

**LAW REFORM**  
ADVISORY COMMITTEE  
FOR NORTHERN IRELAND

DISCUSSION PAPER No. 6

**MARRIAGE LAW**

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LAW REFORM ADVISORY COMMITTEE  
FOR NORTHERN IRELAND

**Marriage Law**

CONTENTS

Preface:	iii
Executive Summary	vi
Chapter 1: Existing Marriage Procedures	1
Chapter 2: Capacity to Marry	11
Chapter 3: The Law and Practice in Other Jurisdictions	15
Chapter 4: Criticisms of the Existing Law and Framework for Reform	25
Chapter 5: Age and Relationships Rules	29
Chapter 6: Marriage Venues	31
Chapter 7: Civil Preliminary Notification	37
Chapter 8: Celebrants and Ceremonies	43
Chapter 9: Registration of Marriages	47
Chapter 10: Transjurisdictional Marriages within the United Kingdom	51
Chapter 11: Consequences of Procedural Irregularity	55
Chapter 12: Criminal Sanctions	59
Chapter 13: Questions for Consultees	63



## Preface

The Law Reform Advisory Committee for Northern Ireland was established in April 1989 by the then Secretary of State for Northern Ireland, the Right Honourable Tom King, MP to “keep the civil law of Northern Ireland under review and make recommendations for its reform”.

The Members of the Committee at present\* are:

The Honourable Mr Justice Girvan (Chairman)

His Honour Judge Burgess (Vice-chairman)

Miss Mary Connolly LLB, Solicitor

Professor Brice Dickson, Barrister

Mrs Ethne Harkness LLM

Mr V Alan Hewitt LLM, Solicitor

Miss Marie McAlister, Barrister

Mr Rory McShane BA, Solicitor

Mr John Thompson QC

\*The text of this discussion paper was finalised while Miss Margaret Walsh, a Barrister was a member of the Committee.

The Secretary to the Committee is Mr Michael Foster, Barrister and its offices are in Lancashire House, 5 Linenhall Street, Belfast BT2 8AA, Telephone (01232) 542900.

The Secretary of State for Northern Ireland in January 1998 formally referred the topic of marriage law in Northern Ireland to the Law Reform Advisory Committee for Northern Ireland (“the Committee”) for incorporation in its programme of Law Reform. The decision by the Government to refer the topic to the Committee flows from the Government’s view that the Northern Ireland law relating to marriage is in need of review and reform. The present law is perceived to be complex, anomalous and possibly discriminatory. The system of marriage preliminaries is not uniform and privileges relating to the celebration, timing and place of actual marriage are granted to certain religious groups but not others. The Secretary of State considers that proposals for a change should not be brought forward in isolation but should be part of a comprehensive review of marriage law in Northern Ireland.

### **The Concept of Marriage Under Northern Ireland Law**

Under Northern Ireland law marriage as a legal concept is that it is the fulfilment of a contract satisfied by the solemnisation of the marriage. Marriage, directly it exists, creates by law a relationship between the parties and a legal status between the parties as individuals and with regard to the rest of the community. Northern Ireland law only recognises as a valid marriage the voluntary union for life of one man and one woman to the exclusion of all others. In its inception it must be for life. The requisites of a valid marriage according to Northern Ireland law are:

- (1) that each of the parties should as regards age and mental and physical capacity be capable of contracting marriage;
- (2) that they should not by reason of kindred or affinity be prohibited from marrying one another;
- (3) that except where a second or subsequent polygamous marriage has been entered into under a law that permits polygamy, there should not be a valid subsisting marriage of either of the parties with any other person;
- (4) that the parties understand the nature of the contract, and are free to consent to marry one another; and
- (5) that certain forms and ceremonies should be observed.

These principles are not in question in this review. We are, thus, not concerned with contentious issues such as the questions of cohabitational arrangements or formalised same-sex relationships nor are we concerned with the wider issues involved in questions such as the dissolution of marriage. The review, however, does cover the rules relating to age, the conditions relating to kinship and affinity and the forms and ceremonies to be observed. The issue of forms and ceremonies raise questions as to the legal requirements relating to the manner and place of solemnisation in marriages, marriage ceremonies and procedures and registration and licensing requirements.

### **The Format of the Committee's Review**

To understand the problem and shortcomings (if any) in the existing law it is necessary to investigate in detail the workings of the law as it currently stands, to explore the criticisms and difficulties which arise out of the law in its present form and to examine alternative systems, particularly in other jurisdictions within these islands. Consultation with interested bodies including in particular the various religious communities is clearly necessary.

The Committee established a sub-committee chaired by the Chairman and comprising eight members. It has carried out a detailed examination of existing law and practice and has examined equivalent laws applicable in England and Wales, Scotland, the Republic of Ireland and the Channel Islands. It has formed some tentative views as to areas for possible reform. Following the publication of a preliminary discussion paper addressed to the main religious bodies practising in Northern Ireland, a number of religious bodies affected by the existing law or likely to be affected by any changes in the future have made helpful submissions to the sub-committee. At this stage the Committee now considers that it would be helpful to produce a detailed discussion paper seeking submissions from all interested parties and persons.

After conclusion of the consultation process the Committee will bring forward a report to the Secretary of State setting out the Committee's recommendations taking into account all the observations and submissions made by interested persons and bodies.

The paper is circulated for comment and criticism only and does not present the final views of the Committee. The Committee would be grateful to receive comments in writing before 28th April 2000.

Please note that it may be helpful for the Committee, either in discussion with others concerned or in any subsequent report, to be able to refer to and attribute comments submitted in response to this paper. Any request to treat all or part of a response in confidence will, of course, be respected. If no such request is made, the Committee will assume that the response is not intended to be confidential.

All correspondence should be addressed to:

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## Executive Summary

- The existing law relating to the preliminaries to marriage and the procedural requirements in respect of marriage ceremonies and venues is complex, anomalous and possibly discriminatory.
- The current law requires modernisation and simplification.
- In formulating a new system the grounding principles should so far as possible be:
  - the continued validity of religious as well as civil marriages;
  - equality of treatment of all religions;
  - minimal interference with existing freedoms of individual religions;
  - equal treatment between those wishing to have a civil or religious marriage;
  - certainty, simplicity, transparency and ease of application;
  - cost effectiveness
- The Scottish model of law reform appears to provide the best method for reform of the law in this jurisdiction subject to certain modifications to take account of local requirements.
- The current law relating to age requirements and relationship rules appears to be working satisfactorily.
- The current rules relating to religious and civil marriage venues are unnecessarily complex and unsatisfactory. The Committee's provisional view is that religious marriage venue requirements should be abolished and that the law relating to civil marriage venues should be relaxed to follow current English law.
- The current rules relating to notice of intended marriage and preliminary notification requirements are too complex and should in the Committee's provisional view be replaced by a unified and simplified system of preliminary notification and authorisation, adopting the Scottish system of a marriage schedule subject to some modification.
- The current law in respect of persons authorised to conduct religious marriages should in the Committee's provisional view be replaced by a statutory scheme defining authorised celebrants. Statutory requirements in respect of religious and civil marriage ceremonies should be clarified following the Scottish model.
- The current rules relating to the registration of marriages is unnecessarily complicated and diffuse and the Committee provisionally considers that a simplified system of registration of marriages along Scottish lines should replace the existing procedures.



- The law relating to the consequences of procedural irregularity should be clearly stated. The provisional view of the Committee is that a marriage should only be annulled if both parties are aware of the procedural irregularities and that the irregularities invalidate the marriage.
- The current law relating to criminal offences in the Marriage Acts is, in the provisional view of the Committee, in need of major simplification.



## CHAPTER 1

# Existing Marriage Procedures

### Introduction

- 1.1 The law relating to the formalities for and registration of marriages is contained in a series of statutes dating from 1844. Persons can get married either by a religious ceremony (in this discussion paper called “a religious marriage”) which is recognised under civil law as having legal effect or by a civil ceremony before a civil registrar (in this discussion paper called “a civil marriage”). The number of civil marriages as a percentage of the total number of marriages has continuously grown over the years. Thus in 1926 6.1% of marriages were in registry offices. By 1981 that had grown to 12%. By 1996 it was up to 24%.
- 1.2 In considering the formal validity of a marriage a number of factors come into play. These include the location of the marriage, preliminary requirements which must be fulfilled, the authority of those carrying out the marriage ceremony, the period for which an authorisation to marry is valid, the form of the ceremony and the hours within which the marriage may be conducted. While these are common factors the current law imposes a plethora of different requirements on different churches and religions and we set out below an analysis of the differing rules which apply as between the different churches and religions.
- 1.3 Throughout this discussion paper for ease of reference we refer to the Roman Catholic Church as the Catholic Church. This does not imply that either term is theologically or otherwise more correct than the other . The Presbyterian Churches refer to the Presbyterian Church in Ireland, the Remonstrant Synod of Ulster, the Presbytery of Antrim and the Reformed Presbyterian Synod of Ireland.

