Making It Easier: Marriage Law
From the Diocesan Registry

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Marriage Law - Legislation
- The Canons (esp. Canons B30 to B36)
- Marriage Act 1949 (as amended)
- Civil Partnership Act 2004
  - Existence of a Civil Partnership is impediment to marriage
- Church of England Marriage Measure 2008
- Church of England Marriage (Amendment) Measure 2012
- Marriage (Same Sex Couples) Act 2013
- Immigration Act 2014 (and Regulations)

Marriage in the Church of England
- Legal preliminaries:
  - Banns
  - Common Marriage Licence
  - Special Marriage Licence
  - Superintendent Registrar’s Certificate

  The first three are the ‘ecclesiastical’ preliminaries

Entitlement to Marry
- Marriage Act 1949
  - Resident in the parish
  - On the Church Electoral Roll
- Church of England Marriage Measure 2008
- He/she baptised in the Parish*
- His/her confirmation entered in the register of the parish
- He/she has at any time had his/her usual place of residence or habitually attended public worship in the parish* for at least 6 months [NB no requirement to go on Church Electoral Roll to qualify after habitual attendance]
- During his/her lifetime a parent has had their usual place of residence or habitually attended public worship in the parish* for at least 6 months
- His/her parent or grandparent married in the parish*
  * References to baptism, marriage and habitual worship all relate to Church of England rites or worship

Churches available for Marriage
- Parish Church
- Chapels of Ease/Daughter Churches licensed for marriage by the Bishop
- Military Chapels (Marriage Act 1949: Part V)
- Parishes without a Parish Church
  - Parish Centre of Worship; or
  - Parish Church of adjoining parish
- Churches without regular services
  - Parish Church of adjoining parish
- Churches closed for repair
  - Parish Church of adjoining parish (if no suitable building in parish)

Churches available for Marriage
- If a church is available for marriages, it will usually be one of these categories:
  - Parish Church
  - Parish Centre of Worship
  - Public Chapel licensed for marriage by the Bishop
  
  Once a church is available for marriages, it is entered on the General Register Office’s Official List, and marriage register books are issued to the minister in charge of that building

From the Diocesan Registry
Preliminaries – specified evidence

- Couples should provide evidence of nationality
  - Cannot use Banns or Common Licence if bride or groom a non-EEA national
- Usually the evidence will be valid (i.e. In-date) passports
- Use 'Specified Evidence Checklist' in other cases

Preliminaries - Banns

- Banns must be called:
  - In the parish where the marriage is to take place;
  - AND in the parish(es) where the parties are living;
  - On three Sundays preceding the marriage at the principal service [defined as the 'normal largest congregation' each Sunday; no longer necessarily a morning service]
  - no requirement to be consecutive Sundays
  - By a member of the Clergy unless the service is Morning or Evening Prayer (or other non-Sacramental service) where no member of the clergy is officiating, and may then be called by a member of the laity
- Wedding must take place within 3 months of the third calling of the Banns
- Banns certificate produced for from a parish where the wedding is not taking place, and signed off by the incumbent (not lay person)

Preliminaries - Banns

- Two forms of approved wording:
  - Book of Common Prayer: I publish the Banns of marriage between N {of this parish} and N {of the parish of}. If any of you know cause or just impediment why these two persons may not be joined in Holy Matrimony, ye are to declare it. This is for the {first} time of asking.
  - Common Worship: I publish the Banns of Marriage between N {of this parish} and N {also of this parish OR of the parish of}. This is the {second} time of asking. If any of you know any reason in law why they may not marry each other you are to declare it.

N.B. There is no requirement to state marital status or (if relevant) the qualifying connection

Preliminaries - Common Licence

- Same qualifying criteria as for Banns
  - but if one of the parties is relying on residence they must have been resident in the parish for 15 days immediately before affidavit is sworn
- Only permitted if one or both of the parties is a European (i.e. UK/EEA/Swiss) national
- Used when:
  - One or both of the parties is resident outside of England and Wales
  - There has been an error in calling Banns which is discovered close to the wedding date
  - (Unusually) where there is good reason why the wedding should not be made public by publishing Banns

Preliminaries - Common Licence

- 'Specified Evidence' to be shown to Surrogates
- Divorced applicants – Episcopal consultation required (because Bishop’s Licence)
- Affidavit to be sworn before a Surrogate for marriages
- Licence is valid for 3 months from the date of the Affidavit
- Baptism is no longer a requirement
- No 15 day residence requirement for couples relying on CoE Emm 2008 'qualifying connections' or church Electoral Roll membership

The Immigration Act 2014: Part 4

- Introduced a scheme for “referral and investigation of proposed marriages”
- Superintendent registrars to ‘refer’ some proposed marriages to the Home Office for potential ‘investigation’
- But some categories of persons are “exempt”
  - Defined a “sham marriage”
  - Prohibited the use of Banns and Common Licence for a non-European national
  - Required such couples to apply for Superintendent Registrar’s Certificate
  - Introduced “specified evidence” requirements for proof of nationality / immigration status
Foreign Nationals (1)

- Following the Immigration Act 2014
  - Any Anglican wedding involving non-EEA national must take place by Superintendent Registrar’s Certificate (SRC), unless Special Licence appropriate
  - Banns and Common Licences now unlawful

Who is an “EEA national”?

