and 45(1).

[31] *ibid.*, s. 4.

[32] See para. 10, fn. 43 above.

[33] Marriage Act 1949, s. 75(1)(*a*).

Marriages in registered buildings

69. The statement in paragraph 65(*e*) that a marriage in a registered building can be by "such form and ceremony as the persons to be married see fit to adopt" might give the impression that the parties can dictate the form of the wedding and that this can be as unconventional and devoid of religious content as they wish. But although the quoted formula is that employed by the Act it is somewhat misleading. This is because:—

(*a*) a registered building must be a "separate building"[34] which,

(i) under the Places of Worship Registration Act 1855, has been certified to the Registrar General and recorded by him as a "place of meeting for religious worship of any . . . body or denomination of persons", and

(ii) has been registered by the Registrar General under section 41 of the Marriage Act 1949, which can be done only after there has been delivered to the superintendent registrar of the district in which the building is situated a certificate signed by at least 20 householders stating that the building is being used by them as their usual place of public religious worship and that they desire it to be registered[35]; and

(*b*) no marriage can be solemnised in any registered building "without the consent of the minister or one of the trustees, owners, deacons or managers thereof, or in the case of a registered building of the Roman Catholic Church, without the consent of the officiating minister thereof[36].

Hence, all registered buildings are necessarily places of public religious worship and marriages can be celebrated there only with the consent of the religious authorities. A wedding according to the rites of a different religion cannot be solemnised there merely because that is what the parties want but only if the religious authorities are prepared to consent.

70. The Registrar General can be faced with difficult and embarrassing problems in deciding whether to permit the registration of a building in accordance with the provisions summarised in paragraph 69(*a*). This is well illustrated by the recent "Scientologist" case—*R.* v. *Registrar General, ex parte Segerdal*[37]. In that case the acting chaplain of a building in Sussex known as a chapel of the Church of Scientology had applied to the Registrar General for the recording under the 1855 Act of the building as a place of meeting for religious worship. The Registrar General, after lengthy enquiry and copious correspondence, refused, taking the view that the chapel was not used for public religious worship. Application was therefore made for an order of mandamus to compel

[34] Marriage Act 1949, s. 41(1), as amended by the Marriage Acts Amendment Act 1958. There is an exception to the requirement that the building be "separate" in the case of a building used exclusively for public religious worship as a Roman Catholic chapel: s. 41(7) as amended by the 1958 Act.

[35] *ibid.*, s. 41(2). For the provisions relating to cancellation and substitution of another building, see s. 42 as amended by the Marriage Acts Amendment Act 1958.

[36] *ibid.*, s. 44(1) proviso.

[37] [1970] 2 Q.B. 697, C.A.

him to record the building. It was held that, although the Registrar General's duty was enforceable by mandamus, he was not, in the instant case, in breach of that duty since he was entitled, and indeed bound, to satisfy himself that the building was a place of meeting for religious worship. The religion, or, more properly perhaps, philosophy, of the Scientologists did not involve any congregation or assembly for reverence or veneration of God or a supreme being or entity. Hence there was no element of "religious worship" in their ceremonies and the Registrar had rightly refused registration. Clearly, however, the niceties with which the Registrar General may have to wrestle in deciding whether an ostensible religion is a religion and, if so, whether its ceremonies involve "worship" are more suited to a theologian than a civil servant. He also has to satisfy himself that the building is a "separate" one[38] and that the religious worship is "public"; but these fortunately involve issues of fact rather than theology.

Authorised persons

71. As mentioned above[39], all marriage ceremonies in a registered building (*i.e.* all save those of the Church of England, the Quakers or the Jews or those in a register office) must be attended by a registrar or by an "authorised person". His function is not only to ensure that the subsequent process of registering the marriage is duly carried out but also to ensure that the preliminaries have been duly completed and that the formalities are properly observed, for if they are not he will, or should, refuse to allow the marriage to take place. The object of allowing an "authorised person" to act instead of a registrar is to minimise the discrimination against religions other than the Church of England, Quakers and Jews by allowing one of their officials to be present instead of a representative of the State. Hence, the trustees or governing body of the registered building may authorise a person (who may be the minister or some other official of the church or chapel) to be present at weddings in that building and may certify his name and address to the Registrar General and the local superintendent registrar[40]. No particular qualifications are prescribed. Marriages may then be solemnised in a registered building in the presence of the duly certified authorised person of the building or of another registered building in the same registration district[41]. These provisions relating to authorised persons also have the desirable consequence of relieving the civil authorities of the burden of having to make a registrar available at every marriage in a registered building.

B. Criticisms and Recommendations

Civil and religious marriage

72. In the Working Paper we referred[42] to the possibility of introducing a system of compulsory civil ceremony of marriage in place of the existing alternative ceremonies, civil and religious, that are available to persons wishing to be

[38] Except in the case of Roman Catholic chapels: see fn. 34 above.
[39] See para. 67.
[40] Marriage Act 1949, s. 43, as amended by the Marriage Acts Amendment Act 1958.
[41] *ibid.*, s. 44(2); *i.e.*, one authorised person per district could in theory act at weddings in all registered buildings in that district. In practice, however, each sect has its own authorised person or relies on the presence of a registrar. But a single authorised person may act in respect of a number of different churches or chapels of the same sect.
[42] Paras. 69–70.

married. The introduction of such a system would have the advantages that flow from uniformity in arrangements for the solemnisation of marriage; nevertheless, it was our impression, when we issued the Working Paper[43], that it would not be generally acceptable unless, at any rate, no other satisfactory method of improving the present arrangements was possible. Consultation has not altered this impression. Since we have come to the conclusion that our detailed recommendations, if implemented, would achieve the improvements needed in this branch of the law, we have not given consideration to the introduction of such a system. The recommendations which follow are made on the assumption that the present law, which allows persons to marry either by a civil or religious ceremony, will continue. We, therefore, turn to an examination of the existing arrangements for solemnisation of marriage with a view to their possible improvement. These arrangements place emphasis on prescribed places, persons, words and hours, and it is convenient to take each of them in turn.

Prescribed places of solemnisation

73. The first question for consideration is whether celebration of marriages should continue to be confined in general to register offices, churches and chapels of the Church of England and to other places of worship registered for the solemnisation of marriage. There is no such restriction under Scottish law and the Kilbrandon Committee recommended that it should not be introduced there and that, indeed, a registrar should be permitted to celebrate marriages outside his office[44]. Moreover, there is no such restriction in the case of Quaker and Jewish weddings in England and its absence does not seem to have led to any difficulty or abuse. These, on the face of it, are powerful reasons in favour of its repeal. On further scrutiny, however, they do not appear to us to be so powerful as first appears. In this respect Scottish and English traditions have long diverged and there does not seem to be any overwhelming reason for uniformity between the two countries in this particular respect. Scottish law has placed much greater emphasis on restrictions on the celebrants of weddings, and at present these are limited to registrars and to ministers of Christian denominations[45]. The Kilbrandon Committee, in recommending an extension to ministers of other religions, coupled this with recommendations for still closer control of the right to act as celebrant[46]. We are not convinced that the introduction of such control over celebrants (as opposed to "authorised persons" in respect of their functions as such)[47] is desirable in England and Wales or that it would be acceptable to the religious bodies. Nor do we think that the absence of any evidence of abuse in the case of marriages of Quakers and Jews, both of which have long been established in this country, is necessarily a sound reason for extending a like concession to other religions or sects many of which are newly established here and some of which do not have long-standing traditions or have traditions which are different from ours.

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[43] Para. 70.

[44] Cmnd. 4011, paras. 122–123. But it appears that they only had in mind circumstances similar to those now covered by the Marriage (Registrar General's Licence) Act 1970.

[45] *ibid.*, paras. 103–107. Some 132 different Christian denominations are listed in Scotland: *ibid.*, para. 104. As in England there is an exception for marriages according to the usages of the Quakers or Jews.

[46] *ibid.*, paras. 114–116.

[47] See paras. 94 and 95 below.

74. As we see it, the restriction of facilities to marry to prescribed places has positive advantages. It helps to avoid clandestine and irregular marriages by ensuring that weddings take place in buildings which are known to, and recognised in, the community as places where marriages can lawfully take place, and which are under the control of responsible bodies who will see that the requirements of the law are observed. And it precludes any possibility of setting up commercial "marriage parlours" which, we think, most people would regard as an undesirable development. Accordingly, we recommend that the restriction of marriages to prescribed places should remain.

75. Nevertheless we think that certain changes in the present rules would be desirable in relation to "registered buildings". In the first place we doubt whether any useful purpose is still served by retaining the dual requirement of "recording" under the Places of Worship Registration Act 1855 followed by registration under the Marriage Act[48]. The main reason why the former step is taken is because it is an essential preliminary to the latter. Nevertheless, as Lord Denning, M.R., pointed out in *R.* v. *Registrar General, ex parte Segerdal*[49], it confers certain other privileges, for example, exemption from rates[50] and from the obligations to register with the Charity Commissioners[51]. As we understand it, the fact that the Registrar General has recorded a building as a place of religious worship cannot be decisive in determining whether it is entitled to these other privileges; it would be an extraordinary anomaly if it were, for the Registrar General makes no claim to be an arbiter on exemption from rates or from the jurisdiction of the Charity Commissioners. It would be absurd if his decision, taken with quite different considerations in view, should, if favourable, bind the rating authority and the Charity Commissioners who were not parties to his decision and cannot appeal against it. Nevertheless, recording by the Registrar General is, at present, an essential preliminary to obtaining these exemptions and, in practice, cogent evidence of entitlement. It seems to us anomalous that this should be so. However, the amendment of the 1855 Act is not within our terms of reference. Until the 1855 Act is amended, we see no objection to recording under that Act being a necessary preliminary to registration under the Marriage Act.

76. Even if the 1855 Act were amended, the Registrar General would still have the difficult and embarrassing task[52] of deciding (subject to review by the court if his decision is adverse) whether a particular place is a place of public religious worship. But so long as religious marriages continue to be legally recognised we see no alternative to leaving him with some such role. Whether, as in England, the emphasis is on the place of religious worship or, as the Kilbrandon Committee recommend in respect of Scotland, on the marriage being celebrated by a religious institution, someone has to decide whether a particular sect is a religion or not and it is this that constitutes the difficult and embarrassing part of the task. Although, as we have said, we do not regard the

[48] See para. 69 above.
[49] [1970] 2 Q.B. 697, C.A. at 704.
[50] General Rate Act 1967, s. 39(2)(*a*). See also Highways Act 1959, s. 184 exempting from expenses of private street works.
[51] Charities Act 1960, s. 4(4) and (9).
[52] See para. 70 above.

Registrar General or a court as a particularly appropriate judge of the meaning of "the chameleon word 'religion' or 'religious'"[53] we are unable to suggest any other person or body which would be likely to be both better qualified and as generally acceptable. Nor was the Kilbrandon Committee able to suggest any alternative[54]. Hence, our conclusion is that, if religious marriages are retained, so must the present role of the Registrar General and the courts in deciding what is a religion.

