



225th Report
Ecclesiastical Committee

Church of England Marriage Measure

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The Ecclesiastical Committee

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

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

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

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

Current Membership

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Lord Davies of Coity	Sir Stuart Bell
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Remit

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

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

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

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

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

Publications

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

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¹ There is currently a vacancy in the Commons membership of the Committee, following the death of Mrs Gwyneth Dunwoody on 17 April 2008.

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Report by the Ecclesiastical Committee on the Church of England Marriage Measure

The Ecclesiastical Committee has met and considered the

Church of England Marriage Measure

referred to it under the provisions of the Church of England Assembly (Powers) Act 1919.

1. This Measure amends the law so as to make it easier for those who have certain types of clearly defined connections with a parish to marry there even though they are not parishioners. It does this principally by extending to them the parishioner's legal right to marry in the parish church.
2. The Measure:
 - gives to a person who has a "qualifying connection" with a parish the same right to marry in the parish church as a parishioner has under the existing law. The "qualifying connections" are that:
 - the person concerned was baptised or prepared for confirmation in the parish;
 - the person concerned or a parent of that person has had his or her usual place of residence in the parish for a period of at least 6 months, or has habitually attended public worship in the parish for a period of at least 6 months. (The period may be continuing or at any time in the past, except that in the case of a parent it must have been during the lifetime of the person concerned); or
 - a parent or grandparent of the person concerned was married in the parish.
 - sets out the cases where the marriage may be solemnised in a place of worship which is not a parish church but is within the parochial system, but excludes all cathedrals;
 - deals with the information to be provided to establish a qualifying connection and the guidance which the House of Bishops is to issue on this;
 - deals with the procedure to be followed, in particular as regards banns; and
 - extends the common licence procedure, under which special permission can be given for the marriage to take place without banns, to cases where there is a qualifying connection.
3. For more information about the Measure, see the Comments and Explanations submitted by the Legislative Committee of the General Synod, annexed to this Report.
4. The Committee is of the opinion that the Measure is expedient.

**LEGISLATIVE COMMITTEE OF THE GENERAL SYNOD:
COMMENTS AND EXPLANATIONS ON THE CHURCH OF
ENGLAND MARRIAGE MEASURE**

The Measure amends the law so as to make it easier for those who have certain types of clearly defined connections with a parish to marry there even though they are not parishioners. The Measure does this principally by extending to them the parishioner's legal right to marry in the parish church.

The Measure:

- gives to a person who has a “qualifying connection” with a parish the same right to marry in the parish church as a parishioner has under the existing law;
- lists the “qualifying connections”, namely that:
 - the person concerned was baptised or prepared for confirmation in the parish;
 - the person concerned or a parent of that person has had his or her usual place of residence in the parish for a period of at least 6 months, or has habitually attended public worship in the parish for a period of at least 6 months. (The period may be continuing or at any time in the past, except that in the case of a parent it must have been during the lifetime of the person concerned); or
 - a parent or grandparent of the person concerned was married in the parish.
- sets out the cases where the marriage may be solemnised in a place of worship which is not a parish church but is within the parochial system, but excludes all cathedrals;
- deals with the information to be provided to establish a qualifying connection and the guidance which the House of Bishops is to issue on this;
- deals with the procedure to be followed, in particular as regards banns; and
- extends the common licence procedure, under which special permission can be given for the marriage to take place without banns, to cases where there is a qualifying connection.

The Measure does not affect the legal principles governing:

- the existing rights of parishioners, including the provisions under which, in many cases, a person who is not resident in the parish but who has worshipped there regularly for at least 6 months can apply to be entered on the church electoral roll of the parish and can thus acquire the right to marry there; or

- the issue of the Archbishop of Canterbury's Special Licences in cases where the Measure does not apply. For example, where a couple wish to marry in a parish with which one of them has a genuine connection but that connection is not listed in the Measure, or where they wish to be married in a place of worship not covered by the Measure such as a school or college chapel, it will still be possible for them to apply for a Special Licence with the support of the minister of the church or other place of worship concerned.

INTRODUCTION

The functions of the Legislative Committee of the General Synod are laid down by section 3 of the Church of England Assembly (Powers) Act 1919. When the General Synod has given Final Approval to a Measure, the Legislative Committee submits the Measure to the Ecclesiastical Committee, together with “comments and explanations”. If the Ecclesiastical Committee wishes to invite General Synod representatives to discuss the Measure with it, the Legislative Committee makes arrangements to provide such representatives, and if necessary a conference can be held between the two Committees.

1. The Legislative Committee of the General Synod, to which a Measure entitled the Church of England Marriage Measure (“the Measure”) has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.

The Object and Main Provisions of the Measure

2. The Measure makes limited changes to the law so as to make it easier for those who have certain types of clearly defined connections with a parish to marry there even though they are not parishioners. It does this principally by extending to them the parishioner’s legal right to marry in the parish church. It does not affect the existing rights of parishioners.

The current law

3. Under the present law any person, whether or not he or she is a member of the Church of England, in general has a right to marry, following the publication of banns, in the parish church of a parish where he or she is resident. A person who is entered on the church electoral roll of the parish² has the same right to marry there. (The right to marry in the parish also extends to some other churches and chapels which are not parish churches but which are within the parochial system).
4. However, save in a very few exceptional cases, a person who wishes to marry according to the rites of the Church of England in any place other than a church or place of worship where he or she has a right to marry under the principles set out in the previous paragraph must apply for a Special Licence from the Archbishop of Canterbury. This requires the support of the minister responsible for the church or other place where the person concerned wishes to marry. The grant of a Special Licence is not automatic, because it is a matter within the Archbishop’s discretion. The other possibility, for those who wish to marry in a parish church or in some other places of worship within the parochial system and who are qualified to be entered on a church electoral roll, is to worship habitually in the parish for at least 6 months, and then have themselves entered on the roll of the parish concerned.

² In these Comments and Explanations, a person who is resident in the parish or entered on the church electoral roll is referred to as a “parishioner”.

The need for a change in the law

5. The reason the General Synod decided that the changes in the law set out in the Measure were needed was that a substantial number of couples who come to the Church of England to be married wish to do so in a place where neither of them is resident or on the church electoral roll, but which has a particular significance for at least one of them and with which he or she feels an enduring connection. For example, the couple may wish to marry in a parish where one of them grew up and his or her parents have their home, and which he or she also regards as “home” even though he or she is not resident there as a matter of law, or in a parish where one of them has recently lived and been a member of the worshipping congregation, even though he or she has now moved elsewhere.
6. In order to do that under the present law, at least one of the couple will need to qualify for entry on the church electoral roll, or they will need to obtain a Special Licence. However carefully these rules are explained, couples may find the requirements complex, time-consuming and generally somewhat daunting. They may therefore feel that the Church’s welcome to them is less than wholehearted and that it is placing obstacles in their way. That in turn creates pastoral problems for clergy in dealing with such cases, while the legal requirements also add to the time and effort the clergy have to devote to the formalities preceding the marriage.
7. The Church is strongly committed to encouraging and supporting marriage in general and marriage in church in particular. It likewise wishes to be able to welcome and support individual couples who come to it to be married. Given that the Church recognises marriage as one of God’s gifts to humanity, rather than as an exclusively Christian sacrament, that welcome extends to couples irrespective of whether they are members of the Church of England. Moreover, when a couple come to the Church in order to make their life-long commitment to each other in marriage before God, that is an opportunity for the Church to further its mission not only to the couple themselves but also to their families and others who come to the marriage service.

The changes made by the Measure

8. In view of this, the Measure extends the range of churches and other places of worship in which a couple have the right to be married following the calling of banns, and without the need for a Special Licence. It confers on a person who has a connection of one of the types listed in the Measure – referred to in the Measure and in these Comments and Explanations as a “qualifying connection” – the same right to marry in the parish church as a parishioner has. In addition, the Measure extends the “common licence” procedure to cases where the new right under the Measure would apply (see paragraphs 84–85 below).

Background and Legislative History

9. The draft Measure as introduced into the Synod for First Consideration in July 2006 was prepared by a Marriage Law Working Group chaired by the Bishop of Newcastle, which had continued the work of earlier groups since 1999. As most of the existing law relating to Church of England marriages is to be found in statutes which apply to all marriages, whether civil or according to religious rites, the (then) Department for Constitutional Affairs

was consulted on the proposals in the draft Measure, and had no objection. (There was further informal consultation with staff of the Ministry of Justice, which succeeded to the relevant functions of the Department of Constitutional Affairs, during and after the Measure's progress through the Synod, and they took the same view.)

10. The legislation was received positively by the Synod and was committed to a Revision Committee. As the Synodical process continued, the Measure received very careful scrutiny from the Revision Committee and then at a Revision Stage before the full Synod in February 2007. The Synod recommitted the Measure to the Revision Committee for further consideration, and the Revision Committee was permitted to consider any amendments put to it even if they had already been considered by the Committee or by the Synod. Following this a Further Revision Stage in full Synod took place in July 2007. The Revision process as a whole resulted in a number of significant amendments largely designed to simplify the Measure, but left its broad principles and objectives unaltered. The Final Drafting Stage, which dealt with some points of detail, was taken later at the July 2007 meeting of the Synod, and the Synod then proceeded to give the Measure Final Approval by overwhelming majorities.
11. The voting on the Measure at the end of the Final Approval debate was as follows:

	Ayes	Noes
Bishops	26	0
Clergy	106	3
Laity	126	3

Guidance Material and Training

12. It has been clear from the outset that both clergy and couples will need guidance on the Measure and how it is to be implemented. The Measure requires the House of Bishops to issue guidance on the exercise by a minister (or a person with authority to issue common licences) of his or her functions in deciding whether a person who wishes to rely on the Measure has provided sufficient information to establish a qualifying connection with the parish concerned. In general, this guidance will deal with essentially practical points on the information needed in order to satisfy the minister etc that a qualifying connection exists.
13. Staff of the Mission and Public Affairs Division of the Archbishops' Council are also developing training materials which will be made available to the dioceses in order to assist clergy in making use of the opportunities presented by the Measure. Suitable individuals to deliver the training for dioceses have been identified and have themselves received appropriate training.

THE MAIN PROVISIONS OF THE MEASURE AND THE MAIN ISSUES CONSIDERED BY THE GENERAL SYNOD

14. The Measure is a short one, containing only five sections. However, section 1 is fairly long, and a number of its subsections received lengthy and detailed consideration during the Synodical process. In order to assist the Ecclesiastical Committee, the following account of the main provisions of the Measure therefore divides up section 1 into groups of related subsections, before going on to deal with the remaining sections of the Measure:

	Section(s)	Para(s)	Page(s)
A The right to marry in a parish with which the person concerned has a qualifying connection	1(1) & (12)(b)	16–43	13–19
B The qualifying connections	1(3), (4), (12)(c), (13) & (14)	44–62	20–25
C The places where a marriage under the Measure may take place	1(1), (2), (10) & (11)	63–75	26–28
D The minister	1(12)(a)	76–77	29
E The information to be provided in order to establish a qualifying connection	1(8) & (9)	78–81	30–31
F Publication of banns	1(5)–(8)	82–83	32
G Marriage by common licence	2	84–88	33
H Guidance	3	89–92	34
I Supplementary provisions, citation, commencement and extent	4 & 5	93–96	35
Appendix			37

15. The paragraphs which follow use the following abbreviations:

“the 1949 Act” – the Marriage Act 1949;

“the 1983 Measure” – the Pastoral Measure 1983;

“the Church Representation Rules” – the Rules in Schedule 3 to the Synodical Government Measure 1969;

“the HRA” – the Human Rights Act 1998;

“parishioner” – a person resident in the parish or entered on the church electoral roll of the parish;

“the Revision Committee” – the General Synod Committee which, under the Synod’s Standing Orders, had the task of considering the Measure in detail, with any proposals for amendments, and amending the Measure as it thought appropriate within the terms of the Standing Orders;

“the Working Group” – the Group chaired by the Bishop of Newcastle which prepared the draft Measure submitted to the Synod.