- A national of one of the following countries:
  - Any member state of the EU (European Union)
    - Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK:
    - And Iceland, Liechtenstein and Norway;
  - All of the above countries comprise the EEA (European Economic Area)
    - And Switzerland

Foreign Nationals (2)

- A non-EEA national is a national of any country not mentioned previously
- Where bride and/or groom are non-EEA and applying for SRC, they can be granted SRC on any basis where (before March 2015) they could have had banns read.
- This includes Qualifying Connections under CEMM 2008.

Foreign Nationals (3)

- Non EEA nationals may have to give notice (together and in person) at a designated register office anywhere in England & Wales E.g. Liverpool, Manchester
- Not local register office, unless exempt from immigration control (right of abode)
- Both parties must have 7 clear days’ residence in a registration district in England/Wales
- Once SRC issues, valid for 12 months from date of notice

Foreign Nationals (4)

- Unless exempted from referral scheme (e.g. Indefinite Leave to Remain or a category of marriage visa), a non-EEA national couple’s notice of intention to marry will be referred to the Home Office and might be investigated (the ‘referral and investigation scheme’).
- This could take up to 70 days
- If this happens, marriage cannot happen until after 70 day period has ended
- In all other cases, notice period is 28 days

Preliminaries – SRC: process

- The couple are required to ensure that they have first contacted the Church and obtained the incumbent’s consent
- Usually this should be in writing, although verbal consent may be permitted by the civil registrar in some situations
- This will also mean that the Church checks whether the couple have the necessary entitlement (e.g. residence, Church electoral roll membership) to marry in that parish’s church building
- Thus, it remains the responsibility of the officiating member of the clergy to be satisfied of the couple’s ‘qualifying connection’ (under the 2008 Marriage Measure) to the building
- SRCs can be granted on the basis of ‘qualifying connections’ only to non-European nationals
- If a couple obtain SRC and present it to minister, but they do not have ‘qualifying connection’, minister should not proceed
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Marriage in multi-parish benefice
- Distinction between a single parish benefice with two or more parish churches, and a multi-parish benefice with a parish church in each separate parish (or separate benefices held ‘in plurality’)
- Residence, electoral roll membership or qualifying connection are all parish specific unless a Bishop’s Marriage Order is in place

Bishop’s Marriage Order
- Since the CoFEM(A)M 2012 a Bishop’s Marriage Order extends to those with qualifying connections.
- Application for an Order is to the Bishop
  - Supported by resolution of all affected PCC’s
- Consider the effect on all Parishes
  - e.g. is there one “pretty” church that is likely to benefit to the detriment of others? (Fees are payable to parish where wedding takes place)

Bishop’s Marriage Order
- TO ALL TO WHOM these Presents shall come
  WE CLARENCE by Divine Permission LORD BISHOP OF EMSWORTH send GREETING:

PURSUANT to Section 23 of the Marriage Act 1949 as extended by Paragraph 12(4) of the Third Schedule to the Mission and Pastoral Measure 2011 WE DO HERBY DIRECT that the banns of matrimony of persons entitled to be married in any church within the benefice of The Vale of Blandings may be published and such marriages may be solemnised in the church to which such entitlement relates or in any other church listed in the Schedule hereto

AS WITNESS Our hand this 27th day of February 2016
+ Clarence

SCHEDULE
St Mary the Virgin, Market Blandings
St John the Baptist, Much Matchingham
St Margaret of Antioch, Blandings Parva

Marriage in church after divorce
- House of Bishops’ Advice issued November 2002
- Explanatory Statement and Leaflet for Enquiring Couples (MICAD form)
- Conscience provisions enable clergy to decline to marry a person who has been married before and has a former spouse still living
- An Incumbent can decline to permit his or her church(es) to be used even if another minister were to have officiated at the wedding
- Advice states that there should normally only have been one previous marriage if the wedding is to proceed in church
- The original Decree Absolute must be shown

Preliminaries - Special Licence
- Archbishop of Canterbury’s Special Marriage Licence is a discretionary preliminary
- Application made to the Faculty Office
- Used when:
  - There is no qualifying connection but one or both of the parties have a genuine and demonstrable link to a church or chapel or there is some other good and sufficient reason
  - School/University/College chapels
  - Cathedrals/Churches not licensed for weddings
  - Emergency marriage in hospital/hospice/home
  - Redundant Churches (consent of Bishop and owner required)

From the Diocesan Registry
The Marriage Service (1)

- Three approved forms of service
  - Book of Common Prayer (1662)
  - Series One/1928 Rite
  - Common Worship
  - (NB – ASB is no longer an approved form)

- Objections raised at the service
  - Backed up by evidence (& a bond – see BCP rubric!)