77. It has been suggested, however, that although it may be necessary to retain the limitation to places where religious observances take place, there is no need to have the stricter limitation to religious *worship*. As we have seen[55], this has been held to require that the place is used for reverence or veneration of a supreme being or entity. This clearly precludes bodies such as the humanists from having their buildings registered for marriages. It also, as we have seen, excluded the Scientologists. Both, however, would probably be excluded anyway on the basis that they practise a philosophy rather than a religion. On the other hand there are religions which everyone would recognise as such but which do not believe in a supreme being[56] and there may be others which do, but which do not worship him at their meetings. Hence, we are bound to say that we are not altogether happy about the retention of the emphasis on "worship" but we have been unable to find a better formula. The Kilbrandon Committee dealt with this problem by proposing that a "church" should be entitled to celebrate marriages subject to the observance of certain formalities, the word "church" meaning

> "an institution which carries on the religious work of the denomination whose name it bears. On the one hand, the religion need not be Christian, and on the other hand, bodies incorporated merely for charitable or philosophical purposes may find themselves excluded."[57]

The Committee admitted that a formulation on these lines would be likely to give rise to controversy but thought that this could be satisfactorily resolved by the Registrar General subject to an appeal to the courts[57]. Adapted to the English concept of "registered building", any test which retained the element of religious observance but rejected that of worship would, we think, result in substituting for "usual place of public religious worship" some such expression as "usual place at which members of a religious denomination publicly assemble to conduct the rites of their religion". We have no doubt, however, that this would make the task of the Registrar General and the courts somewhat more difficult; religious worship does at least provide some objective criterion even

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[53] *per* Winn, L. J., in *R.* v. *Registrar General, ex parte Segerdal* [1970] 2 Q.B. 697 at 708. He confessed that: "I do not feel well qualified to discuss religion or religious topics. I think there are two ways in which one may be somewhat disqualified for discussion of such topics. The one is if one is particularly religious in the sense of being particularly observant of the processes and rituals of a particular current religion. The other is if one is pre-conditioned by a certain amount of study of pre-Christian religions or religious superstititions towards thinking of religion in a very general and wide sense . . ."

[54] Cmnd. 4011, paras. 115, 116.

[55] Para. 70 above.

[56] It was doubtless with this in mind that two of the judges in the "Scientologist" case were careful not to refer to worship of "a supreme being" only, but included "any entity or being outside their own body and life" (*per* Winn, L. J., at 709) and "object" (Buckley, L. J., at 709).

[57] Cmnd. 4011, para. 115.

if it is not a wholly satisfactory one. Hence, being unable to find a more satisfactory formula (none was suggested to us in the course of consultations on the Working Paper) we incline to the view that "religious worship" should be retained. Nevertheless we think that it is eminently desirable that England and Scotland should not adopt tests which might lead to some sects being recognised as religions in the one country but not in the other.

78. In any event we do not think that there is any case for going wholly outside the ambit of religion so as to enable any body of persons, who regularly assemble together for *any* purpose, to celebrate marriages between their members. It seems to us that the underlying intention of the Marriage Acts has always been—

(*a*) to provide the means by which those who wish to associate with their marriage the religious rites of their particular faith may have such a ceremony, normally in the building in which they usually worship, and

(*b*) to provide an alternative system of civil or non-religious marriages for those who, for any reason, do not want a religious ceremony and for this purpose to provide official marriage buildings (register offices).

There seems to be no case for a "civil marriage" outside the register office. There have been suggestions that such marriages should be permitted in private houses or in hotels because the accommodation which local authorities have provided for civil marriages is unsatisfactory. The complaints appear in some areas to be justified. But we think the right remedy is an improvement in the quality of register offices. The rooms in which marriages are solemnised and their surroundings should be in keeping with the solemnity and importance of the occasion. The Registrar General and the Associations of Local Authorities have for some years and with some success been trying to raise standards. These efforts should continue and be intensified. It is perhaps primarily for local people to press for higher standards.

79. We do think, however, that the present condition that every registered building should be a "separate" one is unnecessary. It has not applied to Roman Catholic chapels since 1837[58], but it remains in other cases and operates unfairly against some of the smaller denominations who may use part only of a building as their place of worship. Moreover, in city centres there is a tendency for places of worship of even larger denominations to be incorporated in what is, by normal tests, part of a building the rest of which is used for other purposes. As a result, the boundaries of what can be regarded as "separate buildings" have, in practice, had to be somewhat artificially extended.

80. Finally, we think that the wording of the Marriage Act might be amended so as to allow marriages to take place within the curtilage of (that is, the land attached to) a registered building[59]. This is particularly important if the concept of registered building is to be extended to Jewish weddings, a question explored in paragraphs 84 to 86. We are informed that traditionally Jewish marriages

[58] Marriage Act 1949, s. 41(7), re-enacting the Births and Deaths Registration Act 1837, s. 35.

[59] Difficulties may arise in defining curtilage, particularly in the case of a building which forms part of a larger building, but these can be dealt with when a Bill is drafted.

were solemnised out of doors and that some Orthodox Jews cling to this practice. We see no reason why a marriage in the garden of a synagogue should not be regarded as taking place in the synagogue or why other religious bodies should not be able, if they wish, to celebrate marriages in their churchyards or the gardens of their chapels. Far from promoting clandestinity this would make the marriage still more public.

81. As we have seen[60], the present requirements result in the general rule that marriages must be celebrated in the parish or district in which one of the parties resides. The object of this was, no doubt, to avoid clandestinity and to allow for possible objections to the marriage by ensuring that the parties marry in the area where one at least is well known. But in practice, the requirement can in some cases defeat its own object. Where parties wish to marry in a church or register office outside their place of residence, because it is more fashionable, beautiful or convenient, they may "acquire" a residential qualification, real or false, in the desired area. For the future we have recommended in Part 2 of this Report[61] that notice should be given in the district in which the party has resided for the previous seven days. If this residential requirement is limited to the place where notice is given it is unlikely that parties will be tempted to seek to evade it, but if it is also applied to the place of celebration, they would undoubtedly find it irksome and seek to evade it. In our view, it is no longer necessary that any residential requirement should apply in relation to the place of celebration. Under the proposals which we made in Part 2 of this Report potential objectors to a marriage will be afforded far better opportunities than they have at present effectively to voice their objections. The only purpose that might be served by seeking to insist that the marriage takes place in the district where notice is given would be to make it a little easier for objections to be made at the last minute by making them during the ceremony. In practice, however, this is not something that is likely to happen (it is almost unheard of at present). Moreover, as we have said, to retain the present rule would encourage evasion of the requirements regarding notice and therefore tend to defeat the object of alerting potential objectors. Hence, we recommend that the parties should be allowed to marry at any church, registered building or register office specified in their notice in whatever district the building may be—subject, of course, to the agreement of the appropriate authorities in the case of churches or registered buildings.

82. When this suggestion was put forward provisionally in our Working Paper[62] there was some opposition to it, particularly from superintendent registrars, on the ground that it would put intolerable pressure on the services provided by such fashionable register offices as Caxton Hall in Westminster. It was argued, further, that ratepayers in the areas where such offices were situated would be unfairly burdened in having to support the provision of facilities for marriage which were being used primarily by non-residents, perhaps to the inconvenience of the residents and ratepayers themselves. In answer to this we would point out, first, that it does not follow that abrogation

[60] Para. 66 above.
[61] Paras. 43–45 above.
[62] Para. 79.

of the rule that a marriage must be celebrated where one of the parties resides will necessarily increase the demand for the use of popular register offices. As has been said in the previous paragraph, the existing rules are easily manipulated at present by those who wish to marry outside their own district by the simple expedient of acquiring a spurious residence for this purpose in the appropriate district. Secondly, the fees for civil marriages are fixed so that, broadly speaking, they cover costs, although some areas might be making a small profit and others a small loss. It is true that if the proposed change does alter the pattern of register office use there might be some difficulties of accommodation and staffing in the short term, but there is no reason why over the longer period facilities cannot be expanded to cope with any increase in work-load. We do not think that the prospect of some practical problems of this nature arising justifies denying couples the freedom to marry wherever they wish without having to bend the law in order to do so.

83. As regards Church of England weddings, it will be for the Church to decide whether it wishes to extend complete freedom to marry in any authorised Church or chapel, subject to the agreement of the incumbent, or whether it wishes to retain the present general rule that parishioners should be married within their parish and its corollary that the incumbent is obliged to marry them however nominal their association with the Church. We ourselves would favour the abrogation of both the rule and its corollary as in the case of civil marriages and those of other denominations[63].

Places of solemnisation of Quaker or Jewish weddings

84. One of our main concerns throughout this Report is to seek to remove so far as possible the present differences between the privileges accorded to different religions in respect of marriages. At present there is a conspicuous contrast between Quaker and Jewish weddings and all others. In advocating that these differences should be removed we should emphasise at the outset that we are not suggesting that the special privileges of the Quakers and Jews have in any way been abused; we are quite satisfied that they have not. Our reasons are simply that this discrimination detracts from the simplicity and clarity of the law, is out-of-date, and leads to pressure for still further exceptions. We have already given our reasons why we believe that in principle the "registered building" concept is a sound one and why we should be reluctant to see it discarded as one of the cornerstones of our system. The exclusion of Quakers and Jews from the normal requirements was made when it was provided that marriage must take place in a place of worship of the Church of England since it was recognised that this was a requirement with which they could not be expected to comply. When other denominations were allowed to celebrate their own marriages, the opportunity was not taken to put all denominations on the same footing. Hence the anomaly that the registered building concept still has no application to Quakers and Jews. As a result it is difficult to reconcile other religions to the continued application to them of that concept. We, therefore, recommend that the "registered building" concept, as set out above, should apply to Quakers and Jews.

[63] The Report of the Archbishops' Commission, *Church and State*, 1970, paras. 200–205, also favoured the end of the obligation.

85. It seems to us that this should not present any serious difficulties. The Quakers, by their own rules, normally marry in a Meeting House or where there is none, in a building where meetings habitually take place and which is advertised as such. In the light of our foregoing recommendations there seems to be no reason why this should not be registered for the celebration of marriages. If that were agreed there would be no need to retain the present special certificates required in the case of a Quaker marriage[64]. The Quakers, who commented on our provisional proposal that they should be brought within the "registered building" requirements, saw no objection to it in principle. They did foresee certain practical difficulties (for example, in meeting the requirement that twenty householders must certify that the building is used by them as their usual place of public religious worship) but we do not think these difficulties are unsurmountable; they are certainly no greater than those facing other minority religious groups.

86. Jewish weddings are normally celebrated in synagogues. The very small number that take place out of doors are almost invariably in the garden attached to the synagogue and our recommendation in paragraph 80 would cover that. Some[65], however, take place in private houses, hired halls, hotels or restaurants —although the authorities of the synagogues take full control of and responsibility for the proceedings. It is only in their case that, as we see it, the extension of the registered building concept might cause difficulty. We question, however, whether it is still necessary to retain the possibility of these extra-synagogue weddings. In the past it may have been justified on the basis that there were few synagogues and those few were concentrated in particular areas. If so, in days when travel was more difficult, it may have been unreasonable to expect Jews outside those areas to travel long distances in order to marry. This justification is now of much less weight and is, indeed, weightier in the case of some of the smaller Christian sects and, for example, Moslems and Sikhs, than in the case of the Jews.

Places of solemnisation of Church of England (or Church in Wales) weddings

87. We do not consider that there is any need to bring Church of England marriages within the registered building concept. Except with the dispensation of an Archbishop's special licence, such marriages can be celebrated only in parish churches or in chapels licensed or authorised by the bishop of the diocese[66]. These are notified to the Registrar General who publishes a list of them. Hence the purpose of the registered building concept is already served.

Prescribed persons at solemnisation

88. The general intention implicit in the Marriage Act appears to be that at every wedding there shall be present as a minimum—

(*a*) both parties,

(*b*) two witnesses,

[64] See para. 8 above.

[65] Out of 1587 Jewish marriages solemnised during 1971, 68 took place in buildings other than synagogues.

[66] Marriage Act 1949, ss. 20 and 21.

(*c*) the celebrant, and

(*d*) a person authorised to undertake the formalities regarding registration (the registrant)[67].

As regards (*a*), it is nowhere expressly stated that both parties must be personally present, although the whole tenor of the legislation, including in particular the provisions regarding the exchange of vows, makes it abundantly clear that they must. As regards (*b*) the presence of two witnesses appears to be required in the case of all types of weddings. Concerning (*c*) and (*d*) the need for separate celebrants and registrants now applies only to marriages in register offices, where the presence is statutorily required of both the superintendent registrar and the registrar, and to marriages in registered buildings if, but only if, the celebrant is not an authorised person.