### Location Requirements

- 1.4 In relation to the registration of places where marriages may be solemnised different rules apply depending on the relevant denomination concerned:—
  - (a) In the case of the Catholic Church, the Society of Friends and the Jewish Congregation there are no requirements relating to the registration of buildings. The universal law of the Catholic Church requires that Catholics normally must marry in a consecrated church, normally in the parish church. If a marriage is to be conducted in a church other than the parish church the relevant bishop’s permission is required. Similarly, if the parties wish to have a marriage celebrated in a place other than a consecrated church (eg if one of the persons is in prison or in hospital) permission must be sought from the relevant bishop.
  - (b) In the case of the Church of Ireland, the licensing of a church as a place of marriage is by the bishop of the diocese within his diocese subject to the approval of the Secretary

of State in succession to the former Governor of Northern Ireland. Church of Ireland churches which existed before August 1870 (when the Church of Ireland was disestablished) do not require to be registered. In the case of the Church of Ireland no fee is payable in respect of such licensing

- (c) In the case of Presbyterian Churches, a church may be registered by completion of a certificate in duplicate by a licensing minister in the presbytery in which the church is situated. A registration fee and the expenses of advertising the registration in the Belfast Gazette and a local newspaper are payable by the Church.
- (d) In the case of the Methodist, Baptist and Congregational Churches and other denominations entitled to hold marriage registers, registration of the building is effective on completion of a certificate by the trustees, owners or officiating minister stating that the building is used as a place of public worship and a certificate signed by ten householders stating that the building is used by them as their usual place of worship and countersigned by the trustees, owners or officiating minister. The building must be a *separate* building. A registration fee and the cost of advertising the registration in the Belfast Gazette and in a local newspaper are payable by the Church.
- (e) In the case of other denomination and religions not entitled to hold marriage registers, registration of the building is effective on completion of a certificate in duplicate signed by ten householders stating that such building is used by them as their usual place of public worship and countersigned by the proprietor or trustee of the building. The building must be a *separate* building. A registration fee and the cost of advertising the registration in the Belfast Gazette and a local newspaper are payable by the relevant Church.
- (f) In the case of civil marriages a marriage is authorised in the office of the local registrar. There is a registration office attached to each of the 26 district councils in Northern Ireland.
- (g) Under the Marriages (Registration of Buildings) Act (Northern Ireland) 1967 the Registrar General may on the application of the Secretary of State for Defence register any naval, military or airforce chapel for the solemnisation of marriages therein according to the rights of the various denominations in cases where at least one of the parties has a service qualification within the meaning of the Act.

### **Procedural Preliminary Requirements**

- 1.5 The procedural requirements under existing law are complex and vary depending on the religious body concerned.

## **The Church of Ireland**

- 1.6 Marriages may take place by licence, special licence, banns or registrar's certificate. In the case of marriage by *licence* a licence is available from a Church of Ireland licenser of marriages (nominated for that purpose by the bishop) for a marriage in the licenser's district. Certain conditions must be fulfilled:—
- (i) one or both parties must be a member of the Church of Ireland or other Protestant Episcopal Church;
  - (ii) one of parties must have lived for at least seven days within the licenser's district immediately before giving notice of the intended marriage;
  - (iii) notice of intended marriage must be given to the licenser seven days before the grant of licence;
  - (iv) immediately before the grant of the licence one of the parties must make an oath or declaration which includes a clause to the effect that one of them has lived for the past fourteen days within the district attached to the church in which they intended to marry. (The church must be within the licenser's district).
- 1.7 In the case of marriage by *special licence*, provided one of the parties is a member of the Church of Ireland or other Protestant Episcopal Church the bishop of the diocese may grant a special licence which authorises the marriage to take place at any time or place within the bishop's diocese.
- 1.8 In the case of a marriage by *banns* both parties must be members of the Church of Ireland or other Protestant Episcopal Church. The banns must be published in the church of the parish in which the parties live and if they live in different parishes banns must be published in both parishes. Seven days notice to the minister(s) is required and publication must be made on three Sundays or feast days before the date of the marriage and a marriage ceremony must take place in the church or one of the churches in which the banns have been published.
- 1.9 When one or both parties are members of the Church of Ireland a *registrar's certificate* (or certificates if they live in different registration districts) may be obtained authorising marriage in a church. Details of the procedure are set out below in the context of registrar's certificates (see para 1.18 infra). Where the registrar's certificate procedure is adopted in the case of Church of Ireland marriages one of the parties must have lived for fourteen days before the marriage within the registrar's district attached to the church in which the parties intend to marry.

## **The Catholic Church**

- 1.10 The procedures for marriages according to the rites and ceremonies of that church where both parties are Catholic is in general regulated by the laws of that church. Under statute

bishops may nominate persons to issue licences for marriages. Where one only of the parties is Catholic notice must be given to the licenser seven days before the issue of the licence and he must send copies of the notice to the clergyman of the place of worship which each party regularly attends. In the case of a marriage between a Catholic and a non-Catholic a registrar's certificate may authorise a marriage in a Catholic church. Normally the officiating priest ensures that a certificate is completed and signed by all parties after the marriage ceremony and forwarded to the district registrar who enters the details in the marriage register.

- 1.11 For the last fifteen years or so the Catholic Church has required the parties to give three months notice of their intended marriage, any abridgement of time requiring the bishop's approval. This period is to enable proper deliberation before marriage, to enable pastoral counselling to be provided and to allow for preliminary investigations to ensure that the marriage will be regular. Before the marriage will be solemnised the parties must confirm their freedom to marry and the priest must be satisfied that the parties understand the situation.
- 1.12 While the publication of banns is theoretically possible the system of banns is now obsolete in the Catholic Church.

### **The Presbyterian Churches**

- 1.13 In the case of marriages in the Presbyterian discipline, marriages may take place by licence, special licence or banns. No provision is made for marriage by registrar's certificate.
- 1.14 In the case of a marriage by *licence*, a licence authorising marriage in a church within the presbytery may be obtained from a licensing minister appointed by the presbytery provided that one or both parties are Presbyterian. Each presbytery may with the approval of the Secretary of State appoint ministers to grant licences where one or both parties are Presbyterians. Certain conditions must be fulfilled before the issue of a licence:—
  - (i) one party must give notice of the marriage to the Presbyterian minister of the congregation of which he or she has been a member for the past month;
  - (ii) the minister must issue a certificate confirming that notice was given and the certificate must be produced to the licensing minister;
  - (iii) seven days must elapse after receipt of the certificate before the licensing minister may issue the licence; and
  - (iv) immediately before the grant of the licence the same party must make an oath or declaration verifying that one of the parties has lived for the past fifteen days within the presbytery.

- 1.15 In the case of a marriage by *special licence*, a special licence may be granted by the moderator of one of the appropriate governing bodies of the church to which one or both of the parties belong.
- 1.16 In the case of the marriage by *banns*, banns may be published if both parties are Presbyterians in the presence of the congregation of which they are members but if the parties are members of different congregations banns must be published in each of the churches. Six days notice to the minister is required and publication must be made on three Sundays before the marriage which must take place in the church or one of the churches in which the banns have been published. Banns are almost, if not completely, obsolete in the Presbyterian Churches.

### **Methodist, Baptist and Congregationalist Churches, Society of Friends and the Jewish Congregation**

- 1.17 Marriage may take place by registrar's licence, registrar's certificate or special licence. Details relating to the registrar's licence and certificate are set out below (see para 1.18 *infra*). In the case of marriage by *special licence*, the President of the Association of Baptist Churches in Ireland, the Secretary of the Conference of the Methodists in Ireland and the Chairman of the Congregational Union of Ireland may issue special licences. The Clerk of the Yearly Meeting of the Society of Friends is also empowered to issue special licences provided that one or both of the parties are members of the same denomination as the person granting the special licence. Marriages by special licence may be celebrated at any time or place. In the case of marriages according to the practices of the Society of Friends, marriages may be by registrar's certificate or special licence. No provision is made for marriage by registrar's licence or any other licence. Marriages according to the Jewish form are governed by the same principles as marriages according to the practices of the Society of Friends with the exception of the special licence facility.

### **Registrar's Licences and Certificates**

- 1.18 A *registrar's licence* may authorise a marriage in the registrar's office or in a church or other building registered for marriages in the registration district provided that at least one of the parties lives in that district. If both parties live in the same registrar's district one party must have lived there for at least fifteen days and the other for at least seven days immediately before notice is given to the registrar of that district. Notice may be given by either party. If parties live in different districts notice must be given to the registrar of each district and both parties must still live in the respective districts for fifteen days immediately before giving notice. The registrar within whose district the marriage is to take place must have received a certificate from the registrar of the other district before he issues his licence. The registrar may send copies of the notice to the minister of the place of worship usually attended by the couple and to the minister of the church where the marriage is to take place. The registrar, seven clear days after the giving of notice and after administering an oath or declaration to one of the parties, may issue the licence. The oath or declaration includes a clause to the

effect that one of the parties has lived within the district in which they intend to marry for fifteen days immediately before the grant of the licence.

- 1.19 A *registrar's certificate* may authorise a marriage in his office or in a church or other registered building in the registration district provided that at least one of the parties lives in that district. If the two parties live in the same registration district they must have lived there for at least seven days immediately before notice is given to the registrar in that district. Notice may be given by either party. If the parties live in different districts notice must be given to the registrar of each district. Both parties must have lived in their respective districts for at least seven days immediately beforehand. The registrar may send copies of the notice to the minister of the place of worship usually attended by the couple and to the minister of the church where the marriage is to be held. After twenty-one days from the date that notice was given the registrar may issue his certificate. Where notice is given in different districts a certificate must be issued by each registrar.

### **Registrar General's Licences**

- 1.20 Under section 4 of the Marriage Act 1983 the Registrar General may issue a licence allowing a marriage between a couple one of whom is either housebound or detained in prison or a patient detained under the Mental Health (Northern Ireland) Order 1986 to be solemnised at the residence of the person who is housebound or detained. Notice of the marriage must be given by one of the parties to the registrar of the district in which the marriage is to be solemnised. If the parties live in different districts notice must be given to the registrar of each district. A Registrar General's licence cannot be issued (a) for marriages according to the rights of the Catholic Church between two persons professing the Catholic religion, (b) marriages according to the customs of the Jews between persons professing the Jewish religion, or (c) marriages according to the customs of the Society of Friends.

### **Celebrants**

- 1.21 During the Middle Ages a marriage contracted by words of present intention (a contract *per verba de praesenti*) was valid at common law. Either party could compel a subsequent solemnisation in church (*in facie ecclesiae*). Whether or not such a solemnisation ensured the couple could not be punished for fornication or a party would be guilty of adultery if he or she chose to cohabit with another person is unclear. This was the law of the church courts and if the question of the validity of a marriage arose in an action in the temporal courts the bishop's certificate would be accepted as conclusive. There is no doubt that the common law treated the issue of an informal marriage as legitimate.
- 1.22 The canon law of the Catholic Church remained the same on this point until the Council of Trent in 1561 when the Tametsi Decree required the presence of a priest to validate the marriage. In consequence of England's break with Rome that decree had no effect in England, so that the previous law continued to apply until Lord Hardwicke's Marriage Act



of 1753 which required all marriages (save those of Quakers and Jews) to be solemnised in a parish church or chapel according to the rites of the Church of England. That Act, however, did not apply in Ireland.