- Inter-faith marriages
  - Guidelines for the celebration of inter-faith marriages
    - www.churchofengland.org/media/666345/guidelines%20for%20the%20celebrati on%20of%20faith%20marriages%20in%20church.pdf

The Marriage Service (2)

- Hours for weddings
  - Between 8.00am & 6.00pm (Canon B35)
  - (NB - Section 114 Protection of Freedoms Act 2012 does not apply)

- Language
  - Must be conducted in English
  - Repeated, if necessary, in the language of a non-English speaker
    (likewise British Sign Language etc)

- Officiating minister
  - The Incumbent or, at his or her invitation, another Anglican Clerk in Holy Orders
    - normally a Priest (or Bishop)
  - A Deacon may only officiate with the consent of the Incumbent
    - c.f. Archbishops’ guidelines annexed to Canons

The Marriage Service (3)

- Involvement of Ecumenical Ministers (Canon B43) permitted with the consent of Incumbent at request of the couple
  - BUT Anglican clergy must solemnise the marriage (i.e.):
    - Establish the absence of any impediment
    - Direct the exchange of vows
    - Declare the existence of the marriage
    - Give the final Blessing
    - Sign the Registers
  - Bishop’s direction to be sought regarding: leading declaration of intent and/or supervising the exchange of rings

Service of Blessing of a Marriage

- Used after a wedding has been conducted elsewhere (normally after a civil ceremony)
- Intended for use in a church context
- Has no legal effect or status so no “qualifying connection” is required
- Forms of service available:
  - An Order for Prayer and Dedication after a Civil Marriage (Common Worship)
  - Canon B36 also permits the reading of one of the approved forms of Marriage Service
  - Services are not preceded by Banns or other preliminary;
  - Services are not registered in the Marriage Registers.

Marriage (Same Sex Couples) Act 2013

- Extension of marriage to same sex couples
- Marriage of same sex couples is lawful.
- ...  
- (3) No Canon of the Church of England is contrary to section 3 of the Submission of the Clergy Act 1533 (which provides that no Canons shall be contrary to the Royal Prerogative or the customs, laws or statutes of this realm) by virtue of its making provision about marriage being the union of one man with one woman.
- (4) Any duty of a member of the clergy to solemnize marriages (and any corresponding right of a person to have their marriage solemnized by members of the clergy) is not extended by this Act to marriages of same sex couples.
- (5) A “member of the clergy” is—
  - (a) a clerk in Holy Orders of the Church of England, or
  - (b) a clerk in Holy Orders of the Church in Wales. “

Marriage (Same Sex Couples) Act 2013

- House of Bishops Pastoral Guidance on Same Sex Marriage – 15 February 2014
- Largely re-states the guidance given in 2005 following Civil Partnership Act 2004
  - Access to the sacraments (baptism, confirmation and holy communion) should not be denied to those in a same sex marriage
    (nor should the sacraments of baptism or confirmation be denied to those whose parents are in a same sex marriage)
  - Clergy should not provide services of blessing following a civil marriage but should respond pastorally and sensitively in other ways.
    - It would not be appropriate conduct for Clergy to enter into a same sex marriage and Bishops would not be willing to ordain someone who is in a same sex marriage
Your Handouts:
- “Legal issues for clergy, churchwardens and parishes: Where to get help!”
- ‘Immigration Act’: Changes to Marriage Law
- Specified Evidence Checklist
- Specified Evidence guidance

Resources:
- www.facultyoffice.org.uk/special-licences
- To access House of Bishops’ Advice and Guidance on
  - Marriage in Church After Divorce
  - Church of England Marriage Measure 2008
- Guidebook for the Clergy (February 2015) from General Register Office:
  - www.gov.uk/government/publications/guidance-for-the-clergy
  - www.liverpool.anglican.org
- www.liverpooldiocesanregistry.co.uk/marriage
- churchesupporthub.org/weddings
- www.gov.uk/marriages-civil-partnerships

Liverpool Diocesan Registry

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Any Questions?

Gives us your feedback at:
www.liverpool.anglican.org/MIEFeedback