89. In our view, the legislation should emphasise still more emphatically that at every wedding of whatever type both parties must be present in person and at the same time. This is not a purely academic point. Some Eastern sects refuse to allow the bride to be present at a wedding in their places of worship and one case has been brought to our attention where an attempt (frustrated by the registrar) was made to celebrate a marriage in the registered building of such a sect in the absence of the bride.

90. The requirement of the presence of witnesses is a necessary precaution against clandestinity ensuring that evidence will be available should any doubts arise whether the marriage was properly solemnised. In Scotland it is statutorily provided that the witness to a civil wedding must be aged 16 or over and the Kilbrandon Committee recommended that this should apply to religious marriages also[68]. Such a minimum age stipulation has been urged upon us by a number of commentators on our Working Paper. We think this would be a useful safeguard against very young children acting as witnesses which we are assured sometimes does happen, but a minimum age could give rise to difficulties for the person who had to ensure that a witness was not below that age. A witness would be unlikely to have his birth certificate with him at a wedding. We make no recommendation as to the age of witnesses but consider that the superintendent registrar or other celebrant should have power to reject any witness who appears to him to be unsuitable by reason of his age or for any other reason.

91. In addition to the parties and the witnesses, we consider that the aim should simply be to ensure that at every wedding there is present one or more persons qualified properly to supervise the solemnisation of the marriage and to see that it is duly registered. Whether this should be two different persons or one and the same person seems to us to be immaterial. In fact, this aim already appears to be achieved in practice in the case of all weddings, including Quaker and Jewish ones. In the case of Quaker weddings, we understand that one or more nominated members of the Society of Friends are always present to

[67] We use this neologism to describe the person who is responsible for registering the marriage; the term "registrar" cannot be used as that has been pre-empted by one type of such person.

[68] Cmnd. 4011, paras. 124–125.

ensure that everything is conducted in accordance with the rules of the Friends, and that among those present will be the registering officer appointed by the Society for the district in which the marriage is solemnised[69]. In the case of Jewish weddings, wherever they are celebrated, the synagogue takes full responsibility for the wedding and the secretary of the synagogue is responsible for the registration of it[70] and is always present at it. This does not seem to differ, except in name, from the concept of the "authorised person" required in the case of marriages in registered buildings. As we see it, the nominal difference in this respect between Quaker and Jewish weddings and those of other religions, could easily be eradicated. We therefore recommend that Quaker and Jewish marriages should also be registered by either an authorised person or a registrar. If this recommendation were implemented the only practical difference, as compared with the present position, would be that an authorised person would have to be present at all Quaker and Jewish marriages, unless of course a registrar is present. We do not think that the occasional Quaker practice of celebrating a wedding in the presence of a deputy when the registering officer is absent need be an obstacle to the adoption of this recommendation; there is no reason why more than one authorised person should not be appointed for a registered building and in an emergency a registrar could attend the marriage. This situation does not appear to give rise to any problem in practice for other denominations.

92. As has been stated, the Church of England authorities are not empowered to appoint authorised persons or call upon the services of a registrar. This means that a clergyman who solemnises a marriage has also to be responsible for its registration. We think that some clergymen would welcome the opportunity of being relieved of the responsibility of registering the marriage. In having an authorised person they would also be relieved of the responsibility of seeing that the requirements of the civil law have been complied with. This suggestion was supported by some of the replies. We therefore recommend that the Church of England should be granted the same right to appoint authorised persons as is enjoyed by other denominations. There would of course be no obligation on the bishop (or whatever authority the Church chose to nominate authorised persons) to appoint an authorised person if he did not wish to do so.

93. As regards civil weddings, there seems at first sight to be no reason why the law need provide that both a superintendent registrar and a registrar be present, although there may be advantages in having a second person to undertake the registration work so that the superintendent registrar can concentrate on conducting the marriage with the proper degree of dignity. The fact is, that the Marriage Act is drafted on the basis that there are two civil officials, the registrar and the superintendent registrar, and the registrar is allocated specific duties. We do not think it would be right for us to make a recommendation which would disturb this arrangement in one isolated respect, without having considered all the consequences (*e.g.* in terms of pay and responsibility) and

[69] Marriage Act 1949, s. 53(*b*).

[70] *ibid.*, s. 53(*c*). The statutory responsibility, however, is that of the secretary of the *husbands'* synagogue which will not necessarily be the synagogue where the marriage is solemnised. We would have thought that, if our recommendation in para. 84 is accepted, the responsibility should be that of the secretary of the latter synagogue.

without having undertaken the appropriate consultations. For this reason we stop short of recommending that both officers need not be present at a civil wedding.

Authorised persons

94. The functions of an authorised person are:—

(*a*) to be present to ensure, by inspecting the required documents, that the proper preliminaries have taken place,

(*b*) to hear the statutory words spoken, and generally to ensure that no patent irregularities occur, and

(*c*) to register the marriage.

In the case of Church of England weddings these functions have to be performed by the celebrant because the Church authorities cannot appoint an authorised person or call upon a registrar. We have already recommended that they might be empowered to do so[71]. In the case of most other religious weddings (and all if the assimilation recommended in paragraph 91 is achieved) either an authorised person or a registrar must carry out these functions. This system is not only wasteful of the time of registrars who have to travel to registered buildings which have no authorised person, but it also tends to hamper the recruitment of staff. Nevertheless, we do not recommend that the appointment of an authorised person should be made an essential condition of registration of a registered building, if only because this might derogate from the object sought to be achieved by the recommendation in the next paragraph. But we do think that where there is a large congregation it should be regarded as their responsibility to appoint a suitable authorised person instead of relying on the services of a registrar.

95. At present the Registrar General has no power to reject the nomination of any person as an "authorised person" or to insist upon his replacement if he proves to be inefficient. Authorised persons, in the performance of their duties, are subject to regulations made by the Registrar General and they may be proceeded against criminally if they fail to carry out the requirements of the Marriage Act. But this is the extent of the control over them. Prosecution for offences is an extreme measure which is rarely resorted to: it is a cumbersome method of dealing with minor breaches of the law normally resulting from forgetfulness rather than vice, and fails completely to deal with omissions which fall short of being offences. We accordingly recommend that the Registrar General should be empowered

(*a*) to reject a nomination and

(*b*) to require the religious authority concerned to cancel the appointment and either to nominate another authorised person or to have marriages registered instead by a registrar[72].

We do not envisage that (*a*) will often be used; the important power is (*b*).

[71] See para. 92 above.

[72] This proposal is intended to be additional to and not in substitution for that in s. 44(5) of the Marriage Act 1949. Under that the Registrar General may attach a condition to the registration of a building that no marriage be celebrated therein without the presence of a registrar if not satisfied that the building provides sufficient security for the due registration of marriages and for the safe custody of marriage register books.

Prescribed words

96. As already pointed out[73], at civil marriages or marriages in registered buildings, certain words have to be used during the ceremony. These words consist merely of the following statements by the parties:—

> "I do solemnly declare that I know not of any lawful impediment why I, *A B*, may not be joined in matrimony to *C D*."

and

> "I call upon these persons here present to witness that I, *A B*, do take thee, *C D*, to be my lawful wedded wife [or husband]."[74]

For some reason which is not obvious to us, when the marriage in a registered building is in the presence of an authorised person instead of a registrar, the words—

> "I call upon these persons here present to witness that"

may be omitted[75]. Words very similar to the statutory ones form part of the Church of England marriage service except that the parties are not then required to repeat the declaration that they know of no impediment; the minister instead requires them to disclose any impediment if they know it and their silence is treated as a negative response.

97. We think that this is an appropriate opportunity to modernise the terms of the first declaration. The wording that we suggest is—

> "I do solemnly declare that I do not know of any reason why I, *A B*, may not be joined in matrimony to *C D*."

As for the second declaration, our main criticism is that it does not make it sufficiently clear that the marriage is monogamous. In times past this may have seemed too obvious to need saying. But it clearly is not any longer. There are now buildings registered for the celebration of marriages where the service will be in accordance with the rites of a religion which permits polygamy. If marriages complying with the Marriage Act are solemnised there they will be monogamous ones as the religious authorities fully recognise, but the present prescribed words hardly ensure that this is made clear to the parties (or indeed to others who are present). We regard it as vital that they should, but we have not found it easy to reformulate the declaration in acceptable language that makes this clear. In the Working Paper we suggested the following words in substitution for the existing second declaration:—

> "I, *A B*, take you, *C D*, to be my one and only wife [or husband] to the exclusion of all others."

We agree, however, with those who commented that the phrase "one and only" lacks solemnity and that there is no need for both this phrase and "to the exclusion of all others" since both expressions emphasise the monogamous character of marriage. We therefore recommend the following:—

> "I, *A B*, take you, *C D*, to the exclusion of all others, to be my lawful wedded wife [or husband]."

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[73] Para. 67 above.
[74] Marriage Act 1949, ss. 44(3) and 45(1).
[75] *ibid.*, s. 44(3).

98. The second major weakness is that the celebrant is not required to declare that the parties have become man and wife. This omission means that it may not be crystal clear to both that they have been married, as opposed to merely betrothed. We think, as did the Kilbrandon Committee[76], that it should be prescribed that after the parties have exchanged vows the celebrant should declare that they have become man and wife. On the other hand, we do not think that this declaration should be treated as essential in the sense that no marriage could come into being unless and until it was pronounced. As we understand it, at present the marriage is concluded once the parties have exchanged their vows[77] and any subsequent pronouncement by the celebrant is in confirmation of what the parties have already done rather than the conferment upon them by the celebrant of the status of husband and wife. We doubt if it would be advisable to alter this. But we do suggest that it would be desirable to make clearer than it is at present exactly at what moment of time the parties become husband and wife, since circumstances could occur in which this could be of importance[78]. We recommend that this moment should be immediately after the exchange of vows.

99. Finally, there is the question of the language in which the prescribed words are pronounced. As we understand it, at present they have to be pronounced in English except that, in weddings "in any place where the Welsh language is commonly used", Welsh may be used instead[79]. But there is no statutory requirement that the celebrant should ensure that English or Welsh is intelligible to both parties and the witnesses. While we think it right that the statutory words should be said in the official language of the country, it is even more important that they should be understood. At present the very few statutory words may be the only words of English or Welsh used in the course of a ceremony conducted in another language (which may or may not be understood by most of those present), and the parties merely have to repeat the words to the celebrant's dictation. We suggest that today this is not an adequate safeguard and that the celebrant should be required to satisfy himself that both parties and the two witnesses have a sufficient grasp of English or Welsh to understand the prescribed words and, if they do not, should be required to ensure that the words are repeated in a language which they do understand[80].

100. The foregoing recommendations regarding prescribed words are not intended to be limited to religious marriages in registered buildings. It is equally necessary that they should apply to civil weddings. For many years the Registrar General has in fact required superintendent registrars to read to the parties to a civil marriage a statement which makes it clear that the marriage is monogamous

[76] Cmnd. 4011, para. 115, rule 1.

[77] See *Quick* v. *Quick* [1953] V.R. 224 and *Collet* v. *Collet* [1968] P. 482 at p. 492.

[78] For example, if one party or the celebrant dropped dead during the ceremony or if there was a change of heart as in *Quick* v. *Quick*, above, where after the exchange of vows and as the husband was putting the ring on the wife's finger, the wife flung the ring on the floor, said she was not prepared to marry him and rushed out. The court, by a majority, held that the marriage had been completed.

[79] Marriage Act 1949, s. 52.