- 1.23 In the much criticised decision in **R v Millis** (1843) 8 ER 844 the House of Lords had to consider the question of the validity of a marriage conducted in Ireland by a Presbyterian minister. The male party to the marriage later married another woman in a parish church in England and on his return to Ireland was prosecuted for bigamy. The House of Lords upheld the decision of the lower court which had acquitted him on the ground that his first marriage had been invalid. The Lords hearing the appeal were equally divided on the issue and it was for this reason that the decision of the court below was upheld. The view which prevailed was that a marriage celebrated in Ireland by a Presbyterian minister (who was not an episcopally ordained priest) according to the rites of the Presbyterian Church in Ireland was invalid. The rule that no common law marriage is valid without the intervention of an episcopally ordained priest is almost certainly without historical justification and the majority of canonists and legal historians regard the decision as wrong.
- 1.24 The result of the ruling led to the enactment of the Marriages (Ireland) Act 1844 which regularised marriages conducted by non-episcopally ordained ministers. Section 3 of the Act expressly provided that nothing in the Act affected marriages by Catholic priests and Catholic marriages could be conducted in the same manner and subject to similar limitations as applied up until then.
- 1.25 The effect of the rule in **R v Millis** is that marriages conducted by Catholic clergymen as episcopally ordained priests are valid at common law. Even if an ordained priest is no longer in communion with the Catholic Church marriages conducted by him are valid at common law.
- 1.26 It was held in **Ussher v Ussher** [1912] 2 IR 445 that a marriage conducted in a private house by a Catholic priest was valid at common law even though it was not in accordance with the Catholic rite.
- 1.27 The authority of the clergy of other churches and denominations is now governed by the statutory provisions in miscellaneous Marriage Acts since 1844 onwards.
- 1.28 Under current requirements normally authorised celebrants must be in charge of a congregation meeting regularly for worship within a building which has been licensed or registered for the solemnisation of marriages. Authorised celebrants fall into various categories:—
- (a) licensers of marriage appointed by bishops of the Church of Ireland or licensing ministers nominated by presbyteries of the Presbyterian Churches and approved by the Secretary of State. These minister licensers are responsible for issuing licences within

the Church of Ireland or Presbyterian Churches giving authority for the solemnisation of marriage.

- (b) all ministers who have been appointed within the Church of Ireland or Presbyterian Churches may take notice of marriage. On receipt of a licence issued by a licenser of marriage or licensing minister they may solemnise the marriage and effect the registration by having the marriage registers completed (Licensers of marriage or licensing ministers may also take notice of, solemnise and register marriages);
- (c) ministers ordained or appointed within other denominations may on receipt of an authority issued by a civil registrar solemnise and register marriages. The marriage registers issued must be held in secure accommodation and there must be at least ten householders in the congregation;
- (d) persons recognised within a congregation as a pastor may solemnise a marriage in the presence of a civil registrar who effects the registration. There must be at least ten householders in the congregation and the church building must be registered for the solemnisation of marriages and must be a separate building (ie with a separate entrance and not being part of another building or room in a house). Once in place the approved celebrant remains there until he or the congregation decides otherwise. Neither the Registrar General nor the local registrar has any power over him.

#### **Period of Validity of Notice**

- 1.29 The authority for a marriage has validity from the date of issue up to a period of three months from the date on which notice is given (see section 25 of the Marriages (Ireland) Act 1844).

#### **Statutory Wording in Marriage Ceremony**

- 1.30 There is no prescribed form of marriage ceremony but statutory wording is prescribed for use in certain cases by section 27 of the Marriages (Ireland) Act 1844. By that section each of the parties is required to declare:—

"I do solemnly declare that I know not of any unlawful impediment why I, AB, may not be joined in matrimony to CD."

And each of the parties shall say to the other:—

"I call upon these persons here present to witness that I, AB, do take CD to be my lawful wedded wife (or husband)."

These words are used in civil marriages and must also be used in the case of marriages in buildings registered under the statutory conditions prescribed in the 1844 Act. They are thus

not required for example in the case of Catholic, Church of Ireland and Presbyterian marriages. Two or more credible witnesses must be present besides the officiating minister and the doors of the place of worship must be open.

### **Hours and Days of Marriage**

- 1.31 In the case of a marriage in a registered building every marriage shall be solemnised between the hours of 8.00 am and 6.00 pm. In the case of civil marriages they cannot take place on Sunday.

### **Registration of Marriages**

- 1.32 In the case of a Catholic marriage, immediately after the solemnisation of the marriage the parties, witnesses and celebrant complete a certificate giving details for registration and this is sent or delivered to the registrar who registers it by copying the details into the register. In the case of marriages in Protestant churches under special licence the same procedure is adopted save that the certificate is sent to the registrar through the Registrar General.
- 1.33 In the case of a marriage in Church of Ireland, Presbyterian, Methodist, Baptist and Congregationalist churches and denominations with marriage registers these denominations have duplicate marriage registers. The solemniser or registering officer registers the event and immediately afterwards the parties, witnesses and solemniser sign each register. Quarterly returns must be made to the Registrar General. When the registers are full one is lodged with the registrar of marriages for the district.
- 1.34 In the case of denominations and religions without marriage registers marriages cannot be solemnised without the presence of the registrar and the registrar registers the marriage in his or her register, the parties and the witnesses signing the register as well as the registrar.
- 1.35 In the case of marriages according to the practices of the Society of Friends where the marriage is by special licence registration is effected in the same manner as referred to at para 1.32 supra. In the case of other marriages according to the practices of the Society of Friends registration is as in the case of other Protestant denominations with marriage registers.
- 1.36 In the case of Jewish marriages the marriages are registered in duplicate registers by the Secretary of the Synagogue to which the husband belongs, the parties, witnesses and Secretary signing the register. When the register is full one is lodged with the registrar in Belfast where the only Synagogue in Northern Ireland is located.



## CHAPTER 2

# Capacity to Marry

### Age

- 2.1 The age requirements are set out in the Marriage Act (Northern Ireland) 1951, the Marriage Act (Northern Ireland) 1954 and the Children (Northern Ireland) Order 1995. Any marriage between persons under 16 is void. Sections 1 and 2 of the 1954 Act set out the law relating to consent to marriages of minors and rules for dispensing with that consent. The method of obtaining consent from specified persons is set out in the Schedule to that Act as amended by Article 10 of Schedule 9 to the Children (Northern Ireland) Order 1995.

### Kindred and Affinity Relationships

- 2.2 It is a requirement of a valid marriage that the parties should not be prohibited from marrying each other by reason of kindred or affinity. The prohibited degrees of relationship are set out in Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984, as amended by Article 4 of the Family Law (Northern Ireland) Order 1993. The Table found in Article 18 sets out three categories of relationship within which marriage is void or only permitted in certain defined circumstances.
- 2.3 Firstly, certain marriages are always void; if a man purports to marry someone related to him in the way listed in the first column of Part I of the Table, or, in the case of a woman, the second column of Part I, then that marriage is void. Those prohibited relationships are as follows:—

#### Article 18 Table — Part I

Mother	Father
Adoptive mother or former	Adoptive father or former
Adoptive mother	Adoptive father
Daughter	Son
Adoptive daughter or former	Adoptive son or former
Adoptive daughter	Adoptive son
Father's mother	Father's father
Mother's mother	Mother's father
Son's daughter	Son's son
Daughter's daughter	Daughter's son
Sister	Brother

Father's sister	Father's brother
Mother's sister	Mother's brother
Brother's daughter	Brother's son
Sister's daughter	Sister's son

2.4 Secondly, Article 18(2A) and (2B) of the 1984 Order, as amended, provides that marriages within the relationships mentioned in Part II of the Table are not void only by reason of affinity provided that both parties have reached the age of 21 at the time of the marriage and the younger party has not at any time before attaining the age of 18 been a child of the family in relation to the other party. For this purpose "a child of the family" is defined as a child who has lived in the same household as that (older) person and has been treated by that person as a child of the family. Operation of these provisions may involve an application to the court for a declaration that there is no impediment of affinity to the solemnisation of the marriage and Article 31A of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989, inserted by the 1993 Order, regulates such applications. If these requirements are met, but not otherwise, a man may validly marry a woman related to him in a way listed in the first column of the following extract from the Table and a woman may marry a man listed in the second column.

**Article 18 Table — Part II**

Daughter of former wife	Son of former husband
Former wife of father	Former husband of mother
Former wife of father's father	Former husband of father's mother
Former wife of mother's father	Former husband of mother's mother
Daughter of son of former wife	Son of son of former husband
Daughter of daughter of former wife	Son of daughter of former husband

2.5 Thirdly, certain marriages are void unless they come within exceptions set out in Article 4(5) of the 1993 Order, inserting new paragraphs (2C) and (2D) in Article 18 of the 1984 Order. The relationships affected by these provisions are as follows:—

**Article 18 Table — Part III**

Mother of former wife	Father of former husband
Former wife of son	Former husband of daughter

2.6 Exceptionally, such marriages are permitted where both parties have reached the age of 21 at the time of the marriage and other persons closely involved in the relationship have died, that is to say:—

- (a) in the case of a marriage between a man and the mother of a former wife of his, after the death of both the former wife and the father of the former wife;
- (b) in the case of a marriage between a man and the former wife of his son, after the death of both his son and the mother of his son;
- (c) in the case of a marriage between a woman and the father of a former husband of hers, after the death of both the former husband and the mother of the former husband;
- (d) in the case of a marriage between a woman and a former husband of her daughter, after the death of both her daughter and the father of her daughter.