A. SECTION 1(1) AND (12)(B)—THE RIGHT TO MARRY IN THE PARISH CHURCH OF A PARISH WITH WHICH THE PERSON CONCERNED HAS A QUALIFYING CONNECTION

16. Section 1(1) sets out the basic principle which forms the “backbone” of the Measure, namely that a person who intends to be married and who can show a qualifying connection with a parish is to have the same right, but no greater right, to have the marriage solemnised in the parish church of the parish as a person who is resident in the parish or enrolled on the church electoral roll of the parish would have.
17. By requiring a clearly defined link with the parish, the extended right thus remains firmly rooted in the parochial system.
18. The right under section 1(1) is to have the marriage solemnised after publication of banns, and there will therefore be no need for a Special Licence where the section applies. However, the Measure leaves the Special Licence procedure unchanged. It was recognised from the outset that there would always be some individuals who had a genuine connection with a parish but who would fall outside the criteria defined by the Measure, and that it should still be possible for them, with the support of the minister of the church concerned, to apply for a Special Licence.
19. It should be noted that the Measure does not alter the existing rights of parishioners.

Matters raised before the Revision Committee and the General Synod

20. Paragraphs 21 to 43 below deal with the main issues which were raised in the Revision Committee and in full Synod. Those issues need to be viewed in the context of the Synod’s decision to allow only a limited range of qualifying connections, all of which require some clearly demonstrable link with the parish. The Ecclesiastical Committee is therefore asked to consider the following paragraphs in conjunction with paragraphs 44 to 62 which deal with what constitutes a qualifying connection.

The case for section 1(1)

21. A general argument which was put both to the Revision Committee and to the Synod was that it was neither necessary nor desirable to change the law, or at least that if any change was made it should be an extremely limited one. Three separate reasons were put forward for this approach:
 - one group of submissions, particularly from clergy, expressed concern that any new regime which gave couples an extended right to marry in a much wider range of parish churches than at present would result in a heavy concentration of weddings in some parishes – for example, because the church was a particularly attractive one or was near to a particularly attractive venue for receptions. It was argued that this could impose a very heavy burden on the clergy of the parish, as well as on the lay people (many of them serving in a voluntary capacity) including the organist, choir and bellringers, and others who were involved with marriage services in the church. It was suggested that because of this the clergy could well find it difficult or impossible to provide all couples with

adequate marriage preparation before the marriage and pastoral care afterwards, and the numbers involved could also adversely affect the parishioners, because of the pressure on their clergy and because their own choice of dates for weddings would be curtailed;

- others argued that couples who were not resident in a parish should be married there only if they had a real and living connection with the worshipping community, or at least if there was provision for one to develop. They considered that the present law was adequate for this purpose, and should remain as it stood; at most, any new provisions should be confined to, say, a person who had lived in the parish in the past or had a current parental home there and regarded the parish as “home” even if he or she was not technically resident there; and
 - there was concern that the qualifying connections would be difficult to verify, thus creating practical and legal problems for the clergy.
22. The Revision Committee and the Synod noted that a couple, even if they were parishioners, did not have the right to insist on the marriage service taking place on a particular date and at a particular time, and the date and time of the service would have to be agreed with the minister in cases under the Measure in the same way as in cases under the existing law. Similarly, a couple did not have the right to insist on the services of an organist, choir, bellringers etc, much less the right to insist on them at any particular date and time, and this would likewise have to be agreed whether the marriage was under the Measure or under the existing law. These factors would help to put a brake on any tendency to swamp a particular church.
23. In addition, the Revision Committee and the Synod took into account the fact that clergy can if necessary ask for help from other local clergy, and indeed that the laity can and do assist in carrying out marriage preparation. If the couple came from a distance and had real difficulty in attending marriage preparation in the parish, it might well be possible to make arrangements for them to receive preparation in their home parish, and commending the couple to the parish priest in the parish where they were to begin their married life together would put that member of the clergy in a position to continue their pastoral care after the marriage.
24. However, quite apart from those factors, the Revision Committee and the Synod considered how far the concerns set out in paragraph 21 were in fact directly relevant to the question whether there should be a change in the law. The position which the Revision Committee and the Synod accepted was that, if a case was made out for extending the range of parishes where a couple had the right to marry along the lines in section 1(1), those concerns could and should be addressed by imposing appropriate limits on what qualifying connections were to be allowed and appropriate requirements about how they were to be proved. Provided that was done, the Measure would not create the major practical problems which some of the submissions had envisaged. Thus the factors listed in paragraph 21 would not in themselves negate a case for a change in the law, if one was made out on some other basis.
25. The Revision Committee and the Synod accepted that the fundamental reasons for the change in the law, and thus for section 1(1), were those already summarised in paragraphs 5–7 above, namely:

- the very real difficulties which the present law is creating for some couples who wish to marry in a parish in which neither of them is resident or entered on the church electoral roll but with which one or both of them have a clear and genuine connection, and the difficulties which clergy are also experiencing in these cases – see paragraph 6 above;
 - the importance which the Church attaches to encouraging and supporting marriage in general and marriage in church in particular, and to supporting and welcoming individual couples who come to it for marriage; and
 - the mission opportunities which couples coming to the Church for marriage present.
26. The evidence also showed that a person who was not a parishioner but who was seeking to marry in a given parish with which he or she had a connection might well have stronger links with the worshipping community in that parish than with any other parish. Indeed, those links could well be at least as strong as those of a good many parishioners.
27. These reasons were seen as justifying a change in the law on the basis set out in the Measure. Moreover, the Synod and the Revision Committee recognised that there were further arguments in favour of that basis for legislation:
- it remained firmly rooted in the parish system. By ensuring that the couple were made welcome by the parish, encouraged to join with the worshipping community before the marriage and provided with support and good quality marriage preparation, the parish clergy would be able to build up a living and enduring connection between the couple and the parish, as well as encouraging the couple to develop such a connection with the parish where they were to begin their married life together;
 - if the Measure increased the number of couples marrying in church that was to be welcomed; and
 - it would not undermine either the existing rights of parishioners or the provisions under which, in many cases, a person who had not previously had a connection with the parish could acquire the right to marry there by worshipping there habitually for 6 months. Similarly, it would not undermine the Special Licences procedure.

Qualifying connection as opposed to allowing a couple to marry in any church of their choice

28. Another but different proposal which was put to the Revision Committee and the Synod was that a couple should have the right to marry in any church of their choice, without the need for any qualifying connection (or that there should be a discretion to permit the couple to marry in any church of their choice, which also raises the further issues discussed in paragraphs 29–35 below). The General Synod had already considered and rejected this approach in a debate in July 2004 at an earlier stage in the Working Group’s work. When it was raised again in the context of the Measure, a number of factors came together to satisfy the Revision Committee and the Synod that the Measure should continue to be based on the “qualifying connection” principle rather than this radically different proposal, in particular the following:

- giving every couple the right to marry anywhere they wished would involve a risk of swamping some parishes and their clergy in very much the way that the submissions mentioned in paragraph 21 above had feared, and in particular could make it more difficult for the parish clergy to ensure that couples received proper preparation before the marriage and proper pastoral care afterwards;
- it could also leave some churches with a very heavy concentration of weddings for non-parishioners booked a long time in advance. This would tend to have an adverse effect on the choice of dates left for parishioners' weddings, and to create a degree of competition for popular dates which could in practice put clergy in a difficult position pastorally;
- it would amount to virtually abandoning the parish system so far as the qualification for marriage was concerned;
- it would also represent a radically different system from that which applies to marriages in "registered buildings" according to religious rites for other Churches and faith communities. There, the couple must be married in the civil registration district where one of them is resident (unless there is no registered building in that district where one of the couple can be married according to his or her own religion) or in the usual place or worship of one or both of them;
- there would be some risk of attempted abuse from couples seeking to enter into a "sham" marriage in a parish distant from their home parish; and
- the Synod was aware of the recent legal developments regarding possible "sham" marriages by non-EU nationals, and that the Government would be likely to be concerned about any change in the law that increased the risk of such cases.

Right rather than discretion

29. A further argument put to the Revision Committee and the Synod was that the Measure should give the minister a discretion to allow a person to be married in the parish on the basis of a qualifying connection, rather than giving that person a right to be married there. It was rejected for the same reasons which had originally led the Working Group to bring forward a Measure on the basis of the extension of existing rights rather than on the basis of discretionary provisions. These were primarily legal reasons, flowing from the HRA, on which the Working Group had received advice from the Legal Advisory Commission (LAC) of the General Synod.
30. The LAC's advice was based on article 12 of the ECHR, which deals with the right to marry and found a family, taken together with article 14, which prohibits discrimination in the enjoyment of the rights and freedoms set out in the ECHR.
31. The advice concluded that while article 12 did not confer a right to be married at any particular place, which was a matter for the national law of the country concerned to regulate, any limitation imposed by the national law must not, among other things, be arbitrary or discriminatory. Any differential treatment of analogous groups could be challenged as discriminatory under article 14 unless there was a reasonable justification for it on objective grounds. Thus if the criteria under the new legislation were to

include a discretionary element which could be exercised on personal or subjective grounds, there would be a strong risk of challenge on grounds of discrimination contrary to article 14. The advice went on to point out that any such discretion could give rise to wide variations in practice between the way in which the Measure operated in different parishes and across the Church at large, and that in itself would give rise to serious risk of challenge under article 14. The LAC therefore advised against any discretionary element of this kind.

32. The LAC also took the view that a member of the clergy conducting a marriage was a public authority within the meaning of the HRA. He or she must therefore not act in a way that was incompatible with a right conferred by the ECHR, and he or she would be exposed to legal challenge if, contrary to the LAC's advice, the new legislation provided for a discretion exercisable on personal or subjective grounds.
33. For essentially the same reason, the Revision Committee rejected the idea of the legislation providing a "local discretion". The proposal here was that each individual PCC should be left to decide that marriage of non-parishioners could be solemnised in the parish only in accordance with a clearly defined policy formulated by the PCC and using objective and acceptable criteria, such as the maximum number of marriages which the parish could reasonably undertake in a year (operated on a "first come, first served" basis), or a requirement that the couple must agree to undergo proper marriage preparation. The Revision Committee accepted legal advice which it received that this would still involve a real risk of unlawful discrimination, because individual parishes would have different policies, and couples whose circumstances were identical would thus be treated differently in different parishes.
34. The suggestion that couples could marry in any church they chose, irrespective of whether they had any prior connection with the parish, provided the minister and/or the PCC in their discretion agreed to this, was likewise rejected for the reasons set out in paragraphs 30–33 above as well as those explained in paragraph 28.
35. In addition to the legal considerations under the ECHR, the Revision Committee recognised the great importance of consistency on these matters throughout the Church, so that couples could proceed on the basis that the same principles would apply in each parish and would be applied in a consistent manner. The same point was emphasised in the debates in the full Synod, and it was recognised that quite apart from the HRA issues, any other approach would be unsatisfactory in principle, and couples would find it confusing, frustrating and generally fraught with difficulty in practice, which in turn would create problems for the clergy whom they approached.

"Opt-out" for individual parishes

36. For very much the same reasons, the Revision Committee and the Synod rejected proposals allowing a parish to "opt out" of the Measure. They considered this would not be acceptable even if the option could only be exercised on the grounds that in the PCC's view the number of marriages the parish was likely to have to take under the Measure would interfere with the clergy's performance of their duties or the provision of pastoral care (including marriage preparation).