[80] This might arise not only where, say, the parties' language is Urdu, but also where a Welsh-speaking husband insisted upon a service being conducted in that language although the wife or the witnesses did not understand it. See *Parojic* v. *Parojic* [1958] 1 W.L.R. 1280 where the bride's language was Serbian.

and to make sure that where one party is a foreigner who does not fully understand English (or Welsh) that the prescribed words are translated into a language which he does understand. In the case of marriages celebrated according to the usages of the Society of Friends we appreciate that the relative informality of the marriages may present difficulties if only because in their case there may be no clearly defined celebrant in the strict sense. But these difficulties may apply to certain sects which are already required to use the prescribed words[81]. In any event, we are sure that the authorities would fully accept the need to ensure that words are used which comply with the minimum requirements mentioned in paragraph 97. We would also hope that in the light of the foregoing the authorities of the Church of England would review the words of its marriage service[82]. We do not, however, consider that the existing service in any way fails to achieve the aim of our proposals; for example, the celebrant does formally pronounce the parties to be man and wife. But, the parties are not required to *repeat* a declaration of no impediment and there is no requirement that they should understand English, the language in which the ceremony would be conducted and the questions addressed to them.

Prescribed hours

101. Today[83] the sole objects of prescribing that marriages must be solemnised between the hours of 8 a.m. and 6 p.m. are to prevent clandestine marriages in the middle of the night and to protect those entitled to celebrate marriages from being called upon to do so at abnormal hours. The objects appear to us to be reasonable ones. No doubt there are some people who would like to see the evening hour extended to 7 or 8 p.m. so that the ceremony could immediately precede a dinner reception. But we see no strong case for such an extension and do not know of any widespread demand for it. Our view is that the hours should remain as at present and that it should be made clear that this requirement should apply to any sort of wedding, except one following a Registrar General's licence[84] or an Archbishop's special licence. This of course would mean that Jewish and Quaker marriages would have to be celebrated within the prescribed hours, thus putting an end to the practice of some sections of the Jewish community of holding their weddings after sunset. We realise that this may cause some inconvenience but we make our recommendation in the interests of the universal application of a rule which we believe to be sound in principle.

Enforcement

102. To secure observance of the rules regarding the required preliminaries, the presence of both parties and two witnesses, the prescribed words and the prescribed hours, we recommend that it should be made a condition of registration of a registered building that the religious authorities undertake that the rules

[81] See Cmnd. 4011, para. 112: "It was said that [a Sikh] ceremony, in its essentials, differs very little from that of a Quaker marriage, even as regards the nature of the respective celebrants."

[82] A more general review is advocated in the recent Report of the Archbishop's Commission on the Christian Doctrine of Marriage: *Marriage, Divorce and the Church*, paras. 104–116.

[83] It appears that historically an early hour was prescribed in order that mass could be celebrated afterwards.

[84] As pointed out (see paras. 10 and 68) the wording of the 1970 Act does not make this wholly clear.

will be followed in every marriage solemnised in the building. The Registrar General should be empowered to cancel the registration if this undertaking is not observed. If this were coupled with the greater control over "authorised persons" which we have recommended[85] the risk of irregularity in solemnisation should be reduced.

Summary of conclusions on place and method of solemnisation

103. Our recommendations under this head are:—

(*a*) The requirement that marriages can be solemnised only in prescribed places should be retained (paragraphs 73 and 74).

(*b*) As regards "registered buildings":—

(i) registration should be restricted to buildings of "public religious worship" (paragraphs 76 and 77);

(ii) such buildings need not be "separate" buildings (paragraph 79);

(iii) it should be permissible to solemnise marriages within the curtilage of the building (paragraph 80).

(*c*) The prescribed place need not be located in the district in which the parties reside (paragraph 81).

(*d*) The foregoing recommendations should be applied to Quaker and Jewish marriages (paragraphs 84–86).

(*e*) It should be clearly stated in the legislation that both parties must be personally present at the same time at the solemnisation of the marriage (paragraph 89).

(*f*) The requirement of two witnesses should be retained (paragraph 90).

(*g*) Registering officers of the Society of Friends and secretaries of synagogues should become "authorised persons" of the places in which Quaker and Jewish marriages take place (paragraph 91).

(*h*) The Registrar General should be empowered—

(i) to reject a nomination of an authorised person, and (ii) to require the religious authority concerned to cancel the appointment of an authorised person and either to nominate another authorised person or to have marriages attended instead by a registrar (paragraph 95).

(*i*) The prescribed words to be used during some part of the ceremony—

(i) should be amplified so as to emphasise that the marriage is monogamous (paragraphs 96 and 97);

(ii) should be spoken in English (or Welsh where that is permitted) but the celebrant should be required to ensure that the parties and the two witnesses have a sufficient grasp of English (or Welsh) to understand them; if they do not, the prescribed words should be repeated in a language which they do understand (paragraph 99).

[85] See para. 95 above.

(*j*) The Act should state that the marriage relationship is established when the parties have exchanged the vows that they take each other as man and wife, and the celebrant should be required to declare that the parties have become man and wife (paragraph 98).

(*k*) It should be made clear that all marriages must be celebrated between the hours of 8 a.m. and 6 p.m., except that marriages by Registrar General's licence or Archbishop's special licence may be solemnised at any hour (paragraph 101).

(*l*) It should be made a condition of registration as a registered building that the religious authorities undertake that no marriage will be solemnised unless the required preliminaries have been complied with and that the rules regarding the presence of both parties and two witnesses, the prescribed words and the prescribed hours will be observed, and the Registrar General should be empowered to cancel the registration if this undertaking is broken (paragraph 102).

PART 4

REGISTRATION OF MARRIAGES

Reasons for registration

104. A system of registration of marriages is required so that there is a public record of an event which has important legal consequences both for the parties themselves and for third parties and for the State. The parties need such a record as evidence of their marriage and so that they can present proof of it to others[86]. Third parties need it so that they can determine the status of the parties and the status (*e.g.* legitimacy) of themselves and others in so far as that is dependent on the marriage of the parties. The State needs it because upon it may depend rights and obligations owed by or to the State in relation, for example, to tax, social security, and allegiance. An effective system of registration affords means of proof or disproof and avoids uncertainty where certainty is essential. In addition registration provides statistics regarding marriage which are vital for any serious research into legal, social or demographical problems.

A. THE EXISTING PROCEDURES

105. Recording of marriage was originally undertaken by the Church. A system of State registration has been superimposed with the result that we now have a system whereby the Church of England, and other religious bodies which have appointed authorised persons, register marriages celebrated by them but later have to take steps to ensure that copies of their registers become available for recording by the State. As a result there may eventually be three copies of the register: at the church or chapel, in the office of the superintendent registrar of the district, and at the office of the Registrar General.

[86] See para. 108, fn. 6 below.

Only where a marriage is solemnised in a registered building which does not have an authorised person or in a register office is the registration undertaken by the State alone and no official copy of the register is maintained elsewhere than at the office of the Registrar General and the superintendent registrar.

106. Provisions for registration of marriages solemnised in this country are now laid down in Part IV of the Marriage Act 1949 and in regulations made thereunder. In the case of a civil marriage in a register office the registrar is responsible for registering the marriage[87]. In the case of religious marriages the responsibility, in the case of a Church of England wedding, is that of the clergyman who solemnised the marriage[88], in the case of a Quaker wedding that of the registering officer of the Society of Friends of the district[89], in the case of a Jewish wedding that of the secretary of the synagogue of which the husband is a member[90], and in the case of a wedding in a registered building, that of the registrar[91] or authorised person[92]. In every type of marriage, therefore, there is a designated person responsible for ensuring that it is registered. In this Report we describe him as "the registrant"[93]. Marriage register books and forms for making certified copies (*i.e.*, marriage certificates) are made available to each type of registrant by the Registrar General[94]. Immediately after the marriage[95] that person is required to register it in duplicate in two register books, except that where the marriage is in a register office or a registered building without an authorised person registration by the registrar in one book suffices[96]. The entry must be signed by him and by the parties and the two witnesses as well as by the celebrant where the registering officer is a registrar[97]. There is express power to ask the parties for the needed particulars[98].

107. As a result of the foregoing, the marriage will have been registered locally but not centrally and not necessarily by any public officer. This further step is achieved by the following process: in the months of January, April, July and October the registrant is required to deliver to the superintendent registrar of the district a certified copy of all entries made during the previous quarter[99]. At the end of those months the superintendent registrar, having done his best to collect any entries omitted[100], forwards the certified copies

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[87] Marriage Act 1949, s. 53(*f*). And see the Marriage (Registrar General's Licence) Act 1970 s. 15.
[88] Marriage Act 1949, s. 53(*a*).
[89] *ibid.*, s. 53(*b*).
[90] *ibid.*, s. 53(*c*).
[91] *ibid.*, s. 53(*d*).
[92] *ibid.*, s. 53(*e*).
[93] See para. 88, fn. 67 above.
[94] Marriage Act 1949, s. 54.
[95] Or "as soon as conveniently may be after the solemnisation" in the case of a Quaker wedding: *ibid.*, s. 55(1). This recognises that at a Quaker wedding the registering officer is not required to be present (although we understand that in practice he will be: see para. 91). Although the secretary of the husband's synagogue is equally not compelled to be present at a Jewish wedding, the alternative formula is not used in his case. Both are required before registration to satisfy themselves that the marriage was comformable to the usages of their respective faiths: s. 55(1) proviso (*b*).
[96] *ibid.*, s. 55(1)(*a*).
[97] *ibid.*, s. 55(2).
[98] *ibid.*, s. 56.
[99] *ibid.*, s. 57. "Nil returns" are required: s. 57(1)(*b*).
[100] *ibid.*, s. 58(1). Note also s. 61 regarding power to correct mistakes in entries in the register, books.

to the Registrar General, and they are then entered in the central register maintained at Somerset House[1]. At this stage, however, the superintendent registrar does not attempt to complete a register at his office. Only when the register books kept by the registrants are filled do they have to be delivered to the superintendent registrar of the district and kept with his records[2], thus completing the register at district level.

108. The result of this process is that there will at the end of the quarter be at least two, and generally three, copies of the register in existence. Eventually one will be kept at the church or chapel, one by the superintendent registrar of the district and one maintained centrally by the Registrar General. The first of these (when it exists at all) is really of concern only to the church and not to the State. Nevertheless, the Act requires it to be maintained and there are provisions for its custody[3], for searches in it and for the provision of certified copies of entries[4]. But only in the case of the other two registers are there provisions for indexes to be kept so as to facilitate searches[5] and it is only in the case of certificates of entries in the central register that there is express provision in the Marriage Act that these are to be received as evidence of the marriage without further proof of the entry[6].

B. Criticisms and Recommendations

The need for speedier complete registers

109. As we have already said[7], the system of registration outlined above "provides a reasonably effective method of recording marriages which have taken place". It also has the advantage that it produces, admittedly after some delay, a complete central register. But until the central register at Somerset House is completed, certificates can be obtained only from the registrant, who may be the incumbent, the registrar or the authorised person, and unless the person wishing to obtain a certificate already knows exactly where the marriage was solemnised he will not know where to go. If the register book which he wishes to inspect is maintained by a registrar it may not be available when he calls because it has been taken by the registrar to a wedding in a registered building[8]. Entries do not get on to the central register until between one and four months after the wedding when the quarterly returns by the

[1] Marriage Act 1949, s. 58.

[2] *ibid.*, s. 60. Except where the registrant is a registrar, one copy of the register will still remain in the church or chapel since only one of the two books maintained there has to be delivered up.

[3] *ibid.*, s. 60(1). Those maintained in respect of Church of England weddings have a somewhat more official status than those of other religions since they form part of the registers of the parish or other ecclesiastical district. See also s. 62 regarding the registers when a church or chapel ceases to be used.

[4] *ibid.*, s. 63.

[5] *ibid.*, ss. 64 and 65.

[6] *ibid.*, s. 65(3). But under the Evidence Act 1851, s. 14, all types of certificate are admissible as truth of the statements made because they are certified copies of public documents: *Wilton & Co.* v. *Phillips* (1903) 19 T.L.R. 390.