## CHAPTER 3

# The Law and Practice in Other Jurisdictions

### Scotland

- 3.1 Following the Kilbrandon Report on the law of Scotland relating to the constitution of marriage sweeping changes were made to the law relating to marriages by the Marriage (Scotland) Act 1977.
- 3.2 The Scottish Act is a clearly formulated and well drafted piece of legislation which has produced a very workable and relatively easily administered system in relation to marriage procedures. It introduced a simplified universal preliminary procedure to marriage and subsequent registration of the details of marriage.
- 3.3 By section 3 each of the parties to a marriage intended to be solemnised in Scotland must submit to the registrar for the district in which the marriage is intended to be solemnised a prescribed notice of intention to marry (called “the marriage notice”), accompanied by a prescribed fee and various prescribed documents including a birth certificate. There is no residential requirement and persons from outside Scotland may give notice of intended marriage within Scotland.
- 3.4 On receipt of a *marriage notice* the district registrar enters prescribed particulars in the marriage notice book supplied for that purpose by the Registrar General. The particulars prescribed by the statute include the name of the parties and the proposed date of marriage. The entry is displayed until that date has elapsed. A person claiming that he may have reason to submit an objection to an intended marriage may inspect an entry in the marriage book and section 5 makes provision for how objections should be dealt with.
- 3.5 When a district registrar receives a marriage notice and is satisfied that there is no legal impediment to the marriage he completes a document called a *marriage schedule* in the prescribed form. He must not issue a marriage schedule within fourteen days of the date of receipt of a marriage notice in respect of the marriage unless he is authorised to issue it at a specified date approved by the Registrar General, and the marriage schedule must not be issued earlier than seven days before the date of the intended marriage unless that has been authorised by the Registrar General. A religious marriage may be solemnised only on the date and at the place specified in the marriage schedule. If for any reason the marriage cannot be solemnised on the date or at the place so specified and a new date or place is fixed for marriage the district registrar shall issue another marriage schedule in lieu of that already issued specifying the new date or place, or substitute or direct the approved celebrant to substitute that new date in place of the marriage schedule already issued.

3.6 Section 8 deals with the persons who may solemnise marriages. A marriage may be solemnised by and only by:

- (a) a person who is:
  - (i) a minister of the Church of Scotland; or
  - (ii) a minister, clergyman, pastor or priest of a religious body prescribed by regulations made by the Secretary of State or who is recognised by a religious body so prescribed as entitled to solemnise marriages on its behalf; or
  - (iii) registered under section 9; or
  - (iv) temporarily authorised under section 12 of the Act; or
- (b) a district registrar or assistant registrar appointed under section 17.

3.7 A religious body other than the Church of Scotland or a body prescribed by regulations may nominate any of its members over 21 who desire to be registered under the section as empowered to solemnise marriages. The Registrar General shall reject a nomination if in his opinion the nominating body is not a religious body, the marriage ceremony used by the body is not in an appropriate form or the nominee is not a fit and proper person to solemnise a marriage, or there are already sufficient members of the same religious body as the nominee to meet the needs of that body. A marriage ceremony is in an approved form if it includes and is not inconsistent with the matters referred to in section 9(3)(a) and (b). The marriage ceremony must include a declaration by the parties in the presence of each other, the celebrant and two witnesses that they accept each other as husband and wife, and a declaration by the celebrant after the declaration to that effect that the parties are then husband and wife.

3.8 The Registrar General determines the period during which the nominee shall be empowered to solemnise marriages being a period of not more than three years and may determine that the nominee shall be empowered to solemnise marriages only in such areas as the Registrar General may specify. The name of the nominee, the nominating body and such other particulars as the Registrar General deems appropriate shall be entered in a register which is open to public inspection. If the Registrar General rejects the nomination there is a procedure laid down for an appeal to the Secretary of State, the Court of Session dealing with any legal question whether a body is a religious body. Provision is also made for the removal of persons registered under section 9 from the register on the grounds set out in section 10 and again there is a prescribed appeal procedure. Bodies registered under section 9 are required to notify the Registrar General of any change in the constitution of the body, the death of an approved celebrant, the change of name, address or designation of an approved celebrant or the cessation of an approved celebrant from exercising the functions of a celebrant.

- 3.9 Section 12 empowers the Registrar General to grant a temporary written authorisation to a person over 21 to solemnise a marriage specified in the authorisation or marriages during such period as shall be specified in the authorisation.
- 3.10 *A religious marriage* shall not be solemnised by an approved celebrant:
- (a) unless the parties produce to him before the marriage ceremony a marriage schedule in respect of the marriage issued in accordance with the Act;
  - (b) both parties are present; and
  - (c) two witnesses professing to be 16 years of age and over are present as witnesses.
- 3.11 A marriage solemnised by an approved celebrant in contravention of paragraph (a) or (b) shall be void but it will not be void merely because the marriage schedule specifies a different date or place at which the marriage was solemnised. The celebrant must solemnise the marriage in accordance with the religious body's recognised form of ceremony.
- 3.12 After the solemnisation of the marriage the marriage schedule must be signed by the parties contracting the marriage, by both witnesses present there at and by the approved celebrant, and the parties to the marriage have the obligation of returning the marriage schedule to the district registrar by post or by personal delivery. On receipt of a duly signed marriage schedule the registrar shall cause the particulars as set forth in the marriage schedule to be registered. Provision is made for the eventuality of the loss or destruction of the marriage schedule.
- 3.13 If the schedule has not been returned within twenty-one days a notice may be sent by the district registrar to either of the parties requiring the return of the schedule. If a party fails to comply with such a notice the district registrar may require the party to attend in person.
- 3.14 In the case of *civil marriages* an authorised registrar shall solemnise a civil marriage in his registration office or, with the approval of the Registrar General, in the registration office of another authorised registrar. If either party is unable to attend the registrar's office the registrar may solemnise the marriage at any place in his district other than the registrar's office with the approval of Registrar General or at any place in any registrar's district in respect of which there is no authorised registrar. A person will only be considered unable to attend at the registrar's office by reason of serious illness or serious bodily injury and there must be good reason why the marriage cannot be delayed until the party is able to attend the registrar's office. An authorised registrar shall not solemnise a marriage within fourteen days of the date of receipt (as entered in the marriage notice book) of a marriage notice in respect of the marriage unless he has received a written request for the marriage to be solemnised earlier and the Registrar General approves. As in the case of a religious marriage a civil marriage shall not be solemnised unless the registrar has available to him at the time of the ceremony a marriage schedule in respect of the marriage. Both parties must be present and

two persons purporting to be over the age of 16 must be present as witnesses. The marriage schedule shall be signed by the parties contracting the marriage, by both witnesses present there at and by the authorised registrar who solemnised it. The registrar will then register particulars as set forth in the Marriage Schedule in the register of marriages kept by him.

- 3.15 Section 20 makes provision for the conducting of a second marriage ceremony in Scotland where the parties have already undergone a marriage ceremony outside the United Kingdom but are unable to prove that they are validly married to each in accordance with Scots law.
- 3.16 Section 24 sets out in clear and succinct form various offences committed in relation to irregularly conducted marriage ceremonies.
- 3.17 In February 1998 a consultation process started in Scotland seeking views of the public on possible changes to the law of Scotland relating to the places at which civil marriages may take place. Scotland currently offers a choice of some 250 offices with an authorised registrar and since couples seeking to be married in Scotland are not restricted to the office or offices in their areas of residence they currently have a fairly wide choice of venues as compared to Northern Ireland. The outcome of the consultation process was in favour of the principle of new primary legislation to authorise civil marriage outside registration offices and if legislation were introduced to give effect to that view Scotland would then follow the English approach.
- 3.18 In Scotland the freedom of choice of intending parties to a religious marriage enables marriages to be conducted in a wide range of locations including castles, in the open air, stately houses and so forth. It seems that the great majority of religious marriages in fact continue to be conducted in churches or religious buildings. The lack of a residence requirement has led to a significant number of people from outside Scotland arranging marriages there.
- 3.19 Gretna Green has remained a popular venue for civil marriages (and indeed a significant number of religious marriages take place there) and it appears that some 13% of Scottish civil marriages are conducted at Gretna Green. The continued attraction of Gretna Green owes more to its historical associations and its modern marketing as a marriage venue than it does to any continued provision peculiar to Scots law.
- 3.20 The age at which parties may marry in Scotland remains 16 as in Northern Ireland. There is, however, no requirement of parental consent (unlike the position in Northern Ireland and England and Wales). The Kilbrandon Report came out against the imposition of a requirement of parental consent and the 1977 Act followed that recommendation in section 1. There are still a number of young people who come from outside Scotland to get married there because of the absence of a requirement for parental consent though the numbers in that regard have fallen in recent years.

- 3.21 The rules relating to prohibited degrees of relationship are the same in Scotland as in Northern Ireland and are set out in section 2 of the Act.
- 3.22 The 1977 Act apparently works well in Scotland and has only required one statutory modification in 1980 substituting section 23A for section 23 of the 1977 Act (see the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980).

### **The Republic of Ireland**

- 3.23 The law of the Republic of Ireland relating to the formalities of marriage is largely similar to that prevailing in Northern Ireland. The two jurisdictions share a common Victorian legislative inheritance and the drawbacks arising from that legislation are common to both jurisdictions. There have been a number recent modifications in the marriage law in the Republic which are of some relevance.
- 3.24 Section 31 of the Family Law Act 1995 provides that a marriage solemnised after the commencement of the Act between persons either of whom is under the age of 18 is invalid. This applies to any marriage solemnised within the state irrespective of whether the spouses or either of them are or is ordinarily resident outside the Republic. Thus a marriage between a person domiciled in Northern Ireland under the age of 18 to a person in the Republic of Ireland would be invalid even if such a marriage would have been valid within Northern Ireland. The section also invalidates a marriage made outside the Republic of Ireland of a person or persons under 18 ordinarily resident in the Republic. It is an offence to knowingly solemnise a marriage which is invalid under the section. The court may on the application to it on that behalf by both of the parties to the intended marriage except the marriage from the provisions of section 31. The court shall not grant such an application unless the applicant shows that its grant is justified by serious reason and it is in the interests of the parties to the proposed marriage. Subject to that the application may be made informally.
- 3.25 Section 32 of the same Act introduced a three months preliminary notification requirement. The parties to an intended marriage must notify the registrar in writing of the intention to marry not less than three months prior to the date on which the marriage is solemnised unless an application is made to the court to except the parties from that requirement.
- 3.26 There appears to be no reported case law showing how the courts exercise their power in respect of persons under 18 to marry or in relation to application for abridgement of time. The former parental consent requirement has been removed and replaced by the requirement for court approval although presumably parents would have a legitimate interest to be considered in such an application.
- 3.27 The three months preliminary notice requirement has apparently not worked entirely satisfactorily and amending legislation was required in 1997 to validate certain marriages which were technically invalid because of notification problems. There is still no provision

which would save a marriage where notice was a few days late. The three months notification requirement reflects the Catholic Church's practice of requiring three months notification in advance of marriage. While the relevant bishop within the Catholic Church has powers to abridge time in special circumstances the statutory requirements are less flexible. The legislation was introduced at the time when divorce legislation was being introduced into the Republic and the policy of the legislation appears to have been to try to underpin marriage and to encourage due deliberation by parties proposing to marry.