Modification of licence system

37. A rather different proposal which was put to the Revision Committee was also based on the idea of a discretion rather than a right. This was that the best way forward would be to modify the existing procedures for granting common licences and/or the Archbishop of Canterbury's Special Licences rather than to extend the existing rights of parishioners. Again, the Revision Committee rejected this. It accepted the advice it had received that what was proposed would effectively involve creating an entirely new kind of licence. The object of the Measure was to make it easier for a couple to marry in a parish where one of them had a clearly defined connection, and the Revision Committee shared the Working Group's view that the best way of achieving this, from both a pastoral and an administrative point of view, was through a parish-based system, operated by the local clergy. Neither common nor Special Licences would supply that.
38. The Revision Committee and the Synod also noted that the Special Licence procedure would in any case continue in operation and would still be available for cases not covered by the Measure. In addition, section 2 of the Measure, which is explained in paragraphs 84–87 below, would make the common licence procedure available for cases which fell within section 1.

Rights subject to qualifications or restrictions

39. The Revision Committee was also asked to consider a further set of suggestions flowing from the concern that some parishes might be swamped by non-parishioners seeking to marry there. It was proposed that the couples should have a qualified right to marry where one of them had a qualifying connection, but subject to giving parishioners and regular worshippers priority in choosing a date and time for their marriage. The Revision Committee concluded that even if this was acceptable in principle it would be very difficult to draft satisfactorily, and that in practice it would make the position more rather than less difficult for the clergy. In particular, it was now very common for couples to book wedding dates and times far in advance, so that a parishioner couple could well ask for a date and time which had been booked months rather than weeks before by a non-parishioner couple. Cancelling or moving that booking would place the clergy in a very difficult situation in relation to the non-parishioner couple. On the other hand, if some reserved slots were kept for parishioners, the parishioners might still prefer other dates and times and might never take up the slots, while at the same time non-parishioners would have used them if they could. Thus the Revision Committee was satisfied that the right way forward was to frame the qualifying connections appropriately, so that they did not run the risk of swamping parishes.
40. A separate proposal which was put to the Revision Committee was that the Measure should place an upper limit on the number of marriages to be solemnised under the new legislation in any given church in a given period – the proposer suggested 75 marriages a year – on the basis that any greater number would make it impracticable to provide couples with a high quality service. The Revision Committee rejected this as running counter to the object of the Measure, and also on the ground that given the wide variations between different parishes and their churches and clergy, and between the number of marriages which different parishes could reasonably undertake in

a given period, it would not be possible to set a single figure which was appropriate for all cases.

41. Another type of “qualified right” put to the Revision Committee and the Synod for a different reason would have required a couple to undergo an appropriate course of marriage preparation before marrying under the Measure. While both the Revision Committee and the Synod strongly supported the provision of good quality marriage preparation and encouraging all couples to take advantage of it, they rejected the proposal. The reasons for this lay largely in the present law:
 - Canon B30 already requires a minister to whom a couple apply to have their marriage solemnised to explain to them the Church’s doctrine of marriage and the need for God’s grace to fulfil their obligations as married persons. This applies to all Church of England marriages and would thus apply to marriages under the Measure; but
 - There is no mandatory requirement for any further marriage preparation for couples marrying under the present law. It is for the clergy to encourage couples to take advantage of the further preparation which is offered, and different clergy can and do take different views about what preparation is appropriate. In any case, the Revision Committee and the Synod saw major objections in principle to imposing a mandatory requirement for marriages under the Measure which did not apply in other cases; this would run counter to the basic principle of granting couples who married under the Measure the same rights as parishioners. On the other hand, any attempt to impose such a requirement on all couples, whether they married under the Measure or not, would affect parishioners’ existing rights; if that was to be done it should be done by other legislation where the issues could be fully considered, and not by the present Measure, which was intended for a different purpose.
42. Yet another restriction which was proposed to the Revision Committee would have confined the couples who could take advantage of the Measure to those who were current worshipping members of a church (wherever it was situated), and who were entered on a church electoral roll (of whatever parish) before the marriage. This was put forward on the basis that it would create a greater sense of “belonging”. However, the Revision Committee took the view that, quite apart from any other possible objections, it would be much too restrictive to be consistent with the general objectives of the Measure.
43. Finally, the Revision Committee was asked to consider making the level of fees for marriages under the Measure higher than for marriages on the basis of the existing legal rights. Various arguments were put forward in favour of this, but the Revision Committee was clear that the level of fees should be dealt with, if and so far as necessary, under the existing mechanism and procedure for fixing parochial fees in the Ecclesiastical Fees Measure 1986, rather than by the present Measure.

B. SECTION 1(3), (4), (12)(C), (13) AND (14)—THE QUALIFYING CONNECTIONS

44. Section 1(3) sets out the “qualifying connections”. A person has such a connection with a parish if:
- that person:
 - has been baptised in the parish (unless the baptism took place as part of a combined service of baptism and confirmation); or
 - has been confirmed and the confirmation has been entered in a register book belonging to a church or chapel in the parish; or
 - has at any time had his or her usual place of residence in the parish for at least 6 months; or
 - has at any time habitually attended public worship in the parish for at least 6 months; or
 - that person’s parent has at any time during that person’s lifetime:
 - had his or her usual place of residence in the parish for at least 6 months; or
 - habitually attended public worship in the parish for at least 6 months; or
 - that person’s parent or grandparent was married in the parish.
45. In the list in the previous paragraph:
- references to being baptised, confirmed or married and attending public worship all refer to services according to the rites of the Church of England (section 1(12)(c)); and
 - “parent” includes an adoptive parent and any other person who has undertaken the care and upbringing of the person concerned; and “grandparent” has a corresponding meaning (section 1(4)).

Matters raised before the Revision Committee and the General Synod

General considerations

46. Like section 1(1), the list of qualifying connections in section 1(3) is one of the core provisions of the Measure, and both the Revision Committee and the full Synod devoted a considerable amount of time and thought to it, recognising that the qualifying connections and the provisions relating to them would have to meet a number of essential requirements if the Measure was to fulfil its objectives:
- each of the categories had to constitute a genuine connection with a parish, making it reasonable for those falling within the category to have the right to marry there. The list of categories also had to cover the cases which experience (including experience with applications for Special Licences) showed were particularly common examples of the problems which the Measure was designed to address. (For example, it was clear that a substantial proportion of applications for Special Licences were by

couples wishing to marry in the home parish of the parents of one of them);

- the list as a whole did not need to and should not attempt to cover every possible situation where a person had some connection with a parish and where that connection would make it reasonable for him or her to wish to marry there. It was accepted that there would always be individual cases where one of the couple had a genuine connection with a parish but one which fell outside the standard categories, and in those cases the couple, with the support of the minister of the church concerned, could still apply for a Special Licence;
- the categories had to form a clear, coherent and readily intelligible set of provisions, so that clergy and couples would find them straightforward to understand and operate, and so that they would not be likely in practice to give rise to disputes; and
- the categories also had to be such that, in any given case, the existence of a qualifying connection could be verified without undue difficulty, and in particular without imposing an unreasonable or disproportionate burden on the couple in terms of research and investigation or creating a substantial amount of additional work for the clergy.

47. Thus the Revision Committee and the Synod took all these factors into account in considering each of the individual qualifying connections discussed in the following paragraphs.

Baptism and confirmation

48. The Measure as originally presented to the Synod provided for baptism or confirmation in the parish to be a qualifying connection. It was put to the Revision Committee that if a Service of Thanksgiving for the birth of the person concerned took place in the parish, that should be treated as a qualifying connection in the same way as that person's baptism in the parish. The reason suggested for this was that a person should not be disadvantaged later in life because his or her parents had decided on a Thanksgiving Service when he or she was born rather than having him or her baptised as an infant, quite possibly because of the current parish policy. The Revision Committee rejected this on the grounds that:

- there was a major difference of substance between baptism, which is a sacrament by which a person becomes a member of the Church, and a Thanksgiving Service; and
- there was no provision for recording a Thanksgiving Service in the parish registers in the same way as baptism. If it took place as a separate service it would be recorded in the register of services, but if it took place as part of another service e.g. a family service, there might be no clear record of it in the registers in later years.

49. In view of that decision, it was argued before the full Synod that if a Service of Thanksgiving for the birth of a child in the parish was not to amount to a qualifying connection, baptism in the parish should likewise not do so. However, the Synod accepted the Revision Committee's reasoning for saying that the two were not truly comparable, and retained the provision regarding baptism.

50. The reason section 1(3)(a), dealing with baptism and confirmation, was amended so that it no longer simply makes confirmation in the parish a qualifying connection in the same way as baptism in the parish, is because of what is now the widespread practice of bringing together confirmation candidates from a number of neighbouring parishes to be confirmed together in a parish church in the deanery, or in the cathedral church of the diocese. This includes those who were not baptised as infants and are to be both baptised and confirmed on the same occasion. The Revision Committee concluded that the real connection in these cases was with the parish where the person concerned was prepared for confirmation, rather than with the place where the rite was administered. In order to provide a simple and straightforward test for the clergy, section 1(3)(a) therefore bases the connection on the parish in whose registers the confirmation is recorded, because under Canon B39 the minister presenting the candidate for confirmation must record the confirmation in the register provided for his or her church or chapel.

Parent/grandparent and marriage of a parent or grandparent

51. The Measure as introduced into the Synod referred to a “relative” rather than a “parent”, and gave that term a wide definition including a number of different categories of people, such as grandparents and godparents, who might undertake responsibility for a child’s care and upbringing if the parents were unable to do so. The Revision Committee decided to substitute a more specific provision, now in section 1(4), which refers to a “parent” and defines that term as including an adoptive parent or any other person who has undertaken the care and upbringing of the person concerned.
52. Although the Revision Committee had deleted the qualifying connection based on the fact that a relative had been married in the parish, the full Synod decided to include the marriage of a parent or grandparent in the parish as a qualifying connection, on the ground that it was appropriate to recognise the genuine and significant connection that some families feel, and demonstrate that they feel, with a parish church in these circumstances over more than one generation. The relevant provision of the Measure, to be found in section 1(3)(e), has to be read together with:
- the meaning given to “parent” in section 1(4) and explained in paragraph 51 above; and
 - the provision in section 1(12)(c) under which “marriage” in section 1 refers only to marriage according to the rites of the Church of England. Thus section 1(3)(e) does not apply if a parent or grandparent was married in the parish using a civil marriage ceremony, or was married there according to non-Church of England religious rites.

Worship or residence in the parish or entry on the church electoral roll

53. Some Synod members were particularly concerned that where the claim to be married in the parish depended on worship or residence in the parish, or entry on the church electoral roll, it should apply only where there was a genuine and living connection with the parish and, more particularly, with the worshipping community there, rather than a purely historical link. This led them to propose that it must have continued for at least a specified minimum period, and/or that it must still be continuing at the time of the

marriage or, at least, have continued until within a given number of years in the past.

54. However, other members put forward reasons for taking a less restrictive approach, such as:
- the tendency for couples to marry later in life than in the past, so that there was a longer gap between the time when they were legally resident in the family home and, possibly, worshipping in the parish church there and the time when they wished to return to be married there. Indeed, in some cases the parents were no longer alive or were in residential care by the time their children decided to marry, but their son or daughter still wished to return to the place which he or she regarded as home for the marriage;
 - the evidence that a person might well still feel a genuine and enduring connection with a place where he or she had had some contact with or experience of Christianity, however brief and limited it may have been, and however far in the past, and might thus see that as the natural place to which to return when he or she wished to marry; and
 - the importance of ensuring that the qualifying connections were as simple and straightforward as possible.
55. One of the Revision Committee's main tasks was therefore to strike a proper balance between these different viewpoints and to produce the set of provisions which would command the support of the Synod as a whole.
56. Apart from the general issues, some specific points were also raised on the individual criteria based on past and present residence, worship in the parish and entry on the church electoral roll which appeared in the draft Measure as originally presented to the Synod. The main issues regarding the church electoral roll, the way in which the Revision Committee dealt with them, and its reasons for deleting them from the Measure, are set out in the Appendix to these Comments and Explanations. So far as the residence and habitual worship criteria were concerned, the discussions in the Revision Committee and the debate in full Synod showed that some members of Synod would have preferred to delete one or the other of them completely, because of concerns about their precise meaning or how they were to be proved, or (in the case of habitual worship) because those arguing for deletion would have preferred to rely on the church electoral roll. As indicated in paragraph 53 above, proposals were also put forward for restricting these two qualifying connections in various ways. Some of them were accepted by the Revision Committee, and it also made other amendments to address the other issues that had been raised with it.
57. The result, when the Revision Committee first returned the Measure to the Synod, was a group of provisions which was a good deal more complex than in the Measure as it had first come before the Synod. Concern about this complexity was one of the main reasons why the Synod returned the Measure to the Revision Committee for further consideration. Having looked at the matter afresh, the Committee decided to substitute something much simpler and more straightforward.
58. The Revision Committee therefore substituted amended provisions in relation to residence and habitual worship (now in section 1(3)(b) and (c)).