[7] Para. 6 above.

[8] Movement of the original register books increases the risk of loss, damage or destruction, although we understand that there is no record of this having occurred while books were in transit.

original registrant to the superintendent registrar are sent on by the latter to the Registrar General. A composite index is not available until several months later. When the returns are sent on to the Registrar General, copies are not taken by the superintendent registrar and so complete entries for the district do not become available at the office of the superintendent registrar until an uncertain and variable time dependent on whether the original registrants' marriage register books fill quickly or slowly. Moreover, when the superintendent registrar eventually receives the records he gets them in a form which makes it impossible to produce any consolidated chronological register of marriages in his district.

110. It has, accordingly, been suggested that we might adopt instead the "marriage schedule" system which has been in operation in Scotland since 1854 and works satisfactorily there[9]. Under this system, before the marriage but after the necessary preliminaries have been fulfilled, the registrar of the district where the marriage is to take place completes a schedule of the various particulars required for registration. If there is to be a civil marriage, he retains the schedule and after the ceremony it is signed by him. If there is to be an ecclesiastical marriage, he issues the unsigned schedule to the parties who have to produce it to the celebrant and after the ceremony it is signed by the celebrant, the parties and the witnesses. The signed schedule must be returned to the registrar within three days of the ceremony so that he can register the marriage. We understand that by convention it is regarded as the obligation of the best man to ensure that it is duly returned. In effect, one single document acts both as the registrar's licence to marry[10] and the initial record of the marriage from which the register is completed. It avoids the need for a registrar to attend any weddings except those in his register office and it leads to the completion of the registers at district level within three days and would enable the central register also to be completed early[11].

111. Although this system has advantages, there are a number of serious objections to its adoption in England and Wales. The first is that the public in this country are unused to having to make their own arrangements to secure the registration of the marriage. The tradition of "signing the register in the vestry" and obtaining the "marriage lines" immediately after the ceremony is ingrained as part of the ritual of the wedding. It seems probable that there would be great difficulty, certainly in the early years of the new system, in securing the prompt and unfailing return of the completed schedule without which the marriage could not be registered. Secondly, the introduction of the system in England and Wales could theoretically make it easier both to avoid the registration of a marriage which had taken place and to register one which had not in fact taken place, although we understand that these difficulties have not arisen in Scotland. And, thirdly, apart from deliberate fraud, the

[9] Kilbrandon Report, Cmnd. 4011, para. 60.

[10] Under the recommendations of the Kilbrandon Committee this will be carried to its logical conclusion: the only document which will be produced to the celebrant will be the schedule and no longer also a certificate of proclamation of banns or of publication of notice both of which will be abolished: Cmnd. 4011, paras. 51, 53 and 127.

[11] We understand that in fact it is brought up to date once a year only, but comprehensive central indexes are prepared at quarterly intervals from forms of particulars returned weekly.

safeguards against irregular marriages (*i.e.* those void or of doubtful validity for want of form) would be seriously weakened by the removal of the requirement that every marriage must be attended by a responsible officer whose duty it is to see that all the formalities required by law are complied with and that the marriage is solemnised in due form. Experience shows that, understandably enough, certain sects try to adhere strictly to marriage rites which are very different from those known to English law and which may not comply with its essential requirements.

112. Having regard to these considerations we do not feel able to propose the adoption here of the Scottish system. The situation in the two parts of Great Britain is different both in regard to social habits and legal norms. In Scotland the marriage schedule system has become traditional; in England it would be a startling novelty. In Scotland the law is such that there is both a closer control over celebrants and potentially less extreme consequences if there are defects in the formalities since a valid marriage can be established by cohabitation with habit and repute[12]. Moreover, hitherto Scottish law has made no provision for the celebration of marriages according to the rites of sects other than Christian denominations or Jews[13]. It has, further, been represented to us that, however old-fashioned the present English system may appear, it works well in practice and gives general satisfaction to the public. Our consultations did not disclose any serious dissatisfaction with the present system and although some aspects of it were criticised our view is that the case for any fundamental change, such as the introduction of the marriage schedule, has not been made out.

113. Although in our Working Paper we declined to recommend the adoption of the marriage schedule in England we did provisionally propose a new registration procedure which we thought would overcome the defects in the present system[14]. In brief the suggested procedure would have involved the registrant in compiling duplicate marriage register books, from one of which a perforated page containing the marriage entry would be detached and sent to the superintendent registrar. He would immediately send a copy of it to the Registrar General to enable the central register to be completed, and then insert the signed original in his register. Under such a system complete entries would be available both at the central and district registries within a very short time after the wedding—although it would take rather longer before effective searches could be made because this necessarily depends upon the completion of an index. This scheme was welcomed by some of those who commented on the Working Paper, but many others foresaw practical difficulties in the greater reliance on the postal service which our provisional proposal would entail, in the risk of defacement by the removal of perforated pages and in the need for the registrant to complete two different registers. We do not think that these objections would be of any great weight if the suggested scheme would be

[12] See the Kilbrandon Report (Cmnd. 4011), paras. 135–143 and 155. No change in the law was recommended.

[13] The Kilbrandon Report recommended an extension to other religions and with closer control over the right to act as celebrant: Cmnd. 4011, paras. 114–117.

[14] Published Working Paper No. 35, paras. 110 & 111.

likely to effect a substantial improvement in the quality and speed of registration. Since, however, the present system appears to work reasonably well in practice we have decided to abandon the scheme suggested in the Working Paper and to recommend that the present procedure should be retained and its defects remedied by minor administrative improvements. One such improvement would be to require superintendent registrars to prepare cumulative local indexes of marriage entries at the end of each quarter. This would greatly facilitate the searching of register books and the identification of a specific entry once the district in which the marriage had been celebrated was known. Detailed improvements to the system of registration can, we think, be left to the Registrar General.

Information in registers

114. The present form of the marriage register has been criticised on the ground that the information contained in it does not always enable the parties to be identified at later dates. Entry of age, for instance, is not always sufficient to distinguish one person with a common forename and surname from others. This defect is made worse by the practice of entering such expressions as "Full age" for all persons over 21 (perhaps now 18). The Registrar General has been urged by a number of prominent bodies, including the Medical Research Council, to prescribe a form of register in which all persons registering marriages should be required to enter the date and place of birth of the bride and bridegroom. The proposals which we have made in relation to preliminaries will make it easy for this to be achieved. Each party will have been required to state his or her date and place of birth (and to produce evidence of it)[15] and this information will be stated in the superintendent registrar's licence[16]. We suggest that it should also be stated in the registers themselves. We also suggest that details should there be given of the date and place of the giving of the notice which led to the issue of each licence; this would help to ensure that the registrant checked both the existence of the licence and its current validity. We think it would be useful for identification purposes if in addition to the information contained in the superintendent registrar's licence the register entry included the names of both parents (if known) of each party—at present only the father's name is required. The register entry should also, of course, give names and addresses of two witnesses.

Marriage certificates

115. Official certified copies of entries in the marriage register should, of course, continue to be issuable, initially by the registrant and thereafter also by the superintendent registrar or Registrar General. The Registrar General is not in a position to issue a certificate until some time after the date of the marriage and until then it must be obtained from the superintendent registrar (or the registrant). Our proposal for the compilation of cumulative local indexes at the end of each quarter should assist the superintendent registrar,

[15] Para. 39 above.
[16] Para. 63 above.

and in turn members of the public, in obtaining marriage certificates with the minimum of delay. We also recommend that the Marriage Act itself should state that a certificate issued by the registrant, superintendent registrar or Registrar General is, in the absence of evidence to the contrary, sufficient proof of the celebration of the marriage. As pointed out in paragraph 108, the provision in the present Act (section 65 (3)) relates only to certificates of the Registrar General; the effect of the others depends on common law and the Evidence Act 1851.

Annotation of birth registers

116. The suggestion has been made that particulars of the marriage should be recorded against the parties' birth entries. The Kilbrandon Committee said that they would have liked to recommend this in respect of Scotland since they thought it would provide a good safeguard against bigamous marriages. They refrained from recommending it "only because we realise that it would be a very expensive process, both in staff time and money, as the birth entries of about 80,000 persons would have to be searched for and annotated each year"[17].

117. The introduction of such a system in England would, of course, be still more expensive since the numbers involved would be over 800,000 annually. Nevertheless, we have considered the suggestion since, on the face of it, it is an attractive one. But we have concluded that in itself it would not be worthwhile, apart altogether from the question of expense. In England the various registers are in no sense registers of current status but merely of past events; in this respect our marriage register differs from the Scottish. There, the marriage register is annotated if the marriage is dissolved or annulled and therefore forms something in the nature of a current register of marital status; the suggested annotation of birth registers would carry this a stage further. But merely to annotate the birth register in the way suggested would not, in our view, be worthwhile. We say that for the following reasons:—

(*a*) It would be impracticable to note birth records in respect of marriages which took place prior to the introduction of the system; hence, it would be very many years before it could reasonably be assumed that the absence of a note meant that there had been no marriage in England and Wales.

(*b*) It would not be possible to have birth records marked to record marriages celebrated abroad.

(*c*) About 2½ million people resident in this country and possibly as many as 10 per cent. of the persons marrying in this country were born abroad; it would not be possible to have their birth records annotated.

(*d*) For these and other reasons it would be unlikely effectively to deter a determined bigamist.

[17] Cmnd. 4011, para. 128.

Summary of recommendations relating to registration

118. Our recommendations in respect of registration are:—

(*a*) The present system of registration should be retained, although some administrative improvements ought to be made (paragraphs 109-113).

(*b*) The registers should contain—

(i) all the details regarding the parties given in the superintendent registrar's licence (including dates and places of birth),

(ii) particulars of the licence,

(iii) the names of the parents (if known) of each party, and

(iv) the names and addresses of two witnesses to the marriage (paragraph 114).

(*c*) The Marriage Act should provide expressly that official copies of entries in the registers whether issued by the original registrant, the superintendent registrar or the Registrar General should, in the absence of evidence to the contrary, be sufficient proof of the celebration of the marriage to which it relates (paragraph 115).

(*d*) We do not favour the annotation of birth registers with a note of a marriage (paragraphs 116 and 117).

PART 5

EFFECTS OF IRREGULARITIES

A. THE PRESENT POSITION

119. The Marriage Act 1949 provides expressly that failure to comply with certain formal requirements does not affect the validity of a marriage and that the effect of other irregularities is to make the marriage void if the parties concerned did so "knowingly and wilfully"[18]. The first class includes lack of parental consent[19], failure to publish banns or to give notice in the correct parish or district or to have the marriage solemnised in the correct parish or district[20], or solemnisation in a building which was not duly certified or not the parties' usual place of worship[21]. The second class (those irregularities which avoid the marriage if both parties have acted "knowingly and wilfully") includes, in the case of Church of England weddings, marriages otherwise than in a

[18] We are not here concerned with the effect of defects in *capacity* to marry which may make a marriage void or voidable in accordance with the terms of ss. 1 and 2 of the Nullity of Marriage Act 1971. The only reference this Act makes to the effect of non-compliance with formalities is the statement that a marriage is void "if it is not a valid marriage under the provisions of the Marriages Acts 1949–1970 (that is to say where . . . (iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage)" (s. 1).

[19] Marriage Act 1949, s. 48(1)(*b*). But it seems that, if the parent had forbidden the issue of a certificate under the procedure in s. 30 and the superintendent registrar had nevertheless issued a certificate and the parties had married, the marriage would be void since s. 30 provides that "the notice of marriage and all proceedings thereon shall be void".

[20] *ibid.*, ss. 24 and 48(1)(*a*) and (*e*).