- 3.28 The percentage of civil marriages is around 10% of the total which is small by Northern Ireland standards (24% in 1996) and even smaller by English standards (around 50%). A private member's Bill in 1998 introduced in the Seanad to allow civil marriages to be conducted outside a registrar's office was not supported by the Government which considered the best way forward was a comprehensive review of legislation and operations and resources. To date such a review has not been initiated.

### **England and Wales**

- 3.29 The forms and ceremonies of marriage necessary for the effect of celebration of a valid marriage in England and Wales are set out in the Marriage Act 1949 with various amending statutes thereafter (together called the "Marriage Acts").
- 3.30 The Marriage Acts require that every marriage shall be by banns, licence, special licence, common licence, superintendent registrar's certificate or a naval officer's certificate. Except in the case of a marriage according to the usages of Jews or Society of Friends and of a marriage under special licence, it should be solemnised in a church or chapel of the Church of England in which marriages may lawfully be solemnised, or in a superintendent registrar's office or in a non conformist church or building duly registered for the solemnisation of marriages, or in a naval, military or airforce chapel.
- 3.31 A marriage according to the rites of the *Church of England* may be solemnised after the publication of *banns*, by a *special licence* granted by the Archbishop of Canterbury or his proper officers, or on the authority of a *common licence* or on the authority of a *superintendent registrar's certificate*. A common licence dispensing with the necessity for the publication of banns may be granted in each diocese by one of a number of specified office holders in the Church of England.
- 3.32 A marriage may lawfully be solemnised according to the rites of the Church of England in any parish church and in any church, chapel or place authorised or licensed by the bishop of the diocese for the solemnisation of marriage. A special licence may authorise the marriage to be solemnised in any place (including a private house). A Church of England marriage must be solemnised within three months after completion of the publication of banns or the entry of the notice of marriage in the marriage notice book.

- 3.33 A marriage in a registered building, in the office of a superintendent registrar, or according to the usages of Jews or Society of Friends may be solemnised on the authority of a *superintendent registrar's certificate*. A marriage on the authority of the superintendent registrar's certificate may be by *licence* or *without licence*. The difference between a marriage by licence and a marriage by certificate without licence lies in the different residence requirements.
- 3.34 A notice of marriage *without licence* must state the name and surname, marital status, occupation and place of residence of each of the persons to be married and the period not being less than seven days during which each has resided in his or her place of residence and the church or other building in which the marriage is to be solemnised. If the registered building, or if the case may be the parish church or authorised chapel, in which the marriage is to be solemnised is not in the registration district within which either of the parties reside, but is the usual place of worship of one or both of the parties, this fact must be stated in the notice and, if the building, church or chapel is the usual place of worship of only one of the parties, the name of the party must also be stated in the marriage notice.
- 3.35 Where a marriage is intended to be solemnised under *certificate with licence* then, whether the parties reside in the same or different registration districts, notice of the marriage in the prescribed form must be given to the superintendent registrar of the district in which one of them has resided for a period of fifteen days immediately before the giving of the notice. It is not required that notice should be given to more than one superintendent registrar. The notice must contain the same facts as are to be contained in a notice of marriage without licence, but the period to be stated is the period not being less than fifteen days during which one of the parties has resided in the district in which notice is given.
- 3.36 All notices of marriage have to be filed with the superintendent registrar and their particulars entered into the *marriage notice book* which is open for inspection free of charge at reasonable hours. Provision is made for the lodging of objections to marriage notices.
- 3.37 If, in the case of a marriage intended to be solemnised in a registered building for which an authorised person has been appointed, the superintendent registrar has not received notice requiring the presence of a registrar at the marriage he must, when issuing the certificate, with or without licence, give one of the persons to be married printed instructions in the prescribed form for the due solemnisation of the marriage.
- 3.38 A marriage may be solemnised on the authority of a superintendent registrar's certificate, whether by licence or without licence, at any time within three calendar months from the day on which the notice of the marriage was entered in the marriage notice book. If the marriage is not solemnised within this period then the notice and certificate granted with or without licence are void and no person may solemnise the marriage on their authority.

- 3.39 Any proprietor or trustee of a separate building which has been certified as required by law as a place of religious worship (ie under the Places of Worship Registration Act 1855) may apply to the superintendent registrar for the district in which the building is situated for the building to be registered for the solemnisation of marriages. The applicant must deliver a certificate signed in duplicate by at least twenty householders stating that the building is used by them as a usual place of public worship and that they desire that it should be so registered. On receipt of the certificates the superintendent registrar must send them both to the Registrar General who must register the building in a book kept for those purposes. Such registration can be cancelled. On cancellation the Registrar General must inform the superintendent registrar who must enter the fact and the date in the books provided for registration of the building. After cancellation of the registration no marriage may be lawfully solemnised in that building unless it is re-registered.
- 3.40 Generally where a notice of marriage and certificate issued by a superintendent registrar state that a marriage between the persons named is intended to be solemnised in a registered building, the marriage may be solemnised according to the forms and ceremonies that the persons see fit to adopt. However, each of the persons contracting the marriage must make the prescribed declarations which are in similar form to those prescribed in Northern Ireland. No marriage may be solemnised in any registered building without the consent of the minister or one of the trustees, owners, deacons or managers of the building, or in the case of a Catholic church without the consent of the officiating minister.
- 3.41 A marriage in a registered building may be solemnised with open doors between 8.00am and 6.00 pm in the presence of two or more witnesses and in the presence either of a registrar of the district in which the building is registered, or in the presence of an authorised person. A marriage may only be solemnised in a registered building without the presence of a registrar if duplicate registered books have been supplied by the Registrar General to an authorised person or the trustees or governing body of the building.
- 3.42 The appointment of an authorised person may be made by the trustees or governing body of the building who must certify the name and address of the authorised person to the Registrar General and to the superintendent registrar of the district in which the building is situated within one day from the day he is authorised. The exercise of this power of appointment is subject to certain time restrictions post registration of the building (usually one year).
- 3.43 By the Marriages (Approved Premises) Regulations 1995 the Secretary of State has made provision for the approval by local authorities of premises for the solemnisation of civil marriages. The range of matters dealt with by the regulations are extensive and include such matters as the kind of premises in respect of which approvals may be granted, procedure in relation to applications for approval, procedure and circumstances relating to revocation of approval etc.



- 3.44 Any marriage in approved premises must be solemnised in the presence of two witnesses, the superintendent registrar and a registrar of the registration district in which the premises are situated. The persons contracting such a marriage must make the declaration and use the form of words as used in marriages in registered buildings.
- 3.45 In England and Wales there is a distinction between *registrars* and *superintendent registrars*. The former are responsible for registering births, deaths and marriages (except those married by Church of England rite or marriages solemnised in other denominations where an authorised person has been appointed). The latter are responsible for preliminaries to marriage, solemnisation of civil marriages and maintaining records. Both the superintendent registrar and a registrar must attend civil marriages, one to carry out the ceremony and the other to register the particulars. No such distinction exists in Northern Ireland.
- 3.46 In England and Wales the new legislation relating to civil marriage venues appears to be working satisfactorily. To date 2000 buildings (mainly hotels) have been approved. The increase in the number of civil marriage venues has led to some increase in registration staff.
- 3.47 The law of England and Wales regarding age and other relationship requirements in respect of marriage is similar to that applicable in Northern Ireland.

#### **Channel Islands — Jersey**

- 3.48 The law is regulated by the Loi sur l'Etat Civil 1842. The Act of the States of Jersey draws its inspiration from the Act for Marriages in England and an Act for registering deaths, births and marriages in England passed during the reign of William IV. Jersey law distinguishes between marriages in the Church of England and other religious marriages.
- 3.49 Where the parties are members of the Church of England an Anglican marriage conducted in accordance with the Anglican rite will be valid if conducted after publication of banns or on the production of a registrar's certificate. The celebrant registers the particulars of the marriage. The superintendent registrar's licence is not valid for the purposes of a marriage in a Church of England church.
- 3.50 In order to marry in the offices of the superintendent registrar by civil marriage, or in a non Anglican church by a religious marriage, a licence must be obtained from the superintendent registrar. The notice of marriage (avis) may be submitted in person or by post not more than three months before the date of the proposed marriage and not less than ten days before the date of marriage. Once completed the notice of marriage form must be signed by one of the parties to the marriage and accompanied by a number of documents such as the birth certificates of the parties, the death certificate of a deceased spouse or a decree absolute in the case of a divorced party. Minors (16-20 under Jersey law) must obtain the written consent of their parents or guardians before the superintendent registrar's licence can be issued.

- 3.51 On receipt of the notice of marriage form the superintendent registrar having satisfied himself of the authenticity of the supporting documents copies the details into the *Book of Announcements of Marriages*. The supporting documents together with the receipt for the booking charge will be returned to the applicants by registered post with a marriage appointment slip advising the parties to the marriage when they must present themselves in person at the register office to complete formalities and to collect their marriage licence. This will be not less than three days before the date of marriage. The names of both parties to the marriage are then posted on a notice board in the office of the superintendent registrar where they must remain for a minimum of seven clear days. The signed notice of marriage is valid for a period of three months.
- 3.52 No less than three working days before the date of the marriage one of the parties to the marriage must appear in person at the office of the superintendent registrar to complete formalities and to be issued with the marriage licence. They will at that time be required to produce the originals of the supporting documents that they had to provide when submitting their notice of marriage form. They are required to sign a solemn declaration after which they will be issued with the marriage licence on payment of the fee. There is no requirement in the case of any marriage that the parties to the marriage have resided in the parish in which the marriage is to be celebrated.
- 3.53 Buildings (other than those belonging to the Church of England) in which marriages are to be solemnised must be registered and the registration requirements are largely the same as in England and Wales. The marriage ceremony in such buildings must include the declarations required in such buildings in England and Wales. Special rules are made for Quakers and Jews as in England.
- 3.54 Those wishing to have a civil marriage may marry between 6.00 am and 3.00 pm in the office of the superintendent registrar in the presence of the registrar of the parish and two witnesses making the same formal declaration.