They provide that the person concerned can show a qualifying connection with the parish if:

- the person concerned has at any time had a usual place of residence in the parish for at least 6 months; or
- during the lifetime of the person concerned his or her parent has or had a usual place of residence there for at least 6 months; or
- the person concerned has at any time habitually attended public worship in the parish for at least 6 months; or
- during the lifetime of the person concerned his or her parent has habitually attended public worship in the parish for at least 6 months.

59. As regards these provisions:

- although some Synod members would still have preferred to rely on the church electoral roll if that had been practicable (see paragraphs 5–7 of the Appendix), the amended provisions on habitual worship have the advantage that they cover a person who worshipped in the parish in the past, irrespective of whether he or she applied for entry on the electoral roll. (Clearly, a person seeking to marry now might say that he or she could not have been aware at the time of the future significance of securing entry on the roll.) They also cover a person who could not have been entered on the church electoral roll because, for example, he or she was under the age of 16 at the time (e.g. a child who was a member of the church choir, or who attended worship as a member of a school or a youth organisation). However, it uses the same minimum period of habitual worship as would have been needed under the provisions for entry on the church electoral roll, and thus parallels those provisions; and
- the residence provisions, by using the same minimum period of 6 months and the expression “usual place of residence” (which is also used in the normal residence requirement for a common licence) rather than merely “resident”, rules out purely temporary and transitory presence in the parish.

60. The Revision Committee and the Synod were once again asked to consider imposing further restrictions, with the object of ensuring a current living connection with the parish. However, the Revision Committee rejected them in the light of the same considerations as set out above, and the Synod accepted the Revision Committee’s new and simpler set of provisions without imposing any further qualifications.

Other suggested qualifying connections

61. The Revision Committee and the Synod considered some proposals for other types of criteria which in some individual cases would give rise to a genuine connection with the parish. However, they accepted that the best course would be to leave these individual instances to be dealt with on a one-off basis by an application for a Special Licence. The main examples and the reasons for not accepting them are set out in the Appendix to these Comments and Explanations.

Pastoral reorganisation and changes in parish boundaries

62. The Revision Committee added two new provisions, section 1(13) and (14), to deal with cases where a person can show a qualifying connection with a particular place (in the case of confirmation, with a particular church or chapel to which the register recording the confirmation belongs), but where that place is now in a different parish, either because the original parish has ceased to exist or because its boundaries have been changed. In these circumstances, the Measure treats the person concerned as having a qualifying connection with the parish which includes the place in question at the time of the request for the calling of banns.

C. SECTION 1(2), (10) AND (11)—PLACES WHERE MARRIAGES MAY BE SOLEMNISED UNDER THE MEASURE

63. Where a person has the right to marry in a parish under the Measure, section 1(1) gives him or her the right to marry in the parish church of that parish; if there is more than one parish church, there is a right to marry in either or any of them. In addition, section 1(2) extends this right to any building in the parish which is not a parish church but which is licensed for public worship and has been designated by the bishop as a parish centre of worship.
64. Under the existing law a couple may also marry in a public chapel licensed by the bishop for marriages and the publication of banns provided at least one of the couple is resident in the geographical district for whose residents the chapel is licensed and which is defined by the licence. Under section 1(10), a person who has a qualifying connection with a parish which or part of which lies within that district may marry under the Measure in the licensed chapel.

Matters raised before the Revision Committee and the General Synod

Cathedrals

65. The main issues raised before the Revision Committee and the Synod regarding this group of provisions related to cathedrals. Approximately a third of the Church of England's cathedrals are parish churches, although among them the size and importance of the parish varies widely. A person who is resident in a cathedral parish or on its church electoral roll has the right to marry in the cathedral, just as a parishioner of any other parish has the right to marry in the parish church, and nothing in the Measure affects this or the possibility of an individual acquiring the right to marry in the cathedral by entry on the church electoral roll after 6 months' habitual worship. A couple may also apply for a Special Licence to marry in any cathedral, whether or not it is a parish church, if one of them has a genuine connection with the cathedral and the cathedral authorities support the application, and again nothing in the Measure restricts that possibility.
66. If the Measure had contained no special provisions regarding cathedrals, it would have extended to cathedrals which are parish churches but not to other cathedrals. However, the Measure as introduced into the Synod provided that the new right under section 1(1) was not to apply to any cathedral. The reasons were that cathedrals, whether or not they are parish churches, have legal responsibilities in relation to the diocese as a whole which parish churches which are not cathedrals do not have, and that cathedrals also undertake a wide range of other activities which are not found in most parish churches. Thus it was put to the Working Group that creating new categories of people with the right to be married in a cathedral would detract from other key aspects of the cathedral's ministry, including its diocesan responsibilities, by making additional calls on the time of cathedral clergy and lay staff, and by taking part or all of the cathedral itself out of use for other purposes while a marriage is taking place and for a time before and after the marriage service.

67. The written submissions which the Revision Committee received from the Association of English Cathedrals showed that some cathedrals would not wish the Measure to apply to them at all, while some, particularly among those which were parish churches, would welcome the possibility of conducting more marriages without the need for a Special Licence and using the qualifying connection criteria or some of them. However, the general view among the cathedrals was that while they would welcome a purely discretionary power for individual cathedrals to opt into the Measure if they wished, they considered it would be better for the Measure to exclude the cathedrals completely than to require any cathedral to apply the Measure against its will, as this could create significant problems and costs.
68. A number of proposals were put to the Revision Committee to allow cathedrals or some of them to opt into or opt out of the Measure, or to create their own individual policies for marriages in the cathedral in the light of the Measure and without the need for Special Licences. A proposal was also put to the full Synod to allow cathedrals which are or include parish churches to opt into the Measure. All these were considered but rejected, because of the general need for consistency and fairness to all couples and because of the same issues under the HRA as are outlined in paragraphs 30–33 above.
69. The advice given to the Revision Committee and the Synod on the HRA was that if a cathedral was given some kind of discretion to opt into or opt out of the Measure, or to create its own marriage policy, the discretion would have to be demonstrably exercised on reasonable grounds which provided an objective justification for the decision, and that would be difficult to establish. Moreover, any such discretion would almost inevitably lead to inconsistencies in practice between the cathedrals of different dioceses. This would be undesirable in itself, and it could lead to a challenge under the HRA to a decision by a particular cathedral to remain outside the Measure. Indeed, one of the main concerns about the various suggested discretions was that they would be likely to result in pressure on those cathedrals which did not wish to come within the Measure to change their minds, however cogent their arguments for not doing so.
70. A further argument which was raised against treating cathedrals which are parish churches differently from other cathedrals was that the cathedrals constitute a group of churches with special characteristics and governed by their own special legislation, and that the general thrust of that legislation in recent years has been to treat the cathedrals as a single category, minimising the differences between those which are and are not parish churches. This would point to the desirability of treating all cathedrals in the same way under the Measure.
71. Thus the Revision Committee decided to retain the original provision excluding all cathedrals from the Measure. When the Measure returned to the full Synod for a second time, the Synod itself reconsidered the provision, which is now section 1(11), in the light of a proposal that cathedrals which are parish churches should automatically come within the Measure. However, in the light of the arguments summarised in paragraphs 68–70 above, the Synod again decided to retain the original provision on cathedrals as it stood.

“Greater churches”

72. Some churches describe themselves as “greater churches”, but these are not a legally defined group. In general they are likely to host a much wider range of activities than “ordinary” parish churches and, for example, to receive many more visitors. Taking that into account, a proposal was put to the Revision Committee that they should be excluded from the Measure in the same way as cathedrals, or allowed to “opt out”. However, this was rejected. The Revision Committee recognised that legally the “greater churches” are indistinguishable from other parish churches, in particular in that they do not share the legal responsibilities in relation to the diocese as a whole which are placed on cathedrals. Given that, and the problems in defining the “greater churches” in the legislation plus the issues over “opting” whether to come within the Measure explained in paragraphs 30–36 above, the Revision Committee concluded that the “greater churches” should be treated in the Measure in the same way as other parish churches which are not cathedrals.

Non-parochial places of worship

73. The Measure does not apply to “non-parochial” places of worship which lie within a parish but are outside the parochial system. Thus a marriage in, for example, a university, college or school chapel outside the parochial system will still require a Special Licence. The Revision Committee was satisfied that this was the appropriate procedure for dealing with such cases, and thus rejected a proposal to bring them within the Measure. Likewise, a marriage in a Royal or other Peculiar which is not only outside the parochial system but also outside the boundaries of any parish, such as Westminster Abbey, will still require a Special Licence. The Revision Committee agreed that the Measure should remain as drafted in this respect.

Specially designated “wedding churches”

74. The Revision Committee also examined a completely different proposal, namely to provide in the Measure for specially designated “wedding churches” in any given area, where couples could be married by local clergy after full marriage preparation, instead of giving couples the right to be married in the parish with which one of them has a particular connection. It was suggested that this proposal could be combined with some kind of requirement for a qualifying connection, or could operate without the need for any such connection.
75. However, the Revision Committee rejected this idea. It considered that such an approach would fundamentally change the basis of the law on marriage in the Church of England, which as it stands is rooted in the parochial system. It would also fundamentally alter the basis of the Measure, and the Revision Committee agreed with the Working Party (which had also rejected the idea) that the best way of achieving the Measure’s objectives was to build on the existing system rather than to adopt this radically different approach.

D. SECTION 1(12)(A)—THE “MINISTER”

76. The “minister” has a key role in much of the second half of section 1. Section 1(12)(a) lays down in detail who is to be the “minister” under the Measure:
- normally it will be the incumbent or, if the benefice is vacant, the priest-in-charge if any;
 - however, if some other priest has been given a special cure of souls for the area including the church where the marriage is to be solemnised, he or she is to be the minister;
 - in the case of a team ministry where there is no-one with a special cure of souls within the previous category, and no incumbent or priest in charge, the minister will be the team vicar appointed by the bishop as “acting team rector” or, if there is none, the team vicar who has held that office longest in the team ministry; and
 - if there is no one in any of the previous categories to take on the functions of the minister, the rural (or area) dean must do so.

Matters raised before the Revision Committee and the General Synod

77. The only issues of substance which were raised on this set of provisions related to the position in team ministries. The detailed proposals which were put forward regarding team ministries did not prove contentious and were accepted by the Revision Committee, and they are incorporated in the explanation given in the previous paragraph.

E. SECTION 1(8)–(9)—INFORMATION TO BE PROVIDED TO ESTABLISH A QUALIFYING CONNECTION

78. Section 1(8) places the onus on the person wishing to have his or her marriage solemnised under the Measure to provide such information, whether written or otherwise, as the minister requires in order to satisfy him- or herself that the person concerned has a qualifying connection with the parish.