[21] *ibid.*, s. 48(1)(*c*) and (*d*) and (2).

church or chapel where banns may be published, failure to publish banns or to obtain a common licence or superintendent registrar's certificate, marriages after banns have been forbidden or a common licence or superintendent registrar's certificate has expired, marriages following a superintendent registrar's certificate other than in the church or chapel specified therein, and marriages by a person not in Holy Orders[22]. In the case of marriages other than those of the Church of England, this class includes marriages without due notice or without a certificate, marriages after the certificate has expired, marriages in a place other than that specified in the certificate, and marriages in the absence of the registrar, authorised person, or superintendent registrar[23].

120. Unfortunately, these two classes do not cover the whole ground. There are some requirements of the Act which are not included in either. Among these are, first, celebration of a marriage otherwise than between the hours of 8 a.m. and 6 p.m. This requirement appears as the last of four sections of Part I of the Act which applies to all types of marriage. In the case of the other three sections, it is expressly provided in two of them that a marriage which offends their provisions is void[24], and in the case of the third, that it is valid[25]. Nothing is said in the case of the fourth section. Its wording suggests that the marriage would not be avoided[26] and it is most unlikely that any court would today hold that it was. Another omission relates to failure to use the "prescribed words" at the ceremony. Here the position appears to be that a failure to repeat the words verbatim would not avoid the marriage but that a total failure to exchange vows would[27]. Furthermore, although the Act never declares the marriage to be void for lack of form unless the parties acted knowingly and wilfully, there may be some formal defects so fundamental that in law there is no marriage even if the parties, or one of them, acted in good faith. For example, if a layman purported to celebrate a marriage, without a licence and in a private house[28], it seems likely that there would be no marriage even if one party genuinely believed that the celebrant was a clerk in Holy Orders, that the needful preliminaries had been complied with and that the house was a place where marriages could lawfully be solemnised by him. This, it is suggested, would not be so much a void marriage as no marriage at all. As has been judicially said of the Marriage Act[29]:

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[22] Marriage Act 1949, s. 25.
[23] *ibid.*, s. 49.
[24] *ibid.*, ss. 1 and 2.
[25] *ibid.*, s. 48(1)(*b*).
[26] It says "A marriage may be solemnised at any time between" the hours of 8 a.m. and 6 p.m., not, like ss. 1 and 2, "A marriage solemnised [otherwise than between the hours of 8 a.m. and 6 p.m.] shall be void".
[27] *Hill* v. *Hill* [1959] 1 W.L.R. 127, P.C. Breach of the requirement that marriages must be "with open doors" is also omitted; presumably, this would not avoid the marriage. So is absence of witnesses, which is also not fatal: see *Wing* v. *Taylor* (1861) 2 Sw. & Tr. 278.
[28] *cf. R.* v. *Bham* [1966] 1 Q.B. 159, C.C.A. where the facts were somewhat similar except that the celebrant was a minister of religion and not a mere layman and the ceremony was an Islamic one.
[29] *R.* v. *Bham, supra*, at p. 169. The "marriage", being in a form which could only have led to a potentially polygamous union, was held not to be a marriage within the meaning of the Act.

"What, in our judgment, was contemplated by this Act and its predecessors in dealing with marriage and its solemnisation, and that to which alone it applies, was the performing in England of a ceremony in a form known to and recognised by our law as capable of producing, when there performed, a valid marriage."

If the ceremony was not in such a form, the purported marriage would be void not because the Marriage Act avoids it but because it is not a marriage at all within the meaning of that Act. Unfortunately, the Act gives little indication of what are the minimum requirements of a "form known to and recognised by our law . . . as capable of producing . . . a valid marriage".

B. Criticisms and Recommendations

The need for greater certainty

121. The uncertainty produced by the present state of the law will have been apparent from the foregoing paragraphs. Nor does uncertainty result only when the legal provisions are obscure. The fact that voidness or validity may depend on the knowledge or absence of knowledge of the parties in itself produces uncertainty. Indeed it may come close to leaving it to the option of the parties whether their marriage is to be treated as void or valid, for if they allege that they had knowledge of an irregularity it will be virtually impossible to disprove it, and if they allege that they had not, it will normally be extremely difficult to prove the contrary. As a result the dishonest may be more favoured than the scrupulous. But it is not only the deliberately dishonest who may benefit undeservedly for most people have no difficulty in sincerely convincing themselves that what they would like to have occurred is what in fact occurred, so that the nature of their subsequent testimony about their state of knowledge is likely to vary according to whether they wish to be relieved of the marriage or to remain married. All this causes great difficulty to the Registrar General and to his officers and to the Home Office. Where irregularities come to light which are such that they might affect the validity of the marriage the Registrar General's officials may have to consider whether they should notify the parties and advise a fresh marriage or whether it can safely be assumed that the parties did not act knowingly and wilfully. Sometimes there may be serious doubts affecting a number of marriages celebrated irregularly by a particular celebrant or in a particular place which cannot be resolved by re-marriage (because, for example, one of the parties has died). In these circumstances the Home Secretary may have to exercise the statutory powers which he now has to validate the marriages by an order which is subject to special parliamentary procedure[30]. This procedure, though simpler than the passage of a special public or private Act, can be quite complicated and expensive since the draft order has to be advertised and any objections considered and a local inquiry may have to be held.

[30] Provisional Order (Marriages) Act 1905, as amended by the Marriage Validity (Provisional Orders) Act 1924. The Provisional Orders (Special Procedure) Act 1945 was applied to orders under the 1905 Act by S.I. 1949 No. 2393. In the past such orders have been quite numerous though there has been none in recent years.

Irregularities avoiding a marriage

122. If our foregoing recommendations are implemented the risk of irregularities occurring will be diminished—and clearly the right approach is prevention of irregularities rather than to punish them by the sanction of nullity. Nevertheless, it would be too much to hope that any system could ever eradicate them wholly. Hence, one still has to consider what irregularities should be regarded as so serious as to avoid the marriage. The general principles which should govern that decision are, we think, relatively easy to state. As we see it they are:—

(*a*) The leaning should be in favour of validity; hence the number of formal irregularities which may avoid a marriage should be reduced to the minimum.

(*b*) Irregularities on the part of the registrar, celebrant or authorised person which are not the fault of the parties should not avoid the marriage.

(*c*) Voidness or validity should depend on objective criteria and not on the subjective knowledge of the parties.

It is the working out of the practical application of these principles which causes the difficulty, particularly as principles (*b*) and (*c*) may pull in different directions. If, for example, there is something wrong with the superintendent registrar's licence this may be his fault or that of the parties who have misled him; yet if validity is to depend on whose fault it was, principle (*c*) will be breached.

123. Nevertheless we think that the following corollaries of the general principles would secure general agreement:—

(i) There is no case for a general widening of the present grounds on which a marriage may be regarded as void for formal irregularities[31]; on the contrary they should be narrowed, for not all are of sufficient importance to merit such an extreme consequence which may have calamitous results to innocent parties such as a bereaved woman with young children who finds on the death of her "husband" that she was not legally married. Our foregoing recommendations would remove some of the possible irregularities, but would retain some and add others. These are of varying importance. Only non-fulfilment of those that can properly be regarded as fundamental should prevent the marriage being constituted.

(ii) The fundamentals are the issue of a superintendent registrar's licence[32] (or a Registrar General's or special licence) and solemnisation of a marriage substantially in accordance with the legal provisions regarding solemnisation. If that has occurred the marriage should be regarded

[31] Equally, there is, in our view, no case for elevating parental consent from a formal requirement, breach of which does not annul the marriage, to an essential requirement, breach of which would do so: see para. 49 above.

[32] Under our foregoing recommendations regarding preliminaries this is the document which will be required in the case of every type of marriage except those by Registrar General's licence or by special licence.

as valid as to form[33], notwithstanding non-fulfilment of some of the steps which should have been taken as a preliminary to the issue of a licence, mistakes in the licence, or non-substantial errors or omissions in the solemnisation.

124. It is the detailed working out of the latter part of the second corollary which causes difficulty. The first part of it seems to us to be clear. Under our recommendations regarding preliminaries the superintendent registrar will be given adequate time and opportunity to investigate before he issues a licence. If he issues it and the marriage takes place, it should not, in our view, be possible to attack the validity of the marriage on the ground that the preliminaries were not properly fulfilled or because there were errors in the licence[34]. We appreciate that this means that the marriage may be valid notwithstanding that both parties have wilfully deceived the superintendent registrar. That should be an offence for which they should be liable to punishment. But the punishment should not take the form of avoiding the marriage. The second part of the corollary is, however, much less clear. What exactly is meant by "substantially in accordance with the legal provisions regarding solemnisation"? To attempt an answer involves a separate consideration of each of the legal provisions concerning solemnisation.

125. Under our recommendations regarding place and method of solemnisation the following would normally be the relevant legal provisions:—

(*a*) The marriage must be celebrated at the prescribed place named in the licence.

(*b*) That place must be one authorised for the solemnisation of marriages; *i.e.*, in the case of a civil marriage, the office of a superintendent registrar, in the case of a Church of England wedding, a parish church or authorised chapel, and in the case of other religious weddings, a registered building.

(*c*) The marriage must take place—

(i) between the hours of 8 a.m. and 6 p.m.,

(ii) with open doors, and

(iii) while the licence remains valid.

(*d*) The marriage must be solemnised in the presence of—

(i) the parties,

(ii) the superintendent registrar (in the case of a civil wedding), a person in Holy Orders (in the case of a Church of England wedding) and an authorised person or registrar (in the case of any other religious wedding), and

(iii) two witnesses.

(*e*) The parties must speak the prescribed words.

(*f*) The parties must be pronounced to be man and wife.

[33] It might, of course, be void or voidable on other grounds such as absence of consent or incapacity.

[34] We again stress that this relates only to *formalities*; the marriage might still be void for lack of capacity.

These requirements would apply to all types of wedding, except that (*b*) and (*c*) (i) would not apply to a marriage after a Registrar General's licence or Archbishop's special licence.

126. Of these requirements, it seems plain that a breach of (*c*) (i) or (ii) should not annul the marriage; as we understand it, it would not do so under the present law[35]. We also consider that it would be wrong to say that failure to observe (*e*), the speaking of the prescribed words, should annul the marriage. The absence of prescribed words should be dealt with by making the person who solemnises the marriage guilty of an offence, not by making the marriage void. Nor, again, should non-fulfilment of (*f*) annul the marriage; as we have already stated, the marriage should be regarded as complete when the parties exchange their vows and the subsequent pronouncement should merely be confirmatory[36]. As regards (*d*) (iii), it appears that under the existing law the requirement that witnesses be present is directory not mandatory, and that accordingly a marriage celebrated in the presence of only one witness (or presumably none) is valid[37]. In view of what we have said about the desirability of narrowing rather than widening the grounds which avoid a marriage, we do not consider that the presence of witnesses should be regarded as a fundamental requirement. Accordingly, this leaves requirements (*a*), (*b*), (*c*) (iii) and (*d*) (i) and (ii).

127. As regards requirements (*a*) and (*b*), which are inter-related, there are four possibilities:—

(i) neither might be mandatory,

(ii) the marriage might be void unless celebrated in a prescribed place but without its being essential that this should be the place named in the licence,

(iii) the marriage might be void unless celebrated in the place named in the licence without its being essential that this should in fact be a prescribed place, or

(iv) the marriage might be void unless celebrated in the place named in the licence and unless that is in fact a prescribed place.