### **Guernsey**

- 3.55 The law in Guernsey is not materially different from the law in England and Wales.

## **Criticisms of the Existing Law and Framework for Reform**

### **Criticisms of the Law**

- 4.1 Every one has a human right to marry and Article 12 of the European Convention on Human Rights underwrites this right by providing that —

“Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercise of this right.”

Article 14 of the Convention provides that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as religion. The convention will be incorporated into domestic law by virtue of the Human Rights Act 1998 from a date to be appointed (probably Autumn 2000).

- 4.2 The existing law of Northern Ireland relating to marriage does protect the individual’s right to marry and the state has a margin of appreciation as to the way in which individuals may exercise this right. The provision under Northern Ireland law of the right to a civil marriage or a religious marriage would seem to preclude any argument arising that the law discriminates against persons on the grounds of religion. The law, however, does confer rights on certain denominations which are not conferred on others (eg the right to issue special licences) and frees some from obligations imposed on others.

- 4.3 As the synopsis in Chapter 2 makes clear, the current law is exceedingly complex, detailed and prescriptive in its provisions. While the implications of marriage are serious and the need for regularity is obvious, this is a field of law which should be clear, easy for all to understand and simple to administer. While individual churches are working the current complex law remarkably well and efficiently and no doubt would continue to do so if it remains unmodified, it is clear that there are aspects of the current law which give rise to concern and practical difficulties. A number of aspects of the current law have, in particular, been identified as currently insupportable. Thus the antiquated rules relating to residential requirements which must be fulfilled before the issue of a certificate or licence can no longer be justified and there is anecdotal evidence that the rules are currently being bent to enable parties to apparently fulfil the residential requirements. Rules relating to the registration of buildings impose impractical and unnecessary difficulties in relation to the design and lay out of buildings in view of the requirement that registered buildings be “separate”. The plethora of different preliminary requirements in respect of licences, certificates, special licences and banns with differing requirements depending on membership of different churches cannot be justified on administrative or practicable grounds. The differences in respect of preliminaries serve no practicable purpose in modern circumstances. The limited

facilities for civil marriages, particularly when combined with the current residential requirements, unduly limit the choice of individuals as to the place in which civil marriages may take place.

- 4.4 Once it is recognised that the current law requires updating and a general overhaul to reflect modern conditions it is clear that any new legislation must seek to replace the old body of law with a non-discriminatory system that reflects current expectations and modern developments.

### **Guiding Principles for Reform**

- 4.5 In looking at any framework for new legislation it is necessary to determine the underlying philosophy which should underpin any new legislative framework.

#### **(a) The continued validity of religious as well as civil marriages**

Under the current law the state recognises the validity of both religious and civil marriages. This country has not adopted the secularist approach adopted in countries such as France in which it is a civil marriage alone which by law gives rise to the creation of the marriage state, individuals having the option of a separate religious ceremony which attracts no state recognition. The universal requirement of a civil marriage has administrative and legal attractions for it means that only one form of ceremony would have legal status and only one category of authorised celebrant would be recognised. However, we detect no widespread desire within the community to go down that route. The role which the churches have played in the past within the community, and in particular in the context of marriage, continues to be regarded as central in Northern Ireland life and we consider that the law should continue to recognise the validity of both religious and civil weddings as giving rise to the legal status of marriage. There would, moreover, be substantial resource implications arising from a change to a system such as that operating in countries such as France. We consider that any new legislation must recognise the central principle of the continued validity of religious as well as civil marriages.

#### **(b) Equality of treatment of all religions**

Equal and fair treatment of all irrespective of any particular religious belief or practice is imperative for all legislation. This is particularly so in the Northern Ireland context. Thus any new legislation must ensure that so far as possible the adherence of the various Christian and non-Christian religious groupings are equally treated. Accordingly, it would not be possible to justify the conferring of a privileged position on any religious grouping and any new legislation must be framed so far as possible to ensure common rights and duties irrespective of religious affiliation. For this reason legislation must aim as far as possible to introduce a universally applicable and

effective system relating to matters which arise in relation to any marriage including rules relating to venues, preliminary procedural requirements, authorisation of celebrants, registration requirements and hours and forms of marriages. Any differential treatment must be objectively justified and necessary.

**(c) Minimal interference with existing freedoms**

As the law currently stands certain religious groupings enjoy historical freedoms which are not conferred on others. To impose new burdens or fetters on them would be to intrude on those current freedoms which could only be justified if it were manifest that those freedoms have resulted in undesirable consequences. Though the relationship between this principle and the principle of equal treatment of all religions would logically lead to the conclusion that all religions should have the same freedoms and privileges as the most favoured religion, at the moment differential treatment may be necessary and unavoidable to take account of the differences in church structures, organisations and internal discipline.

**(d) Equal treatment between those wishing to have a civil or religious marriage**

Just as there should be equality of treatment for those of differing religious views and practices inter se so the law should ensure that as far as possible those wishing to have a civil marriage should enjoy rights no less restrictive than those wishing to have a religious marriage. Any difference of treatment should be objectively justified and necessitated by the effect of differences between the two types of marriage.

**(e) Certainty, simplicity, transparency and ease of application**

The law should be so framed that it is easily understood by those undertaking marriage, by those conducting marriages and by those administering the law. Any new legislation must avoid uncertainty and be clearly worded. The consequences of procedural irregularity should be spelled out to avoid doubt and the circumstances in which marriages will be invalid and nulled because of procedural irregularity should be kept to the minimum to avoid calling marriages into question.

**(f) Cost effectiveness**

The state interest in the procedures of marriage is informed by the need to ensure the legal regularity of marriage ceremonies, to ensure the proper recording of marriage for future reference, to underpin the special status of marriage and to provide mechanisms for persons who do not wish to participate in religious marriages. The state's need to be involved in marriage procedures is restricted to those requirements. The cost of marriage procedures should be kept to a minimum and the system should be as cost effective as possible both in ease of the public purse and in ease of those undertaking

marriage. The cost and resource implications of any recommendation must accordingly be taken into account.

### **Models for Reform**

- 4.6 In Chapter 3 we reviewed the law applicable in Scotland, the Republic of Ireland, England and Wales and in the Channel Islands. The law in the Republic suffers from the draw-backs of the current law in Northern Ireland in terms of complexity and its reliance on largely nineteenth century legislation. It will be necessary to look at the changes in respect of age requirements and advance notification effected recently in the Republic. The law in England and Wales is only marginally less complex than in Northern Ireland and it does not provide an effective model for reform. The special position of the Church of England as the established church gives rise to special difficulties so far as the reform of English law is concerned. The law in Jersey draws its main inspiration from old English Acts. It is somewhat less complex and detailed than the law in either Northern Ireland or England and Wales but because of the special position of Anglican marriages in that jurisdiction it does not provide a persuasive model for reform.
- 4.7 On the other hand the law in Scotland represents a body of law which is the product of well considered law reform work and has proved to be successful and easily administered in practice. **The Committee provisionally conclude that the law in Scotland provides a model which should be carefully considered as a basis for reform of the Northern Ireland law.**
- 4.8 The Scottish Act expressly or impliedly covers the following issues which need to be addressed in any new legislation — age and relationship rules, marriage venues for civil and religious marriages, preliminary notification requirements, authorised celebrants, registration of marriages, forms of ceremony, criminal sanctions, cross-jurisdictional marriage requirements and rules relating to the consequences of procedural irregularity. It is necessary to consider each of those individual topics when formulating any recommendations for the future.

## CHAPTER 5

# Age and Relationship Rules

### Age

- 5.1 The current rules relating to age do not appear to be giving rise to any practical difficulties. The age at which parties marry has been tending to become older and fewer marriages between persons under the age of eighteen are occurring. With changes in attitudes to births outside marriage and the resultant reduction in pressure on young persons to marry to avoid this situation this trend is likely to continue.
- 5.2 The legislation in the Republic of Ireland raising the age at which a marriage may take place to eighteen (subject to the court's power to authorise marriages below that age) has been open to some criticism in that jurisdiction. The conferring on the court of a wholly undefined discretion to authorise marriage below that age introduces an element of uncertainty into the law. We are not persuaded that this legislation is a suitable model for reform.
- 5.3 There are persuasive arguments why the age of sixteen may be regarded as too low. Marriage represents an important step in life and it may seem strange that a person may enter into a contract of marriage when he or she is considered not to be competent to enter into most other contracts. Moreover where in England and Wales the age of consent is sixteen the age of consent to sexual relations for a girl in Northern Ireland is seventeen, though sexual intercourse with a wife of sixteen is not a criminal offence. On the other hand the marriage age of sixteen is deeply embedded in the law as it now stands and is the recognised age in other jurisdictions within the United Kingdom. It is highly desirable that each jurisdiction within the United Kingdom follows the same approach in this field.
- 5.4 **We tend to the view that the law in this regard has not been demonstrated to need reform but we welcome any views in relation to this aspect of marriage law.**

### Relationship Rules

- 5.5 The current rules in respect of the forbidden degrees of relationship appear to be working well and we are not aware of any pressure to change or extend the list of forbidden relationships. The Committee however welcomes any views on this issue.