Matters raised before the Revision Committee and the General Synod

79. In spite of the provision described in the previous paragraph, a number of those who made submissions to the Revision Committee were concerned that the clergy would have difficulty in deciding whether a qualifying connection had been established; that the task would involve the clergy in significant extra work; that there was a danger of lack of consistency between different parishes in dealing with cases under the Measure; and that some cases could give rise to disputes, complaints or even legal proceedings.
80. As against this, it was pointed out that experience in practice, for example in relation to Special Licence applications, indicated that a substantial majority of the cases under the Measure could be expected to be straightforward ones – for example, where the parents of one of the couple live in the parish or worship there regularly, or where they have done so until recently. Moreover, where the qualifying connection consisted of baptism, confirmation or the marriage of a parent or grandparent, that could be proved by entries in registers. Nevertheless, the Revision Committee agreed to make two amendments in the light of the concerns which had been expressed:
- a further provision was added to section 1(8) under which, when the minister is deciding whether the information provided is sufficient, he or she must have regard to guidance produced by the House of Bishops under section 3 (see paragraphs 89–92 below). The House of Bishops' document is intended to provide clear and essentially practical guidance for clergy on how to deal with the different types of case which may arise, so as to ensure a consistent approach through the Church; and
 - a new section 1(9) was added to the Measure by the Revision Committee, giving the minister power to require the person concerned to supply or support part or all of the information by means of a statutory declaration. Such a declaration is not made on oath, but knowingly and wilfully making a false declaration is a criminal offence under section 5 of the Perjury Act 1911. The full Synod was asked to reconsider this, but decided to retain the provision. The statutory declaration was chosen as a lighter procedure, requiring less formal documentation, than requiring an affidavit. Moreover, it is not intended that ministers should ask for a statutory declaration as a matter of course, as that would tend to defeat the whole object of the Measure, namely to make it easier and more straightforward to marry in the cases covered by the Measure. Thus the section 1(9) power is a discretionary one, and the minister may only call for a declaration where he or she considers it is necessary to do so in order to satisfy him- or herself that a qualifying connection exists. The House of

Bishops' guidance under section 3 will also include guidance on the exercise of the power.

81. The Revision Committee considered that these two provisions, taken together, would put the minister in a position to deal satisfactorily with whatever cases arose, and that setting up a complex appeals mechanism was neither necessary nor desirable.

F. SECTION 1(5)–(8)—PUBLICATION OF BANNS

82. Section 1(5)–(7), and part of section 1(8), deal with the publication of the banns in cases under the Measure. They provide that:
- the banns must be published where the marriage is to take place. (The same applies under the 1949 Act where the marriage is to take place in a parish where neither of the couple are resident but one or both are on the church electoral roll). The notice requesting the calling of banns there must be given to the minister; and
 - the banns must also be published in the parish or parishes where the couple or each of them are resident (again as under the 1949 Act for the marriage of a person on the church electoral roll). Under a provision added by the Revision Committee, once more corresponding to the provisions in the 1949 Act for a marriage of a person on the church electoral roll, a certificate of due publication of the banns in the parish or parishes where the couple are resident must be produced in advance to the member of the clergy who is to solemnise the marriage.

Matters raised before the Revision Committee and the General Synod

83. The only issues which arose here were essentially technical ones regarding the application of provisions for corresponding cases in the 1949 Act which are referred to in the previous paragraph. The proposals to deal with them were accepted by the Revision Committee and did not prove contentious.

G. SECTION 2—COMMON LICENCE

84. Under the 1949 Act, a marriage according to the rites of the Church of England may be solemnised on the authority of a licence other than a Special Licence, known as a “common licence”, which gives permission in appropriate cases for the marriage to take place without banns. It may be needed if, for example, one of the couple is temporarily resident abroad, so that banns cannot be called in his or her place of residence, or if there has been some defect in the publication of the banns. The licence is normally issued on behalf of the diocesan bishop by a surrogate – an experienced local member of the clergy – or the diocesan registrar.
85. The licence is not granted as of right, but the power to issue it is exercised judicially and in accordance with settled principles. Under the 1949 Act, it may be granted only for marriages in the parish church or in a chapel of the parish or district where at least one of the couple has had his or her usual place of residence for 15 days immediately before the licence is issued, or where he or she is entered on the church electoral roll. The applicant must swear an affidavit that this requirement is satisfied and that there is no impediment to the marriage; knowingly and wilfully swearing a false affidavit is a criminal offence.
86. Section 2 of the Measure makes it possible to grant a common licence for a marriage in a church or chapel in which the person seeking the licence may be married under section 1. The section thus makes it possible for the authority with power to grant such licences (i.e. normally the surrogate or diocesan registrar) to give permission for the marriage to be solemnised in such a church or chapel without banns being called in the types of cases referred to in paragraph 84 above.
87. Where an application for a licence is being made under section 2:
- the affidavit must state that one of the couple has a qualifying connection with the parish concerned and must set out the nature of the connection; and
 - section 1(8) (see paragraphs 78–81 above) also applies here, except that the person who must be satisfied as to the qualifying connection is the authority with power to grant the licence rather than the minister; that authority must also have regard to the House of Bishops’ guidance under section 3.

Matters raised before the Revision Committee and the General Synod

88. Neither the Revision Committee nor the full Synod were called upon to deal with any issues of substance on these provisions.

H. SECTION 3—GUIDANCE

89. Section 3 requires the House of Bishops to issue guidance from time to time on:
- the exercise by a minister of his or her functions under section 1(8) or 1(9); and
 - the exercise by an authority with power to grant common licences of the functions under section 1(8) as applied to common licences by section 2.

As explained in paragraphs 80 and 87 above, sections 1(8) and 2 require the minister or authority to have regard to the guidance under section 3 in exercising those functions.

90. The section was inserted into the Measure by the Revision Committee in response to the concerns referred to in paragraph 79 above. Its object is to ensure that the House provides essentially practical guidance about what information it is appropriate for a minister (or a person issuing a common licence) to accept as satisfying him or her as to the existence of a qualifying connection (and, in the case of marriage following publication of banns, about the circumstances in which the minister should ask for a statutory declaration under section 1(9)). It is intended that the guidance will be made widely available, for example on the Church of England website, so that it will also assist couples by helping them to know in advance what kind of information they will need to provide.

Matters raised before the Revision Committee and the General Synod

91. In addition to inserting section 3 into the Measure, the Revision Committee considered but rejected the possibility of a wider provision giving the House of Bishops power to issue guidance as to the implementation of the Measure generally. The Committee was satisfied that such a provision was unnecessary, as the House could issue guidance on specific topics if it wished without the need for an express provision in the Measure, and there was no reason to think that there would be any need for guidance by the House on the implementation of the Measure as a whole.
92. The Synod likewise rejected a proposal to require the House to issue a full Code of Practice on the exercise of the functions under section 1(8) and (9), subject to approval by the Synod. The Synod accepted that this procedure was unnecessarily elaborate, and would take up unnecessary resources in terms of finance and staff time, given the essentially practical nature of the guidance and the very limited range of matters within section 3.

I. SECTIONS 4 AND 5 – SUPPLEMENTARY PROVISIONS, CITATION, COMMENCEMENT AND EXTENT

93. Section 4(1) deals with the interpretation of the Measure.
94. Section 4(2) was inserted by the Revision Committee. It provides that where a marriage has been solemnised under the Measure and an issue subsequently arises as to whether it was valid:
- it will not be necessary to prove that one of the couple had a qualifying connection with the parish concerned in order to establish that the marriage is valid; and
 - if the validity of the marriage is questioned in any legal proceedings, it will not be possible to adduce evidence that there was no qualifying connection.

This provision was added in order to parallel a corresponding provision in the 1949 Act which applies to marriages where one or both of the parties have their names on the church electoral roll of the parish. It helps to provide certainty by preventing the validity of the marriage being questioned in legal proceedings by re-opening the question of whether there was a qualifying connection.

95. Section 5 deals with the citation, commencement and extent of the Measure. It will not apply in the Isle of Man or the Channel Islands unless and so far as it is extended to them under the special legislation applying to them.

Matters raised before the Revision Committee and the General Synod

96. Apart from the addition of section 4(2) by the Revision Committee, which did not prove contentious, no issues of substance were raised on these sections in the Revision Committee or before the full Synod.

CONCLUSION

97. The Legislative Committee hopes that the Ecclesiastical Committee will be able to issue a favourable report on the Measure. In the event of the Ecclesiastical Committee requiring any further information or explanation, the Legislative Committee stands ready to provide this.

On behalf of the Committee

Philip Giddings
(Deputy Chair)

17th January 2008

APPENDIX: SUGGESTED ADDITIONAL QUALIFYING CONNECTIONS

1. As explained in paragraphs 53–61, the Revision Committee and the Synod considered a number of proposals for types of criteria other than those which now appear in section 1(3) of the Measure but which in some individual cases would give rise to a genuine connection with the parish. However, they accepted that the best course would be to leave these individual instances to be dealt with by the Special Licence procedure.
2. For example, the Measure as originally drafted made it a qualifying connection to show that the person concerned had attended a school in the parish. However:
 - the Revision Committee recognised that some schools had a much closer connection with the parish church and its clergy than others, and that in some cases there was no real connection at all. The Committee concluded that it would be very difficult if not impossible to draft a provision in the Measure which distinguished accurately between different categories of schools in order to include those where there was a genuine connection and exclude those where there was not;
 - If attendance at a school in the parish were made a qualifying connection, the Revision Committee agreed that it would be very difficult to find a logical reason for not treating attendance at a college or university in the parish in the same way; and
 - the Revision Committee was satisfied that where the person concerned had attended a school in the parish, and that school as a body, including the person concerned, had regularly attended public worship in the parish church, say, three times a year (for example at the seasons of Christmas, Easter and Harvest), the person concerned could claim a qualifying connection under the provision relating to habitual attendance at public worship, and without the need for any special provision relating to schools.
3. Given these factors, the Revision Committee decided that the best course would be to delete the provision regarding schools in the parish, and to leave those individual cases where there was a genuine connection with the parish or at least the parish clergy through attendance at the school, but where the person concerned could not bring him- or herself within one of the other qualifying connections, to be dealt with on a one-off basis under the Special Licence procedure.
4. The Revision Committee and the full Synod also rejected a proposal that if one of the couple had a suitable connection with any parish in a particular deanery, the couple should have the right to marry in any parish of their choice in the deanery. This was seen as much too wide, as undesirable in principle because it would undermine the parochial basis for the qualifications for marriage in the Church of England, which the Measure was intended to uphold, and as unsatisfactory in practice because of the risk of an undesirable concentration of marriages in those churches in the deanery which were particularly attractive or near to attractive venues for receptions.
5. The Revision Committee also considered whether, as proposed in the draft Measure as introduced into the Synod, past entry on the church electoral roll

should be a qualifying connection. As regards this, it was pointed out that the Church Representation Rules, which govern church electoral rolls, provide for a new roll to be prepared every 6 years, and for the current roll to be brought up to date as necessary during the 6 years of its life. However, they do not require a parish to keep copies or any kind of record of the roll as it stood at any given time in the past.

6. The Revision Committee recognised that it would create practical problems if entry on the roll at some time in the past was to be a qualifying connection. In particular, the person seeking to rely on the Measure could well expect the parish to have its own record of who was on the roll at any given date in the past and be annoyed and frustrated to find that it did not. This would not only place the parish priest in a difficult position but would tend to frustrate the whole object of the Measure. The Revision Committee attempted to draw up a set of provisions to fill the lacuna but they were necessarily lengthy and complex and could not be made retrospective in effect.
7. As a result, the Revision Committee decided to delete the provisions relating to the church electoral roll, on the basis that, given the Church Representation Rules as they are, any attempt to retain those provisions would make the Measure unacceptably complicated.

Deliberation

WITH THE ASSISTANCE OF REPRESENTATIVES OF
THE GENERAL SYNOD

TUESDAY 22 APRIL 2008

Present	Elton, L	Sir Stuart Bell
	Judd, L	Ben Chapman
	Laming, L	Sir Patrick Cormack
	Lloyd of Berwick, L (Chairman)	Mr David Drew
	Massey of Darwen, B	Simon Hughes
	Perry of Southwark, B	Robert Key
	Pilkington of Oxenford, L	Mr Gordon Marsden
	Shaw of Northstead, L	Mr Desmond Swayne
	Walpole, L	David Taylor
	Wilcox, B	
	Williams of Elvel, L	

The Committee deliberated, with the assistance of:

THE RT WORSHIPFUL DR SHEILA CAMERON QC, Dean of the Arches and Auditor, THE RT REVD NIGEL STOCK, BISHOP OF ST EDMUNDSBURY & IPSWICH, Member of the Steering Committee, MISS INGRID SLAUGHTER, Legal Adviser, and MR WILLIAM FITTALL, Secretary General of the Archbishops' Council and the General Synod, assisted the Committee.