Of these four possibilities, we prefer (iii). We reject (i) because, for reasons which we have already given[38], we regard prescribed places of celebration as an essential precaution under the English system. It is true that it can be dispensed with by a Registrar General's or special licence but this dispensation is intended only for cases of dire necessity or very special circumstances. We reject (iv) because it is for the superintendent registrar to check that the place named in his licence is one in which marriages may be lawfully celebrated and if he makes a mistake his error should not be visited on the parties. We prefer (iii) to (ii) because the latter would not afford the same protection against clandestine or fraudulent marriages. In our view a licence to marry in building X should not enable a valid marriage to take place in building Y. We are, however, conscious of the fact that hardship could be caused if, for example, building X

[35] Para. 120 above.
[36] Para. 98 above.
[37] *Wing* v. *Taylor* (1861) 2 Sw. & Tr. 278.
[38] Paras. 73 and 74 above.

was destroyed shortly before the wedding and if the marriage could not be celebrated elsewhere without going through the formalities of obtaining a new licence. It is for this reason that we have recommended that the superintendent registrar should be entitled to amend the licence[39], by substituting another place.

128. As regards requirement (*c*) (iii), it is tempting to say that the fact that a licence has expired should not annul the marriage, since if a marriage is celebrated after its expiry this is essentially the fault of the celebrant, registrar or authorised person. But this would not be so if the date of the licence had been altered by one of the parties—an alteration which might not be difficult to make. If one introduced a special exception to cover that case one would be re-introducing something like the very unsatisfactory "knowingly and wilfully" test. Moreover, if the existence of a licence is to be regarded as fundamental, as we think it must, it ought, in our view, to be a valid licence and not one which has ceased to be valid. Hence, we think that the marriage should be void unless a licence had been granted in respect of each party and was still current when the marriage was solemnised. Any hardship which this recommendation might be thought to involve would be mitigated by our recommendation[40] that the Registrar General should be given a limited power to extend the period of validity of a licence beyond three months.

129. Requirement (*d*) provides first for the presence at the solemnisation of both parties. We have no doubt that this should be regarded as fundamental and that the marriage should be void unless both are there. It provides secondly for the presence of the prescribed celebrant/registrant; *i.e.*, a superintendent registrar in the case of a civil wedding, a minister in Holy Orders in the case of a Church of England wedding or an authorised person or registrar in the case of any other wedding. We have found the question whether the absence of these should make the marriage void a most difficult one. On the one hand, it may be said that a Church of England wedding not conducted by a minister of the Church or a civil wedding not conducted by an official of the civil arm is a travesty which obviously should be void. On the other hand, it can be argued that although the parties can reasonably be expected to know whether or not there is a valid licence and whether or not the marriage is performed in the prescribed place, they cannot be expected to check whether the clergyman or superintendent registrar is properly qualified. Moreover, it would seem particularly hard to impose on them the onus of checking that at religious weddings other than those of the Church of England there is present a duly qualified authorised person or registrar. It may further be said that if one makes mandatory a valid licence and celebration at the place named in the licence it goes too far also to make mandatory the presence of prescribed people. As we understand it, the theoretical basis of our type of marriage is that the parties marry themselves by exchanging vows; the role of the celebrant is to ensure that they do so properly. Moreover, it can be argued that the onus should be on the civil or religious authorities of the prescribed place to ensure that marriages are not conducted there unless the prescribed people are present and that these authorities, unlike the parties, are able to check credentials. Nor, we think, is there

[39] Para. 63 above.
[40] Para. 63 above.

anything in the contrary argument that, unless the presence of properly qualified prescribed persons were regarded as fundamental, parties would conspire to have marriages celebrated by bogus celebrants. Having obtained a valid licence and attended at the place named in the licence, it is difficult to see why they should want to have a bogus celebrant unless their aim was to deceive their relations into believing that they had been validly married when they had not; the best way of deterring them from that is surely to defeat their aim by making the marriage valid. We would also emphasise that all who were knowing parties to the celebration of a marriage by an unauthorised person would, of course, commit a serious criminal offence: all that is being discussed is whether the marriage should be void or valid. We think that the balance of these arguments is in favour of its being valid.

130. There is, however, one consideration to the contrary which we regard as weighty. If marriages are to be valid notwithstanding the absence of anyone whose duty it is to see to their registration, there will be an increased risk of marriages which are valid but which are not registered. A possible compromise solution which would minimise this risk would be to provide that the marriage should be valid so long as someone holding himself out as a superintendent registrar, minister, authorised person or registrar was present. On that basis the marriage would be void if no ostensible celebrant/registrant was present, but would be valid if one was, even though he was not properly qualified. This would greatly reduce the risk of there being a valid marriage which did not become registered, for holding oneself out as a registrar or authorised person would normally involve at the very least registering the marriage. We do not think that any difficulty would be experienced in the case of a civil or Church of England wedding in deciding whether someone had held himself out, for the ostensible superintendent registrar or clergyman would conduct the wedding. Nor would there be difficulty in the case of other religious weddings where the presiding minister himself purported to be the authorised person. It might, however, be more difficult in other cases where the authorised person or registrar would play a less obvious role until after the ceremony. But if, thereafter, someone registered the marriage this would be cogent evidence that an authorised person or registrar was present and that the marriage was valid, whereas if no one registered it that would be some evidence that no purported authorised person or registrar was present and that the marriage was therefore void. This is the result desired. Hence, we recommend this compromise solution.

131. If any of these fundamental conditions was not fulfilled, the marriage should be void, irrespective of the knowledge or connivance of the parties. If all of these were fulfilled, the marriage should be valid as to formalities irrespective of any irregularities and irrespective of whether the parties knew of or connived at the occurrence of these irregularities[41].

[41] In that event they would, of course, have committed an offence: see Part 6 below.

Validation of void marriages

132. We have referred to the possibility of validating void marriages under the Provisional Order (Marriages) Act 1905[42]. If the recommendations made in this Report are accepted there will be still fewer occasions where validation will be needed because there will be less risk of invalid marriages being celebrated. But a procedure for validation will have to remain as a long-stop. Consultation has not produced any suggestion that the existing procedure needs to be revised and we accordingly make no recommendation.

Recommendations on the effect of irregularities

133. Our recommendations under this head can be summarised as follows:—

Irrespective of the knowledge or complicity of the parties a marriage should not be void on the ground of formal irregularity so long as—

(i) a licence has been granted in respect of each party and was still current when the marriage was solemnised,

(ii) the marriage was solemnised in the place named in the licence, and

(iii) the solemnisation was in the presence of both parties, and a person being or holding himself out to be a superintendent registrar in the case of a civil wedding, a minister in Holy Orders[43] in the case of a Church of England wedding, or an authorised person or registrar in the case of any other wedding.

If any of the above conditions was not fulfilled the marriage should be void irrespective of the knowledge or complicity of the parties (paragraphs 122-131).

PART 6

OFFENCES

A. THE PRESENT POSITION

134. Section 75 of the Marriage Act 1949 sets out certain offences whereby any person who "knowingly and wilfully" solemnises a marriage in breach of specified provisions of the Act is liable to imprisonment[44]. The maximum term is 14 years in some cases and five years in others. Similar offences are created by the Marriage (Registrar General's Licence) Act 1970 in respect of breaches of that Act but lesser penalties are provided[45]. Criticism of the penalties provided in the 1949 Act was expressed during the Parliamentary passage of the 1970 Act; it certainly seems excessive that, for example, the solemniser of a

[42] Para. 121 above.

[43] If, as we recommend, the Church of England is given the right to appoint authorised persons, this recommendation will require a small modification.

[44] The effect of s. 27(3) of the Magistrates' Courts Act 1952 (as amended by s. 43(2) of the Criminal Justice Act 1967) and s. 7(3) of the Criminal Law Act 1967 is that fines (without limit in the case of trial or indictment) may be imposed in lieu of or (on indictment) in addition to imprisonment.

[45] s. 16. The maximum term is 3 years and the maximum fine £500.

marriage at five minutes before 8 in the morning, or five minutes past 6 in the evening, should be liable to imprisonment for 14 years. Section 76 of the 1949 Act sets out offences relating to registration of marriage. Here the penalties are more restrained; they range from a maximum fine of £10 for failing to send in quarterly returns to 5 years' imprisonment for knowingly and wilfully registering a marriage which is void by virtue of any provision of Part III of the Act[46]. Finally, section 77 imposes penalties on authorised persons who fail to comply with the provisions of the Act or regulations made thereunder. Unless the offence is one for which a specific penalty is provided by sections 75-76 the maximum fine is £50 and the maximum term of imprisonment 2 years, but on conviction the culprit ceases to be an authorised person.

B. Criticisms and Recommendations

The need for rationalisation

135. Already the offences do not seem to be wholly appropriate and many of the maximum penalties seem excessive. Both will, in any event, need to be revised so as to be made appropriate to any new procedures introduced as a result of our recommendations. In general the right pattern regarding penalties seems to be set by the 1970 Act which, as we have seen[47], has made greater use of realistic fines and less use of excessive terms of imprisonment. At present it is not made a specific offence to solemnise a marriage known to be void unless the ground of voidness is failure to comply with certain specified provisions of the Act. The offence does not extend to a case where it is known that the parties are within the prohibited degrees or that one is under age or already married. We think it should; and, indeed, that it should cover the cases where the celebrant knows that a party has not validly consented to the marriage because of duress, mistake, unsoundness of mind or otherwise[48]. As regard registration, penalties are incurred by a registrar at present only if he registers a marriage known to be void for failure to comply with the formalities prescribed by Part III of the Act and not, for example, if it is void for lack of capacity. We have considered whether this offence should be widened so as to cover the registration of any void marriage. We have come to the conclusion that instead of being widened the offence should no longer exist. The marriage register is primarily a register of the ceremonies that have taken place. It is the ceremony that should be stopped not the registration. An anomaly in relation to registration that we consider should be corrected is that while failure to register a marriage would have very serious consequences for the parties, at present the maximum penalty is the inadequate sanction of a £50 fine.

[46] This, however, applies only to a registrar, not to an authorised person, who is liable only under s. 77.

[47] Para. 134 above.

[48] By s. 2(*c*) of the Nullity of Marriage Act 1971 absence of consent renders a marriage *voidable* not void.

Solemnisation of bogus marriages

136. The principal weakness which has come to light is that the present offences do not provide an effective deterrent to a growing mischief—namely, the deliberate solemnisation of invalid marriages. This does not occur in the case of civil weddings or those of the Church of England or of other long-established religious groups, but there is evidence that a fair number of invalid marriages are being solemnised by ministers of some religions newly established in this country, generally outside their registered buildings without any attempt at compliance with the Marriage Act, but occasionally in those buildings. *R.* v. *Bham*, which has already been cited[49], affords one illustration. There is little doubt that in many of these cases both parties, and probably the bride in nearly all of them, think that a proper marriage has been contracted and enter into cohabitation in that belief. It is only later when such things as claims for social security benefits bring the position to light that the truth is revealed to them. It may then be possible to regularise the position for the future—though not retrospectively—but not, of course, if what has brought the facts to light is the death of one of the parties. Marriages of this sort will not be saved by our foregoing recommendation to restrict the grounds on which marriages are formally invalid; we are dealing here with marriages which make no pretence at complying with the formalities of English law, which are often according to rites of religions which permit polygamy and which are generally performed outside any prescribed place. We have to fall back on the deterrent effect of liability to serious punishment.

137. Section 75 of the Marriage Act makes it an offence knowingly and wilfully to solemnise various forms of invalid marriage. Unfortunately, the courts have felt constrained to construe the word "marriage" as used in this section so that it covers only "a ceremony in a form known to and recognised by our law as capable of producing . . . a valid marriage"[50]. Hence, as in *R.* v. *Bham*[49], no offence is committed if the ceremony, because, for example, it is polygamous in character, is incapable of producing a valid marriage according to English law. Hence the section has become useless as a means of dealing with the mischief. Anomalously, the greater the irregularity the less the risk of committing a crime.