## CHAPTER 6

# Marriage Venues

### Religious Marriage Venues

- 6.1 As part of the state's interest in the regularity of marriage up to now the state has maintained an interest in ensuring that the places where marriages are conducted are suitable. This state interest may also be informed by a perceived need to ensure that marriage locations have a sufficient degree of dignity to mark the solemnity of marriage as an institution and to ensure that marriages are conducted in places where the regularity of the celebration cannot be called into question. The state interest in marriage locations, however, is not complete. In the case of Catholic, Jewish and Quaker marriages the state leaves it to the religious bodies themselves to determine the appropriate location. In the case of the Church of Ireland, Presbyterian, Methodist, Baptist and Congregational Churches a system of special licence powers can dispense with the need to marry in a church. There are apparently some 200 to 300 special licences granted each year although in practice the number of religious marriages taking place in places other than churches would appear to be small. The existing building registration procedures are bureaucratic and impose inspection duties on the Royal Ulster Constabulary. Under existing law the Registrar General's Office must liaise with other agencies in relation to the registration of the buildings and is dependent upon the advice of those other agencies. The existing procedure which requires the lodging of a petition signed by a specified number of householders may be open to abuse since the Registrar General is not in a position to check the veracity of any such petition. In addition, existing laws give rise to cost differentials between different denominations. This runs contrary to the need for equality of treatment.
- 6.2 Having regard to the undesirable lack of harmony in relation to the rules relating to the registration and licensing of buildings in which marriages may be celebrated and to the potentially discriminatory effect of the lack of symmetry in existing rules **the Committee provisionally concludes that the introduction of a common system is desirable.** A choice thus must be made between opting for —
- (i) a system where registration of the building is unnecessary (thus universalising the Catholic, Jewish and Quaker systems);
  - (ii) a common system of registration effecting all religions and denominations equally and imposing common requirements and standards (thus taking away the present privileges enjoyed by the Catholic, Jewish and Quaker systems);
  - (iii) a common system which designates appropriate or inappropriate places in which marriages may take place but without requiring any registration system as such.

6.3 In favour of the abolition of a building registration requirement the following arguments may be marshalled:—

- (i) the lack of registration requirements applying to the Catholic Church, Jews and Quakers does not in itself result in any manifest problems;
- (ii) all things being equal, parties should be free to select the place where they wish to get married and the state's control of the place where they wish to get married may be a disproportionate interference with the citizens' freedom, since the state's interest can be secured by other and arguably less intrusive means (eg by regulating the celebrant rather than the location or designating appropriate or inappropriate places). Even if some control over marriage buildings is considered necessary in the interests of society other less rigid and intrusive means could be devised;
- (iii) under Scottish law there is no restriction placed in the case of religious marriages on the place of celebration and this does not appear to give rise to problems in practice. While in Scotland in theory religious marriages may be celebrated outside church buildings in practice 80% of such weddings in Scotland are celebrated in churches. This would tend to support the view that the abolition of registration requirements would not have any immediate significant effect on the practice of church weddings. As it is there has been a significant increase in civil marriages in Northern Ireland under the existing legislation.

6.4 In favour of retaining a registration system are the following arguments:—

- (i) once registered there can be no doubt or question about the status of the building (which might not be the case if unregistered buildings had to fulfil certain criteria);
- (ii) requiring marriages in a registered building avoids the potential use of premises or places which might demean the dignity of the marriage ceremony or call into question what is happening at the marriage;
- (iii) abolition of registration or church licensing procedures as presently enforced might give rise to a concentration of marriages in particular locations, particularly if residential requirements are changed;
- (iv) if there are no registration requirements in respect of buildings there may be pressure on the clergy to officiate at weddings in non-religious buildings. If the rules in relation to the premises in which civil marriages may be conducted are changed to follow the English model this might lead to increased pressure on the clergy to compete by agreeing to carry out marriages in non-religious buildings;
- (v) it may be noted that English law has retained building registration requirements.

- 6.5 Discussions with and submissions by the various churches who made representations to the sub-committee have indicated that with a few exceptions most of the churches consider that the individual churches should be free to regulate the venues at which religious marriages could be celebrated. At present the Committee sees considerable force in the arguments for sweeping away the existing church licensing and registration rules and adopting the Scottish approach which directs the focus on to the authorisation of the celebrant rather than the place of celebration. This would leave it to the ecclesiastical bodies and religions to determine the appropriate places in which marriages may take place. This would avoid the current problems raised by the requirements of the law that the premises should be separate, a requirement which has little current logic.
- 6.6 The Committee has considered whether as a compromise between a formalised registration system and a complete freedom on the part of the churches and religions to select marriage venues new legislation should designate buildings or places which might or might not be used for religious marriages. Thus, for example, legislation could provide that religious marriages should not take place in licensed premises or premises licensed for public entertainment. Alternatively, legislation might provide that religious marriages may only take place in churches, chapels, church buildings, mosques, synagogues, temples and premises regularly used for public worship. On balance the Committee would not favour that approach. Problems of definition would be likely to arise and may be contentious. There is no consistency within the Christian religion or between the Christian religion and non-Christian religions as to what type of building or place is appropriate for public worship or the conduct of religious ceremonies.
- 6.7 **The Committee provisionally recommend that the law should not prescribe the location in which religious marriages may be conducted.** If such a change in the law were effected the need to register naval, military or airforce chapels for the solemnisation of marriage would also disappear. We welcome views on this issue.

### **Civil Marriage Venues**

- 6.8 In the case of civil marriages at present the registrar may only marry parties at the registrar's office. The existing law in relation to the authorised places for civil marriages is unduly restrictive. It does appear that in Northern Ireland the places where civil marriages take place are in general somewhat more attractive than was the position in England before the deregulation in respect of the locations of civil marriages in that jurisdiction. Under the existing law, however, the marriage must take place in an office of the registrar. In some cases this will be the council chamber and on occasions this may not always be the preference of the parties. In some areas the facilities are particularly attractive and intending parties may wish to make use of such facilities but residential requirements may preclude this. The Registrar General considers that some 20% of those taking part in civil marriages have expressed dissatisfaction with the existing facilities. The Scottish model is somewhat less restrictive than that in Northern Ireland but even in that jurisdiction there has to be some

good reason for using premises other than the registrar's offices. Under section 18(3) of the Scottish Act if either of the parties to an intended civil marriage is unable to attend the registration office of an authorised registrar the authorised registrar may, subject to the provisions of the section and on reimbursement of any additional expenditure incurred by him, solemnise the marriage at any place in his registration district or with the approval of the Registrar General at any place in any registration district in respect of which there is no authorised registrar. However, the authorised registrar shall not solemnise a marriage at any such place unless application has been made to him by either of the parties to the intended marriage requesting him to solemnise the marriage at such a place and stating a reason why one of the parties is unable to attend a registration office. Subject to section 18(5) he must be satisfied on consideration of the application that the party is unable to attend a registration office by reason of serious illness or serious bodily injury, and that there is good reason why the marriage cannot be delayed until the party is able to attend a registration office. Under section 18(5) if the authorised registrar is not satisfied of those matters he shall consult the Registrar General who may direct him to solemnise the marriage in accordance with the application or to refuse so to solemnise it. In Northern Ireland under the Marriage Act 1983 marriages of homebound and detained persons may be solemnised at places where they reside.

- 6.9 In England and Wales a Government White Paper indicated that the Government had decided to deregulate the choice of buildings of civil marriages by enabling local authorities to designate places in which marriages might be celebrated. This was given statutory effect by Section 42A of the Marriage Act 1949 as amended by the Marriage Act 1994. The present criteria are set out in the Marriages (Approved Premises) Regulations 1995 (SI 1995 No 510).
- 6.10 In England and Wales an application for approval of premises for the solemnisation of a civil marriage is made in writing setting out specified information together with a plan of the premises identifying the room or rooms in which marriages will be solemnised if approval is granted. A fee is payable in respect of such an application. The application is made to the local authority for the area in which the premises are situated and an inspection of the premises must be carried out. Notice of the application is advertised and an objection procedure is laid down in the regulations. Before acceding to an application the authority must be satisfied that the premises fulfil the requirements set out in Schedule 1 to the regulations and that the premises fulfil any reasonable requirements which the authority considers appropriate to ensure that the facilities provided at the premises are suitable. Regulation 5(2) provides that the authority may refuse to grant approval if it considers, having regard to the number of approved premises in its area, that the superintendent registrar and a registrar are unlikely to be available regularly to attend the solemnisation of marriages on the premises. This provision is designed to ensure that there is not an excessive number of authorised premises in any particular local authority area. On the granting of approval the authority attaches standard conditions which are set out in Schedule 2 to the

regulations and may attach such further conditions as it considers reasonable to ensure that the facilities provided are suitable. An approval is valid for three years subject to renewal. Provision is made for the revocation of approval if the holder has failed to comply with one or more of the conditions attaching to the approval or the use and structure of the premises has changed. Each authority must keep a register of premises which are approved by the authority containing premises details.