Q1 Chairman: My Lord Bishop, I understand that you would like the Dean of the Arches to introduce your colleagues on this occasion and then to take us, so far as is necessary, through the Comments and Explanations?

Bishop of St Edmundsbury & Ipswich: That is right, my Lord, I would be very grateful if that could be the case.

Dr Cameron: Thank you very much. It is an honour to be able to introduce my colleagues, my Lord Chairman. On my left, as you have just identified, is the Rt Revd Nigel Stock, Bishop of St Edmundsbury & Ipswich, who was a member of the Steering Committee in respect of this Measure. Beyond him is Mr William Fittall, the Secretary General of the Archbishops' Council and the General Synod. To my right, is Miss Ingrid Slaughter, Legal Adviser to the Steering and Revision Committees for the Measure. Perhaps I may just say that Miss Slaughter has been here on quite a few occasions before this Committee over the years. She has served the General Synod for 25 years with great distinction in the legal department and sadly now is the time where she is going to take her leave and follow other interests in retirement, so this will be her last appearance before this Committee assisting the rest of the team. I have to say that we did hope that the Very Revd George Nairn-Briggs, who was the Chairman of the Steering Committee, would be able to be part of the team here today but unfortunately he is unable to be here due to ill-health.

Q2 Chairman: That completes the team, does it?
Dr Cameron: That is the team, yes.

Q3 Chairman: There is a second row as well as the front row.

Dr Cameron: They are the supporting cast I think, my Lord.

Q4 Chairman: They are familiar to us. Perhaps I could just say on behalf of the Ecclesiastical Committee how much we will miss Miss Ingrid Slaughter on future occasions. The place will not be the same without you. You have been a marvellous stand-by over many, many years, thank you very much. So yes, the Measure?

Dr Cameron: It is the Church of England Marriage Measure and, my Lord, you have a copy of the draft of the Church of England Marriage Measure and you have the detailed Comments and Explanations offered to you by the Legislative Committee of the General Synod. I will just say one or two words by way of general introduction and then perhaps refer to a couple of things in the Comments and Explanations before we come to questions. I am sure it is well-known to members of this Committee that marriages solemnized by Church of England clergy take effect in law just like civil marriages. In fact, in conducting marriages the clergy are subject to the general law which applies to all marriages in this country, and that is laid down in the Marriage Act 1949. This

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Measure before you this afternoon will supplement the law relating to marriage according to the rites of the Church of England. It will not in fact alter the wording of the Marriage Act at all. As you may have seen from paragraph 9 of the Comments and Explanations, our understanding is that the Government has no objection to this Measure, which is of limited effect and confined to the Church of England. The purpose of the Measure is to extend the rights—and I emphasise the word ‘rights’—of couples to marry in a parish church. There were some in the Synod who suggested that the minister should simply be given discretion to decide to marry a particular couple, but the Synod rejected that suggestion. There were not only legal objections under the Human Rights law, and we have set those out in some detail in paragraphs 29 to 32 of the Comments but, more pragmatically, the Synod regarded it as essential that couples should know exactly where they stood and this called for consistency with the same principles applying in every parish, so that a couple could not go to parish A and be welcomed and be allowed to marry but in parish B they would be rejected by the minister. We felt that the rights had to be conferred across the board. The background to the Measure and the need for change in the law affecting Church of England marriages arises out of the fact, which is only too well-known to everybody in this room, that we live in an increasingly mobile society. Work opportunities take people away from their original home base to another part of the country, quite often abroad, yet when a couple plan to marry they often wish to return to the church in that home base or to a church in some other place where one or other has a particular personal connection, and we recognised this very early on in the various working groups on marriage which have been in existence for a number of years within the Church. Whilst there is a very strong wish to welcome more couples, it has been the wish of the Synod that they should be given as much support as possible by way of marriage preparation as they take this major step in their lives. It may help if I mention the fact that in 1999 the House of Bishops issued a teaching document on marriage which emphasised the ideal—and we recognise we do not all reach the ideal—of life-long marriage as “the bedrock of a rapidly changing society”. The Bishops stress how important it is for those who marry to know the full extent of what they are doing, and it is in this context that we believe that good-quality marriage preparation in the parish where the marriage is to take place plays its valuable part. I think it is made quite clear in the Comments and Explanations, and we have got it on the bottom of the first page in the summary, the only way in which a couple can lawfully marry in a parish church, other than under

the existing rights which they have as parishioners or being on the electoral roll, is at the moment by obtaining a special licence from the Archbishop of Canterbury. However, if this Measure becomes law, a special licence will not be necessary in any of the cases covered by clause 1(3) of the Measure, and the list in that clause is wide enough to give a couple a variety of possible parish churches in which to marry. For example, it includes the parish in which the parents of one of the couple are currently living. So that when the daughter or the son have gone abroad and worked for several years and they meet the right person and want to come back to the home base (the parish where no doubt they have still left some of their belongings at home although they have lived abroad for a long time) and they want to get married in this parish, up until the time (and if) the Measure is passed and receives Royal Assent, they would have to get a special licence. In the future under this Measure they will be able to turn up to the local minister and say, “We would like to get married here. Our parents live in the parish,” and that would be sufficient, so it opens up the possibilities. They could even go back a generation to where the grandparents of one of them were married. We had evidence to the working party of the importance of that association. I am afraid that with so many fragmented families nowadays sometimes going back a generation gives an element of stability and people like to go back to that base and choose that parish as the place where they want to get married. You may have seen from the length of the deliberations of the Revision Committee, which are set out in the Comments and Explanations, that every clause, every detail in this Measure has been worked on with meticulous care. The Synod believes that this is a very worthwhile step to take to widen the opportunities for people who at the moment are prevented by the limitations, of the rules and they are perhaps deterred by having to go and get a special licence from the Archbishop, to have the opportunity to go back to base, whatever the base might be, and be welcomed in the parish to the church and be able to have their marriage solemnized there. The fact that the Synod has supported this Measure with great enthusiasm can be seen from the voting figures on page 4, where you will see that the 26 Bishops who were present voted unanimously, 106 Clergy, with three noes, and 126 of the Laity with three noes, so 258 to six, and maybe of the six some people, we have to admit, would rather have just left things as they are, but the majority of the Synod thought that was not the right thing to do and that we must try and open the doors and be more welcoming in the way which is set out in the Measure. I do not know whether it will assist, my Lord, but the qualifying connections are set out very clearly on the first page of this document, and I think we have got

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it also somewhere else, but Miss Slaughter will remind me of that. On the first page, it tells us that the Measure gives a person the same right to marry in the parish church as a parishioner has under the existing law, and then the details of the categories of qualifying connection are set out: the person concerned was baptised or prepared for confirmation in the parish; the person concerned or a parent of that person has had his or her usual place of residence in the parish for a period of at least six months (that was reduced by the Synod from a longer period because we felt we wanted again to give as much flexibility as possible because people do move around, parents move around as well as offspring); or the person or the parent has habitually attended public worship in the parish for a period of at least six months, and that period may be continuing at the present or it may be any time in the past, except that in the case of a parent it must have been during the lifetime of the child, the applicant for marriage, so not predating the birth of their own child; and then finally, a parent or grandparent of the person concerned was married in the parish. That has to be compared with what is still retained and not affected at all, the existing rights of parishioners, which are set out at the bottom of the first bullet point: "The existing rights of parishioners, including the provisions under which, in many cases, a person who is not resident in the parish but who has worshipped there regularly for at least six months can apply to be entered on the church electoral roll of the parish and can thus acquire the right to marry there." So the existing position remains the same but we are adding on.

Chairman: I think we are all very grateful to you for that very clear explanation of the basis behind this Measure, and I think I would like just to repeat in your presence what we said in private session that I think all the members of the Ecclesiastical Committee were deeply impressed by the care which the Synod had taken over this particular Measure. I would add to that simply that it seems to me the Comments and Explanations are fuller than I have ever seen them before. They are very helpful to us and we have all of course read them. At least I think you can assume that we have all read them! I think that there are one or two of us who would have some particular questions they would like to ask before we come back to more general matters, and I think in particular Lord Williams of Elvel, did you have a point you wished to raise?

Q5 Lord Williams of Elvel: Thank you, my Lord Chairman. I am a little bit concerned about 3(e) taken in conjunction with (4) on section 1 of the Measure. There are two problems that I have. The first is that I wonder what the situation of a parent or grandparent is so far as qualifying connection is

concerned if the said parent or grandparent is married civilly in the boundaries of a parish and that wedding is then blessed in the parish and presumably is recorded as such in the parish register. The second difficulty I have is about subsection (4) of clause 1 of the Measure which reads: "For the purpose of subsection (3)(d) above 'parent' includes an adoptive parent and any other person who has undertaken the care and upbringing of the person seeking to establish a qualifying connection." 'Any other person' is a very wide category and I wonder if we could have some elucidation on what is intended.

Dr Cameron: I think the first point, my Lord, in answer to Lord Williams is that the marriages which are dealt with in this Measure are Church of England marriages, and in fact you find that in clause 1, sub-clause 12(c) where it says: "Any reference to baptism, confirmation, marriage or public worship shall be construed as reference to baptism, confirmation, marriage or public worship, as the case may be, according to the rites of the Church of England," so I am afraid a civil marriage would not qualify for that purpose. We are constrained actually on what we can legislate for to matters related to the Church of England.

Q6 Lord Williams of Elvel: Even if the marriage is then blessed in some sort of way by a parish?

Dr Cameron: Yes, I think so because of course the blessing is the welcome to the church. We appreciate there are many reasons why people have civil marriages, but for the purpose of establishing a right, which is what we are establishing here, we have to be very careful not to extend it beyond what it is reasonable for the Church of England to deal with.

Q7 Lord Pilkington of Oxenford: I can see why, but you are doubling the penalty for divorce. A person who is divorced may not be allowed to marry in the Church of England, and if their parents have been divorced they would then be refused to be married in the church of their choice, so you are actually piling on greater burdens to divorce than exist at present, which is quite a worry.

Mr Fittall: Is it worth saying that of course many people who would qualify under (e) will also qualify under (d) so in the case of parents, wherever they have married, of course if they have been resident for more than a six-month period they would qualify. It is only where that is not the case or in the case of grandparents that that difficulty could arise. I think it is a question really of where to draw the line. We were conferring additional rights here.

Q8 Lord Pilkington of Oxenford: You are actually limiting the right in a way for a person who wants to marry in a church because they now face the thing

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that if their parents were not married in a church and they do not live there and they do not fulfil the qualifications, they are doing it solely on parents, then their rights are limited.

Dr Cameron: They would not acquire the new right. They would still be able to become eligible by worshipping in the church and then going on the electoral roll.

Q9 Lord Pilkington of Oxenford: Would they be given a special licence?

Dr Cameron: The grant of a special licence is a matter of discretion for the Archbishop, and Lord Pilkington has drawn attention to that opportunity, which is very helpful, because we recognised that we could not legislate for all permutations, that there had to be a point where we drew a line. We recognised, and it appears in the Comments and Explanations, that there will be cases outside the qualifying connection which at the moment are dealt with by special licence and can still be dealt with by special licence, so that route has not been cut off at all. You have got an add-on. You have got more coming locally to the parish but you have still got the fall-back that people can ask the Archbishop if he can grant them a special licence if they do not come within these categories.

Q10 Chairman: There was a second part to Lord Williams's questions on the other persons.