138. In our view, it should be made a serious offence to perform or permit to be performed any bogus ceremony of marriage. The offence, which will need careful drafting, should cover both irregularities (as the present section does) and "non-marriages" which pretend to be marriages. It would include not only "marriages" which have misled the parties but also those which were designed, for example, to satisfy their relations. Admittedly it will not always be easy to get evidence of the celebration of a marriage alleged to be "bogus" but the issue of any document described in any way as a certificate of marriage would obviously be cogent evidence of the celebration. On the other hand, it would not be an offence to portray a wedding during the Christmas charades or as part of a theatrical performance; that could not lead anyone

[49] [1966] 1 Q.B. 159, C.C.A.; see para. 121 above.
[50] [1966] 1 Q.B. at 169; see para. 121 above.

into believing that a legal marriage had been constituted. The statutory provision would need to be worded in such a way as not to apply to a religious[51] ceremony after a valid civil one[52].

139. There have recently been cases in which persons conducting irregular ceremonies of the type mentioned in the last three paragraphs have issued documents described as marriage certificates. We recommend that it should be an offence for any person to issue a certificate in respect of this type of ceremony. Both this offence and the offence mentioned in paragraph 138 will need to be carefully formulated in consultation with the Law Commission.

Summary of recommendations on offences

140. Our recommendations regarding offences are that:—

(*a*) the offences and the penalties should be rationalised and, in general, maximum penalties revised with greater use of fines instead of imprisonment except for the serious offences (paragraph 135);

(*b*) it should be made a serious offence to perform or permit to be performed any bogus ceremony of marriage (paragraphs 136-138). It should also be an offence to issue a certificate in respect of a bogus ceremony (paragraph 139).

The criminal offences will need to be carefully formulated in consultation with the Law Commission.

PART 7

SUMMARY OF RECOMMENDATIONS

141. 1. *Preliminaries*

(*a*) There should be uniform civil preliminaries for all marriages regardless of where they are to be celebrated (paragraphs 17 and 23).

(*b*) The requirement of publication of banns before Church of England marriages should be repealed as a legal requirement (although the Church may wish to retain it as an ecclesiastical preliminary) (paragraphs 18, 19 and 23).

(*c*) Marriage by common licence should be abolished (paragraph 22).

(*d*) Entry of notice in a marriage notice book and its display on a notice board should be retained (paragraph 28).

(*e*) Fifteen days should be the normal waiting period between the giving of notice and the issuing of authorisation to marry (paragraphs 31 and 32).

[51] Or other traditional form, such as a Romany wedding.
[52] This is permissible under s. 46(1) of the Marriage Act 1949.

(*f*) The Registrar General should be empowered to authorise a superintendent registrar to permit a marriage before the expiration of fifteen days if it appears to the Registrar General on the evidence before him and after making any enquiry that he considers necessary—

(i) that there is no lawful impediment, and that any requisite consents have been given or dispensed with, and

(ii) that the parties could not reasonably have been expected to have given earlier notice and that hardship would be caused if the marriage had to be delayed until the expiration of the full waiting period (paragraph 34).

(*g*) Each party should be required to state in the notice his date and place of birth and to confirm it in the declaration; the registrar should be empowered to demand evidence to support these statements (paragraph 39).

(*h*) Superintendent registrars should be expressly empowered to demand evidence of the effective termination of any previous marriage (paragraph 40).

(*i*) Each party should be required to attend before the appropriate superintendent registrar to give notice and to make a declaration which would identify the other party but deal fully only with the age and status of himself (paragraph 41).

(*j*) Notice should be given in the district in which the party has resided for the previous seven days (paragraph 45) but special provision should be made for cases in which one or both parties are resident in Scotland or Northern Ireland (paragraph 61).

(*k*) Parents who consent to the marriage of a minor should be required either to attend the register office personally or to have the signature to their consent witnessed by a person of standing (paragraph 50).

(*l*) There should be provision for the lodging of objections at the office of the Registrar General (paragraph 52).

(*m*) The statutory provisions defining the consents required on the marriage of minors should be clarified (paragraph 54).

(*n*) Provision should be made for the exchange of notices between superintendent registrars (paragraph 62).

(*o*) On the expiration of the waiting period the superintendent registrar should be required to issue an authorisation, to be known as a "licence", to marry unless on the evidence before him it appears that there might be an impediment to the marriage or that any of the requisite consents have not been given (paragraph 63).

(*p*) A licence should state the place where the marriage is to take place but the superintendent registrar should be empowered to amend this in certain limited cases (paragraph 63).

(*q*) A licence should be valid for three months from the giving of notice but the Registrar General should be given power to extend this period by not more than 14 days if he considers that it is reasonable to do so (paragraph 63).

2. *Place and method of solemnisation*

(*a*) The requirement that marriages can be solemnised only in prescribed places should be retained (paragraphs 73 and 74).

(*b*) As regards "registered buildings"—

(i) registration should be restricted to buildings of "public religious worship" (paragraphs 76 and 77);

(ii) such buildings need not be "separate" buildings (paragraph 79);

(iii) it should be permissible to solemnise marriages within the curtilage of the building (paragraph 80).

(*c*) The prescribed place need not be located in the district in which the parties reside (paragraph 81).

(*d*) The foregoing recommendations should be applied to Quaker and Jewish marriages (paragraphs 84-86).

(*e*) It should be clearly stated in the legislation that both parties must be personally present at the same time at the solemnisation of the marriage (paragraph 89).

(*f*) The requirement of two witnesses should be retained (paragraph 90).

(*g*) Registering officers of the Society of Friends and secretaries of synagogues should become "authorised persons" of the places in which Quaker or Jewish marriages take place (paragraph 91).

(*h*) The Registrar General should be empowered—(i) to reject a nomination of an authorised person, and (ii) to require the religious authority concerned to cancel the appointment of an authorised person and either to nominate another authorised person or to have marriages attended instead by a registrar (paragraph 95).

(*i*) The prescribed words to be used during some part of the ceremony:—

(i) should be amplified so as to emphasise that the marriage is monogamous (paragraphs 96 and 97);

(ii) should be spoken in English (or Welsh where that is permitted) but the celebrant should be required to ensure that the parties and the two witnesses have a sufficient grasp of English (or Welsh) to understand them; if they do not, the prescribed words should be repeated in a language which they do understand (paragraph 99).

(*j*) The Act should state that the marriage relationship is established when the parties have exchanged the vows that they take each other as man and wife, and the celebrant should be required to declare that the parties have become man and wife (paragraph 98).

(*k*) It should be made clear that all marriages must be celebrated between the hours of 8 a.m. and 6 p.m., except that marriages by Registrar General's licence or Archbishop's special licence may be solemnised at any hour (paragraph 101).

(*l*) It should be made a condition of registration as a registered building that the religious authorities undertake that no marriage will be

solemnised unless the required preliminaries have been complied with and that the rules regarding the presence of both parties and two witnesses, the prescribed words and the prescribed hours will be observed, and the Registrar General should be empowered to cancel the registration if this undertaking is broken (paragraph 102).

3. *Registration*

(*a*) The present system of registration should be retained, although some administrative improvements ought to be made (paragraphs 109-113).

(*b*) The registers should contain—

(i) all the details regarding the parties given in the superintendent registrar's licence (including dates and places of birth),

(ii) particulars of the licence,

(iii) the names of the parents (if known) of each party, and

(iv) the names and addresses of two witnesses to the marriage (paragraph 114).

(*c*) The Marriage Act should provide expressly that official copies of entries in the registers whether issued by the original registrant, the superintendent registrar or the Registrar General should, in the absence of evidence to the contrary, be sufficient proof of the celebration of the marriage to which it relates (paragraph 115).

(*d*) We do not favour the annotation of birth registers with a note of a marriage (paragraphs 116 and 117).

4. *Irregularities*

Irrespective of the knowledge or complicity of the parties a marriage should not be void on the ground of formal irregularity so long as—

(i) a licence has been granted in respect of each party and was still current when the marriage was solemnised,

(ii) the marriage was solemnised in the place named in the licence, and

(iii) the solemnisation was in the presence of both parties and a person being or holding himself out to be a superintendent registrar in the case of a civil wedding, a minister in Holy Orders in the case of a Church of England wedding, or an authorised person or registrar in the case of any other wedding (paragraph 133).

If any of the above conditions was not fulfilled the marriage should be void irrespective of the knowledge or complicity of the parties (paragraphs 122-131).

5. *Offences*

(*a*) The offences and the penalties should be rationalised and, in general, maximum penalties revised with greater use of fines instead of imprisonment except for the serious offences (paragraph 135).

(*b*) It should be made a serious offence to perform or permit to be performed any bogus ceremony of marriage (paragraphs 136-138). It should also be an offence to issue a certificate in respect of a bogus ceremony (paragraph 139).

The criminal offences will need to be carefully formulated in consultation with the Law Commission.

142. We further recommend that these reforms should be implemented in a new comprehensive Marriage Act (which would repeal and incorporate that of 1949, and the minor Acts amending it, and the Marriage (Registrar General's Licence) Act 1970) and in regulations made thereunder. Some of the matters at present in the Acts and others which we have recommended could, we think, with advantage be left to regulations.

143. We wish to record our appreciation of the valuable help given us by our two secretaries. Mr. Douglas White assisted in the preparation of the Working Paper before leaving to return to legal practice in New Zealand in 1971. Mr. Jeremy Strachan assisted in the drafting of the Final Report until he left us to take up another appointment in September 1972.

(*Signed*) LESLIE SCARMAN, *Chairman.*
BETTY JOHNSTON.
SHIRLEY LITTLER.
F. ROOKE-MATTHEWS.
DIMITRY TOLSTOY.

8 *January* 1973

APPENDIX 1

MARRIAGES. FORM OF PRELIMINARIES AND METHOD OF SOLEMNISATION 1971

Form of Preliminaries	All Marriages	Civil Marriage	All religious marriages	Religious Marriages according to the rites and ceremonies of:—																
				Church of England & Church in Wales	Roman Catholics	Methodists	Congregationalists	Baptists	Presbyterians	Calvinists	Quakers	Salvation Army	Brethren	Jehovahs Witnesses	Unitarians	Other Christian	Jews	Moslems	Sikhs	Other
CIVIL																				
1. S.R.'s certificate	152,791	85,265	67,526	106	35,744	14,641	5,285	4,710	1,490	609	85	421	403	462	240	1,879	1,420	5	15	11
2. S.R.'s licence	91,831	81,782	10,049	—	5,655	1,749	883	569	246	119	19	43	34	47	58	317	200	7	102	1
3. R.G.'s licence	56	54	2	—	—	—	1	—	—	—	—	—	—	—	—	1	—	—	—	—
All civil preliminaries	244,678	167,101	77,577	106	41,399	16,390	6,169	5,279	1,736	728	104	464	437	509	298	2,197	1,620	12	117	12
ECCLESIASTICAL																				
4. Banns	151,540	—	151,540	151,540	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
5. Common licence	7,766	—	7,766	7,766	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
6. Archbishop's licence	458	—	458	458	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Form of preliminaries not recorded	295	—	295	295	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
All ecclesiastical preliminaries	160,059	—	160,059	160,059	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
TOTAL	404,737	167,101	237,636	160,165	41,399	16,390	6,169	5,279	1,736	728	104	464	437	509	298	2,197	1,620	12	117	12

APPENDIX 2

MEMBERS OF THE WORKING PARTY

Chairman:	The Hon. Mr. Justice Scarman	Law Commission
Members:	Mr. G. I. de Deney[1]	Home Office
	Mr. L. C. B. Gower[2]	Law Commission
	Lady Johnston	Law Commission
	Mrs. S. Littler	Home Office
	Mr. F. A. Rooke-Matthews	General Register Office
	Mr. D. M. Tolstoy, Q.C.	Law Commission
Secretaries:	Mr. Douglas White	
	Mr. Jeremy Strachan	

[1] Mr. de Deney resigned in 1971 on transfer to other work; he was succeeded by Mrs. Littler.
[2] Mr. Gower resigned in 1971 on appointment as Vice-Chancellor of Southampton University.

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