Dr Cameron: The width of the provision in clause (1)(4) of 'any other person'. We thought it was necessary to put in something like that because, not infrequently, people are brought up nowadays by somebody other than a natural parent, and we did not want to rule those people out, particularly for example orphans, they have not got a parent but they may have a guardian or another relative, an aunt or somebody, who takes over, or even, we read sometimes that grandparents take over the role, so we did not want to rule out that possibility and that is why we put those words in as broadly as possible.

Q11 Chairman: Can I just ask a supplementary on that. Is that the sort of matter, perhaps I am wrong, on which the House of Bishops are going to give guidance, or does the guidance to be given by the House of Bishops relate more to—

Dr Cameron: I am going to ask Miss Slaughter to answer that one.

Miss Slaughter: Yes indeed, we will give some very general guidance about the sorts of situations which that is intended to cover.

Q12 Lord Williams of Elvel: The verification procedure for this must be very difficult.

Dr Cameron: Well, again we are working on this, and Miss Slaughter has already done a lot of work on the draft to submit to the House of Bishops on this, but of course it cannot be approved unless and until the Measure takes effect, but we are very conscious of this. Many of the things are not going to be difficult to prove because you can have people making statements in support of what you say and much of it can be proved by producing certificates—marriage certificates, baptism certificates, copies of entries in registers and also the possibility of relatives or friends saying, "We know they lived here, we can confirm we have known them X number of years," et cetera, so it is not actually going to be particularly difficult, and in cases where there might be some doubt we have made a provision for somebody to make a statutory declaration, in which of course they can set out the facts, and Miss Slaughter is giving an example of how people can set it out in a statutory declaration in this guidance which we hope the House of Bishops will approve, and that will be leading people through the process so that it should not be too complicated.

Chairman: Thank you very much for that answer. I think Lord Laming has also given notice of a question which he would like to ask.

Q13 Lord Elton: Before that could I ask a further supplementary on this point. I would be very interested to know what will be the legal effect of the last line in subsection (4), the term 'grandparent' shall be construed according to the definition we have just been given of a parent, including an adoptive parent or any other person who has undertaken the care, et cetera, of the person. Does that mean anybody who has behaved like a grandparent or does it mean the parent of anybody who has behaved like a parent or what?

Miss Slaughter: Chairman, our understanding was that it is a second alternative, applying to each generation. The relationship between the parent and the person who is applying must be as in the first part of the subsection (4) and the relationship between the grandparent and the parent may be any one of these alternatives. You could for example have grandparent adopt parent; parent has child who is now applying as a natural child.

Q14 Lord Pilkington of Oxenford: If I could follow up on what Lord Williams has said. It seems to me possibly wrongly that you are making it almost more complicated than it is now. The situation is we know parish priests disobey the law and they in fact do give permission and they often do marry people not resident in the parish, but they do not apply this complication about whether the parents were married by the Church of England, and actually this will be, in a funny way, meaning to be liberal, as I said

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earlier, somewhat more restrictive which it is not intended to be, because the reality of the situation now is large numbers of parish priests do not obey the law as it stands, as we all know.

Dr Cameron: I do not know whether we take notice of that or not! I think the point is that there are, to counter what Lord Pilkington has just said, those who take a very strict line, that is the other side of the coin, and it may be that some who take the more liberal view are likely to welcome this as opening the doors and legitimising what they have been doing whereas those who have taken the narrow line will have to be more welcoming and they will then be required to do it because people have rights.

Q15 Sir Patrick Cormack: Not at all I hope!

Chairman: I think Baroness Massey has a supplementary on the same question.

Baroness Massey of Darwen: A supplementary to a supplementary. I think you may have answered this one, but could you just say how this affects civil partnership arrangements, if a gay couple for example or a lesbian couple want to have a blessing or get married in the Church, how would this apply?

Dr Cameron: In answer to Lady Massey, the legislation in relation to civil partnerships makes it quite clear that they cannot have any religious element,

Dr Cameron: As I think I said before and I do not know if Baroness Massey heard what I said, our Measure deals only with marriages according to the rites of the Church of England, so it does not cater at all for civil partnerships to be conducted in church and certainly not with any religious element because we would be in breach of the general law.

Baroness Massey of Darwen: Some parish priests will do this, will they not, they will give a blessing? I know they do so—

Sir Patrick Cormack: Well, they should not.

Chairman: I think the question is really outwith the Synod's competence. I do not think they can deal with civil marriages, only with Church matters.

Q16 Sir Patrick Cormack: Quite right too!

Sir Patrick Cormack: There is just one supplementary on that point, my Lord Chairman, and it is this: when you are construing the words 'parent' and 'grandparent', what happens if the unfortunate child has two fathers or two mothers and does not have one of each sex, are they going to be construed as parents?

Lord Williams of Elvel: That is a very good point.

Q17 Sir Patrick Cormack: It is a good point.

Dr Cameron: I think if they have undertaken the care and upbringing—and we do know that two people of the same sex are allowed to adopt now and if the next

generation wish to get married in church I think the attitude is that they are recognised in law as the parents—then it would be wrong not to allow that couple to marry simply because it perhaps is a more unusual arrangement that their parents had than heterosexual arrangements.

Mr Fittall: But in that case the qualification in relation to the person of the older generation would be that they had been resident in the relevant parish. Clearly they would not have been married in the parish and the fact they might have had a civil partnership ceremony at a civil registry would have no bearing on this right. It would focus on the residence in the area and the fact that they had responsibility.

Chairman: I think it has been an important point to raise, if I may say so, but it is now Lord Laming's turn.

Q18 Lord Laming: Like everyone else, I think that the Synod deserves congratulations for grappling with this issue and, as the Dean of the Arches said, this is a worthwhile step. However, my question really relates to the wider circumstances that we have just been discussing which is the changes in our society, and I wonder if we could be assured that the Synod will keep under review such matters as the fact that the Office of National Statistics has just reported that the proportion of people choosing to marry at the present time is at the lowest level since records began in 1862, and of those marrying today 50 per cent will divorce before their tenth wedding anniversary. It seems to me that the Church would want to attract as many people as possible into the state of marriage and would wish to help them understand the responsibilities of marriage, against the background of the tremendous range of alternatives to where people can marry today. I wonder whether the Synod, although they might not welcome this, would keep this matter under review, because although the BBC this morning reported that this was a 'dramatic' change, to be frank, it seems to me rather modest against the background of wanting to encourage people not only to marry but to marry in church. I hope that the Synod would in due course, and not too long a due course, be willing to re-visit this subject.

Dr Cameron: I am going to ask the Bishop to comment on that if he may.

Bishop of St Edmundsbury & Ipswich: I am very glad that you thought the word 'dramatic' was entirely incorrect because I was rather startled when I heard that and I was wondering what you would think of us! Yes, I think that is right and it is fair to say that the Synod did debate this very seriously on exactly the points you are making. We are deeply concerned that since 1970 only about a quarter of the weddings

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that used to happen in church now happen in church. Equally, accompanying the debate was a very serious desire to see proper marriage preparation. I am glad to say that round about September there is a new initiative being launched to support all that and to encourage that sort of attitude to preparing couples for marriage, and yes, I quite agree with you, the difficulty about making this even wider, I think we have outlined this later in the document you have got before you, but preserving what is quite important for us, the parish-based notion of how this is carried out. We would be reluctant to lose territoriality altogether. That is what we have to balance. There were certainly voices in Synod who said, “Why do you not just go down the free-for-all route?” There were real problems about proper application of that right throughout the country, about fairness, about the Human Rights Act, and also concerns I think about thereby doing away with the parish-based system altogether, so that is why it is in its way—I think I agree with you—a modest Measure but it is that because we really wanted to be certain that we took seriously what we were offering. I think the other thing that disturbed me about the tone of the report this morning was that it seemed to imply that the Church was just trying to get back into the wedding market, so to speak. I think we are doing this because of our conviction that marriage is an important bedrock for society, although of course we would like to see people married in Church and we would like to make it more possible. We certainly take your point and I think people will be aware of that and they will see what happens. If this is deemed expedient and carries through people will see what it does to marriage and whether there are other things we could be doing.

Lord Laming: Thank you

Chairman: Did Sir Patrick have another point?

Q19 Sir Patrick Cormack: It directly follows on from what the Bishop has just said and it was to the Bishop I wish to address the question. You alluded briefly to preparation for marriage. I have two worries about this Measure. One is that it does pose a certain threat to the parochial system as we know it, and we have to recognise that, and I am prepared to accept that, but I am worried about what was referred to on that rather unfortunate report as ‘marriage tourism’ and certain churches because of the beauty of their setting or architecture being the places that people wanted to go to and others, which have a wonderful parochial base, being ignored, and there are economic consequences of that, so I hope that, without being too draconian, bishops will put out very firm and clear guidance that couples should not be married in any church unless they have indeed shown that they are serious in their intent and want

to understand what marriage is about. I am not suggesting that they should have to take examinations in the subject (perish the thought!) but that they should conscientiously and genuinely attend one or two sessions, they should worship in the church once or twice before the marriage, they should not just turn up in a limo on the day, be whisked off to the local hotel afterwards, and we all rub our hands because they have not actually been married in the hotel but it really is no different. That is my worry and I would just like some reassurance.

Bishop of St Edmundsbury & Ipswich: I would be very depressed if that is how it ended up. I have to say coming from Suffolk with some of the finest churches in the country, he says modestly, it did concern me what might happen: would they want to go to Lavenham, Long Melford, or Stoke by Nayland, and it was interesting that in the debate in the Synod someone raised exactly this about Hexham Abbey and said Hexham Abbey will now be swamped. The Vicar of Hexham promptly wrote to the Church press saying he rather wished this would happen because he had four weddings that year. I do not think places will be swamped. It was a concern but the control on this is people might have a right to a venue, but they cannot dictate the time or the day and the clergy do have control over that. Certainly there was quite a serious debate in Synod about whether you could legislate for marriage preparation, but they could not really find a satisfactory way of putting it in to make it compulsory. However, yes, I would hope that everyone concerned would take the marriage preparation very seriously. Certainly when this comes out it is an opportunity for me to write once again about the guidelines and to say that I hope everyone will take it seriously. If they do find that their particular venue is being swamped, then that is a task for me to provide proper pastoral support so that clergy can be available and give them guidelines where they might find further support, and yes, that is partly what the September initiative is about, to try and encourage people to take very seriously the preparation.

Q20 Sir Patrick Cormack: I am grateful for that. Before he left Mr Swayne asked me if I would ask the Bishop a question as he had to go off. He said some people might feel now that these same rights should be extended to baptism. Does the Church have any thoughts in that direction?

Bishop of St Edmundsbury & Ipswich: That one is not on the horizon at the present time. I think there is actually less restriction on baptism than there has been on marriage.

Bishop of St Edmundsbury & Ipswich: I cannot honestly say there is any movement at the present time to take that through Synod.

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Lord Laming: Could I just make one quick comment about this which is that we need to recognise that out there there are literally thousands of commercial settings for marriages that would love to be swamped. I think we do need to bear in mind the change in circumstances that the Church is in and I hope if Synod ever finds the churches being swamped, they might report back to us!

Q21 Sir Patrick Cormack: I appreciate that but there are certain restrictions.

Chairman: We have got a number of questions from Lord Shaw, David Taylor, Simon Hughes, and Lord Judd in that order. Lord Shaw?

Lord Shaw of Northstead: Briefly, my Lord Chairman, on Sunday I raised a point at church and I did not get a very satisfactory answer so I thought I would raise it today. I am sorry that the Revd Nairn-Briggs is not here because he comes from my own diocese, but my own church of Roberttown in Wakefield diocese and the church of Hartshead are a united benefice, and I could not get a clear statement as to whether a parishioner in one church has an automatic right to get married in the other and whether in fact this Measure changed the situation.

Q22 Lord Walpole: As a supplementary to that, could I just say presumably section 12(b) on what is a parish and what is a conventional district, I live in a benefice of seven churches and I do not see any reason why anyone who lives within the benefice should not get married in the church that they wish.

Dr Cameron: I think the answer, my Lord, is this is geared to the parish and there may be several parishes in one benefice, so the point is if you prove your connection with a church within a parish which happens to be within a benefice with other parishes and other churches, you then have presumably a choice, and if you could show you had a connection with two of the churches out of the five or seven, or however many there are, because we know many of them are drawn together now, particularly in rural areas, the parish is the basis for showing the connection, so the word ‘benefice’ does not appear here as the criterion. It is the parish church in the parish, so what you have to concentrate on is identifying what is the parish and is the church within that parish a parish church.

Q23 Lord Shaw of Northstead: The problem arises though that one church was built in the middle of the 19th century and the other one at Hartshead has Saxon origins and is as good as any church in Suffolk! Obviously there comes a temptation for people who go regularly to Roberttown who might well want their wedding to take place in this wonderful old little church next door.

Dr Cameron: At the moment they could arrange that by simply going to worship there for six months. Actually the Measure is not making any difference to that situation. I share the Bishop’s hope that in fact we may get swamped with those who want to get married in church. We have to remember we are talking about a religious service and if people want to return to the Church, all of us along this row and those behind us, and I hope many in the room, would say that is a good thing.

Q24 Lord Shaw of Northstead: May I take it that there is not an automatic right if you are a parishioner in one church to go and be married next door?

Dr Cameron: You have to show your connection. Ingrid Slaughter is going to add one point.

Miss Slaughter: Could I just explain, Chairman, that there are special provisions in the Pastoral Measure about the case where there are either benefices in plurality or two or more parishes within the same benefice. There is a special set-up for that and the Bishop can make special arrangements. Where that applies it also covers the cases under this Measure. It is not an automatic right but it is possible to make special arrangements. I think that is the best way of putting it.

Chairman: That may be the answer to the question but it is not a simple matter.

Lord Walpole: I was merely saying that I do think that most people who worship in a group of parishes do in fact go to services in every church regularly, certainly two or three times a year to the other churches.

Chairman: I think David Taylor was next.

Q25 David Taylor: Thank you, my Lord Chairman. I am taking the Dean of Arches back to something which I hope we have not done to death but it is important and it is paragraph 4 on the first page of the Measure. I am wondering what efforts have been made to define a little bit more clearly “any other person who has undertaken the care and upbringing of the person”, et cetera, how substantial that care and upbringing has been, whether it is by length of period, because in today’s complex social structures it might be quite hard to show beyond any doubt that that particular clause is being fulfilled. Who would arbitrate on any disputes on this if there were any, and let’s hope there were not.

Miss Slaughter: The person who would actually decide whether the qualifying connection is satisfied would be the minister, but in the guidance we are going to encourage ministers if they run across any problems, particularly legal issues, that they do consult the diocesan registrar—that is the diocesan solicitor—before reaching a final decision. We have

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put that quite firmly in the guidance. One other aspect of it was that it was indeed intended as a potentially long-term affair, not just for a couple of weeks or something like that, though of course circumstances can change and what was originally intended as a potentially long-term arrangement may, for whatever reason, have to be changed. I think the answer is if it was potentially long term when it started, say the person has been responsible for a child's care and upbringing for a couple of years and then circumstances change, my own guess would be that person would indeed qualify for this.

David Taylor: The final decision is that of the minister taking advice from the registrar? There is no appeal or anything like that envisaged?

Chairman: Thank you very much for that question. I think Simon Hughes is next and then Lord Judd and then Ben Chapman.

Q26 Simon Hughes: I support the Measure and I think the Church has done very well to get the balance right. I think that the linking of people back to the place where they have had had a Christian background or where their parents or grandparents lived is good for the community and the rooting of people, which is a problem in that we have too little of it. My two questions are both out of constituency experience. The first one does not apply to every colleague round the table but my constituency has a cathedral in it, Southwark Cathedral, and section 1(11) says that this provision does not apply to cathedrals even if they are parish churches. I am willing to buy that argument but I just want to hear said publicly that if you do go to a cathedral church for worship and it is your parish church, which is the case for some people in Southwark, or you are on the electoral roll, that six months' attendance will continue to qualify you even though you cannot get in under the new extended arrangements here, because it seems to me if you live in a parish which happens to have a cathedral you should not be excluded from being married in your parish church even though it is a cathedral. That is my first ring-fenced question. And my second question is on a different topic.

Bishop of St Edmundsbury & Ipswich: St Edmundsbury Cathedral is also a parish church. We have tried to set out on page 19 the existing rights, and they carry on existing, there is absolutely no doubt about that, they could qualify under those, otherwise it is then under special licence.

Q27 Simon Hughes: Thank you very much. The second question relates really to section 2 and it is to elicit the answers that I hope support the whole move away from common licence to this provision. I did not see in the very helpful explanatory memorandum

and notes what the current annual number of special licences granted is, and I would be grateful to know, and I would also be grateful to know what they cost and the average time between applying and them being granted, which I understand is quite a long time quite often. In contradistinction, what would be the cost of this process and the time from application to approval of your permission to marry? My hope and belief is that your answer will tell me that it is a cheaper system and a quicker system as well as sparing the Archbishop and whoever works on his behalf a huge task of deciding on all these special licences?

Dr Cameron: In answer to the first part, section 2 deals with marriage by common licence which is not the special licence. The common licence is granted in the diocese where for some reason the banns cannot be called, for example, if one of the couple is abroad and they cannot be called in that person's place of residence because he or she is not resident in the country, or sometimes there are little mistakes made about banns and they can cover that as to special licences there is a discretionary power vested in the Archbishop to grant permission to people to marry anywhere in the country. At the moment, I am afraid I cannot give you an exact figure but there are several thousand a year, and those several thousand applications will in future pass to the parish. We have mixed reports about how the Faculty Office, which is the Archbishop's office, deals with applications. I am sure that everybody on this Committee will know that some people are better at filling in forms than others so that very often those who complain about delays are those who have not filled the form in correctly in the first place. We do get some very urgent cases in the Faculty Office. There are, sadly, people who are terminally ill and that sort of thing and we turn them round in a matter of hours. Others take their turn, which is only fair, and we try and do it as quickly as possible with a very small staff. So far as the parish is concerned, there is no reason why provided people follow the guidance which the House of Bishops is going to produce, and use the form which is going to be recommended, that it should not be a fairly straightforward process. But, here again, we have to make allowances for the fact that people do not fill in forms correctly, so I do not think the time is really the critical point because if they have not filled in the form correctly, it will be sent back to be filled in again. It is not really the time, it is the fact it is going to be parish-based rather than applying to this office in London.

Q28 Lord Pilkington of Oxenford: What does a special licence cost now? I was married under special licence 40 years ago and it cost £100, which was a lot of money then.

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Dr Cameron: Yes, well, it has only gone up to £150!
Lord Pilkington of Oxenford: It was a hard task in 1966 I can tell you.

Q29 Simon Hughes: What will be the minimum cost under this process?

Dr Cameron: This is for the preliminaries, this is for getting permission, this is not the actual marriage ceremony now we are talking about. The figure given to the Synod is that the present cost of banns is about £80.

Chairman: I think we have got time for the two questions I have mentioned, Ben Chapman and Lord Judd, and that might perhaps complete the questioning.

Q30 Ben Chapman: This was obviously designed as a Measure to welcome people into the Church but I am wondering whether in going for a period of six months—and I would be interested to know briefly why that was chosen other than for neatness as opposed to seven months for example—you saw yourself as discriminating against, for example, the new immigrant, the ultra mobile, the new convert, the potential convert, or you saw yourself as discriminating in setting a six-month residential period or six-month church attendance period in favour of a multi-homeowner who could argue for this purpose that they were normally resident in any one of several places.

Dr Cameron: Miss Slaughter is reminding me that if you are already resident in a place you are entitled to be married in the church without the Measure anyway. So far as the six months is concerned, I mentioned the word ‘consistency’ earlier and in order to have your name put on the electoral roll you have to have habitually worshipped for six months, so it seemed logical. First of all, there was a stricter timetable put on of 12 months and when the Revision Committee and the Synod reconsidered that they decided that was too long and so they reduced it to six months, which is then consistent with what we have in our Church Representation Rules for being eligible to go on the electoral roll. We are trying to make things as consistent and clear and simple as possible, and if you have the same time period we believe that that is more sensible than introducing some other figure.

Mr Fittall: Just to supplement that, if you are currently resident somewhere and can demonstrate it, there is no time period so you may only have been resident in the parish for a month or two months or three months under the law as it currently is. Once you are resident, you have a right to marry in that parish church, and that will remain completely unaffected by these arrangements.

Chairman: We need to watch our quorum so I think we had better be as quick as we can. Lord Judd?

Q31 Lord Judd: It is really a supplementary comment/question about something that we discussed a little earlier. In particular, would the Bishop not agree that if marriage is about partnership, about commitment and about integrity, there is a certain comparison here to be made with what appears to me to happen quite often with baptisms as well, that it becomes a rigmarole and a social function because people think it would be a rather nice thing to do, and that therefore the training and preparation of clergy for handling this situation and for counselling and advice is absolutely crucial to its success. If it is about commitment and integrity and serious undertaking, it seems to me that the argument about the disadvantages of opening it up and the advantages of opening it up are both sides of the same question because of course for some people it will be a more serious commitment if it is not just their current geographical circumstances but somewhere that really means something to them than it would otherwise be. All this suggests to me that the quality of the guidance and advice given by the clergy is absolutely central. I must say when I read all this I had a certain unease remembering the extreme imagination and generosity that went into the arrangements for my own marriage in 1961 and I have a slight feeling that the Church may be regularising an awful lot of things that have been happening already.

Chairman: Who is going to comment on that?

Bishop of St Edmundsbury & Ipswich: Which bit do you want me to comment on? I just go back to agreeing with you that marriage preparation is crucial, a lot of thought needs to be given to it, and it needs to be improved. When it comes down to actually judging people’s commitment, I go back to my life as a parish priest (and I did 22 years in parishes on Tyneside and places like that) and the important thing is to establish the relationship. You can produce questionnaires and have discussion groups and all sorts of things with people, but if you have the time to establish a relationship with a couple I think that is what makes the difference, and then you can get to have a serious discussion about what you mean by commitment and what the religious elements of the service are really saying. It is trying to establish that that I think is the most important element, and I hope that whatever we do, we do not make it impossible for people to establish that sort of relationship. That is our one advantage. If you are going to a venue and the marriage celebrant is produced, you very often see them on the day and that is it. I think it is the one thing where we can make

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some offer of support for the future which I hope we will take very seriously.

Q32 Robert Key: My Lord Chairman, earlier today I was discussing this Measure with a parish priest, the Synod having worked long and hard to bring this Measure to this Committee, and he was anxious to know when it would come into effect. I explained that under clause 5 that was nothing to do with this Committee and everything to do with the Archbishops of Canterbury and York, and I just wonder if under clause 5, section (2) whether the Bishop can give us any guidance as to what the intentions of the Archbishops might be about when this Measure might be brought into force?

Bishop of St Edmundsbury & Ipswich: I am sure they want it in as quickly as possible as well but they are dependent on other processes. I think Miss Slaughter probably knows what the process about the guidance will be.

Miss Slaughter: If this Committee is content with the Measure and it receives the approval of both Houses of Parliament, once it has received the Royal Assent, it will then be necessary for the House of Bishops to formally approve the guidance. Obviously that will need to be done in time for people to get geared up about what the guidance says before it is actually brought into force. Having said all that, I would agree with what the Bishop has said, I think that it is thought that ideally it would be very good to bring it into force some time in the autumn, but obviously that is dependent on the House of Bishops' processes and of course the processes in this Committee and in the two Houses.

Chairman: I think that is rather a good question, if I may say so, to end up on. I think I speak for us all when I say that we are deeply grateful to you Lord Bishop and to the Dean of the Arches and all the members of the Legislative Committee for putting so much work into this Measure. It will now be for us to consider whether or not it is expedient, which we hope to do quite quickly.