- 6.11 Under Schedule 1 the requirements to be fulfilled for the grant of approval include a requirement that the premises will be a seemly and dignified venue for the solemnisation of marriages, that the premises will be regularly available to the public for use for the solemnisation of marriages, that the premises have the benefit of appropriate fire precautions and are otherwise safe, that the premises must have no recent or continuing connection with any religion, religious practice or religious persuasion which would be incompatible with the use of the premises for the solemnisation of marriages in accordance with the Act, and that the room or rooms in which the ceremonies of marriage will be solemnised, if approval is granted, are identifiable by description as a distinct part of the premises.
- 6.12 The conditions set out in Schedule 2 attaching to grants of approval require (*inter alia*) that a responsible person must be appointed to ensure compliance with the conditions, that the responsible person should be available on the premises for a minimum of one hour prior to each marriage ceremony and throughout each marriage ceremony, and that the name, address and qualification of the responsible person will be duly notified to the authority. Any change in the layout of the premises or in the description of the room or rooms in which marriages are to be solemnised must be notified to the authority. No food or drink may be sold or consumed in a room in which a marriage ceremony takes place for one hour prior to the ceremony or during the ceremony and the room in which a marriage is solemnised must be separate from any other activity on the premises at the time of the ceremony. The arrangements for and content of each marriage ceremony must meet with the prior approval of the superintendent registrar of the district in which the approved premises are situated. Any reading, music, words or performance which forms a part of a ceremony of marriage celebrated in the premises must be secular in nature. For this purpose any such material used by way of an introduction to, in an interval between parts of, or at the conclusion of the ceremony should be treated as forming part of the ceremony of intending marriage partners.
- 6.13 **Our provisional view is that the existing law in relation to authorised places for civil marriages is unduly restrictive. There are cogent arguments in favour of adopting an approach such as that now adopted in England and Wales, and that a system should be put in place to allow the registration of venues at which civil marriages may be conducted over and above the existing limited facilities on council premises.**
- 6.14 Under the English rules the task of approving marriage venues is given to local authorities. The question arises as to whether the position should be similar in Northern Ireland. An alternative would be to give the power of approval to a central body or an individual such as

the Registrar General. Since the number and location of such premises will have resource implications for the registration system and impose greater demands on registrars it is arguable that a person or body able to take a province wide view would be more appropriate than a local authority. **On balance, however, we provisionally conclude that in the interests of local democracy the English model should be followed and power should be conferred on the local authorities to approve civil marriage venues.**

- 6.15 One aspect of the English law which requires consideration is the rule that a civil marriage venue must have no connection with any religion which would be incompatible with the conduct of civil marriages. Where an attractive venue is registered for civil marriage purposes if such a rule is too narrowly drawn it might preclude the use of such premises for religious weddings. A clergyman may in exceptional cases be willing to carry out a religious marriage ceremony in such a building notwithstanding that it is not a church building. **The carrying out of religious marriages on occasions in premises registered for civil marriages should not, in our provisional view, disqualify the premises for civil marriage purposes though a civil marriage should not include any religious content. We welcome views on this general issue and on our provisional recommendations.**

## CHAPTER 7

### **Civil Preliminary Notification**

- 7.1 The existing law requires advance notification of an intended marriage and different rules apply to different churches and religious groupings. It also imposes residential requirements which apply to some but not all. The requirements of local residence and prior notification are designed to discover impediments to marriages. However, the incidence of impediments coming to light under existing procedures is very small. We consider that the current procedure fails to put in place a coherent system designed or likely to reveal impediments. The statutory framework in Northern Ireland originated in an era when the population was more static and when church attendance was more universal. The notification system designed at that time is now much less suitable in the light of current demographic circumstances.
- 7.2 If the law were reformed to follow the Scottish model, notification of intending marriage would be to the registrar in the area where the parties propose to marry. Under Scots Law parties are required to provide birth certificates, death certificates (where a spouse has died and the surviving spouse is remarrying), declarations of relationships in case of relationship and certain other information. Notice of intended marriage is entered in a marriage notice book with details of the intended marriage being displayed in the registration office and the public have rights of inspection in relation to the marriage book. An objection procedure is provided for. In the absence of justifiable objections a marriage schedule is issued after a prescribed period (in Scotland fourteen days) subject to a power to abridge time in certain circumstances. A religious marriage may be solemnised on the date and place specified in the marriage schedule. The registrar may issue another marriage schedule in lieu of the one already issued if the marriage cannot be solemnised on the date and at the place specified. A universal procedure such as that adopted in Scotland if applied in Northern Ireland would involve some but apparently not great increase in the manpower requirements in the Registrar General's Office and some increase in costs which would have to be reflected in the fees levied.
- 7.3 Written and oral representations from the churches who made submissions to the sub-committee indicate that in the main most of the churches consider that such a system would be workable and effective in Northern Ireland, though a number of helpful suggestions were made in relation to the fine details of the system. Having regard to the guiding principles underpinning any new legislation the introduction of such a universal system has much to commend it. It treats those of differing religions fairly and equally. It interferes little with the existing freedoms of individual churches. It would be cost effective and keep to a minimum the state involvement in the freedom of individuals to marry as they see fit, while providing a mechanism for protecting the state's legitimate concerns in ensuring the regularity of marriages and a proper recording of marriage events. Above all it would replace the current

complex and incoherent rules with a coherent, comprehensible and comprehensive system. In particular the abolition of the residential requirements would represent a pronounced improvement in the law. **The Committee's provisional view is that present residential requirements are outdated and should be abolished, and that Northern Ireland should follow the Scottish example and introduce a system of universal civil preliminaries.**

7.4 There are a number of points of detail in the Scottish system which we tentatively consider would benefit from slight modification in the Northern Ireland context:—

- (a) Section 3 of the Scottish Act prescribes the information and documents which must be submitted to the registrar when giving notice of an intended marriage. **We consider that the primary legislation rather than prescribing the information and documents should empower the making of regulations prescribing what information and documents should be submitted with the notice of the intended marriage.** Such regulations would inevitably include requirements to provide birth certificates and, where relevant, decrees of divorce or annulment, death certificates of deceased spouses, declarations in respect of relationships and evidence of parental consent. Evidence of nationality may also be necessary. (See, for example, the Asylum & Immigration Act 1999). Circumstances from time to time may indicate that additional information or evidence should be prescribed. An increasing problem in England and Wales and also apparently in the Republic of Ireland relates to fraudulent marriages organised by immigrants and asylum seekers. The greater flexibility inherent in the prescription of information and documentation by regulation would enable regulations to be made more easily to deal with new situations than would be the case if the primary legislation required amendment. The proposed Immigration and Asylum Bill currently before Parliament will also affect the registration service in all parts of the United Kingdom. The current Bill proposes to place a duty on registration officers to report to the Home Office marriages which they reasonably suspect as being sham marriages (as defined). At present, there is no such obligation. The purpose is to enable the Home Office to obtain early warning of possibly suspicious marriages so that they may be investigated. In addition in England and Wales and in Northern Ireland the nationality of the parties will be added to the matters which have to be stated when giving notice. Registrars will also be empowered to request specified evidence in order to establish the name and surname, age, marital status and nationality of the persons to be married and will have a statutory power to refuse to issue authority for a marriage where they are not satisfied that one or both of the couple is legally free to contract the marriage. For England and Wales the Immigration and Asylum Bill provides for the existing procedures to be replaced by a single procedure with a fifteen day waiting period, with a discretion vested in the Registrar General to reduce in exceptional circumstances. In Scotland a fifteen day waiting period already exists. In Northern Ireland notice by civil preliminaries is given either by certificate (twenty-one day waiting period) or by licence (seven day waiting period). No change in these



procedures is contemplated in advance of the review being carried out by the Committee. The current Bill proposes that in England and Wales each party should appear personally before the superintendent registrar to give notice of marriage in the registration district where they reside. In Scotland there is no requirement for parties to present themselves in person to the registrar before the proposed marriage. In Northern Ireland the position is analogous to the current England and Wales position (which does not require personal attendance and no change is contemplated in advance of the current marriage law review).

- (b) The Scottish Act requires that each of the parties submits a separate notice in the prescribed form of an intention to marry. **We provisionally consider that the parties should be able to submit separate notices or a joint notice provided that each party furnishes the requisite information and documentation.** It has been suggested that parties should also declare, for statistical purposes, their religious affiliation in the notice of application. The statistics in relation to marriage in different churches can be collected from the information supplied to the registrar for registration and **provisionally we do not favour a requirement that the parties should state their religious affiliation in the notice of intention to marry.**
  
- (c) Under section 6 of the Scottish Act the district registrar shall not issue a marriage schedule within fourteen days of receipt of the marriage notice unless he has received a written request from one or both of the parties within the fourteen day period stating the reason for the request, and he has been authorised to issue the marriage schedule on that specified date by the Registrar General. Under the section it is also provided that the district registrar shall not issue a marriage schedule on a date earlier than seven days before the date of the intended marriage unless he has been authorised to issue the marriage schedule on that earlier date by the Registrar General. The Catholic Church in its submissions to the sub-committee indicated that it favoured a three months notice requirement, while holding that nowadays one month is the minimum a reasonable person would acknowledge as acceptable for the giving of notice about such an important commitment as marriage. It further submitted that Northern Ireland should allow for an abridgement of time for religious marriages by a special application to the Registrar General only when it is supported by the competent authority of the religious body concerned. It is important to distinguish between what the state should require by way of advance notification of an intended marriage and what an individual religious body may consider appropriate for its adherents. The issue of a marriage schedule or licence by the state is an *authorisation* for the celebration of the marriage but it does not impose any *obligation* on a particular church or celebrant to conduct such a marriage. This is implicit in the Scottish legislation but **we consider that the new legislation in Northern Ireland should state this in explicit terms.** An individual religious body as part of its own ecclesiastical discipline may decline to marry parties who have given what that body considers to be inadequate notice of intention to marry.

We provisionally consider that the time limits set out in the Scottish legislation are about right and are designed to enable the state to ensure fulfilment of the state's legitimate requirements to ensure the regularity of the proposed marriage and accordingly we would not favour the imposition of a three months or one month requirement of advance notification. Individual churches will be free to impose their own special requirements. Our provisional recommendation would also be in line with the policy behind the Immigration and Asylum Act 1999.

- (d) The Scottish provision confers on the Registrar General a discretion to abridge the time for the purposes of section 6. At present, as we have seen, the ecclesiastical authorities of certain churches have power to issue special licences which can effectively waive time and other requirements. All the churches having such a power to grant special licences see merit in retaining such powers. The retention of such a privilege by the churches having that privilege at this time, however, conflicts with the principle of equal treatment and would be difficult to justify. While we see some merit in the suggestion that where the relevant authorities within the religious grouping concerned support the parties' application to the Registrar General for an abridgement of time, the Registrar General should abridge the time unless he sees good reason not to, **we provisionally conclude that legislation following the Scottish model would adequately deal with the situation. Moreover since a religious body will not be bound to marry parties on the mere production of a marriage schedule we provisionally do not consider that the Registrar General should only be permitted to abridge time in the case of a religious marriage if the church authorities support the application to abridge time.** The Committee consider that it should not be the function of the Registrar General to be involved in the imposition on parties of the ecclesiastical discipline of individual churches.
- (e) **We provisionally consider that the requirement that the registrar should not issue a marriage schedule more than seven days before the intended marriage is unnecessarily restrictive and consider that the parties should be able to collect their marriage schedule up to, say, fourteen days before the date of the intending marriage.**
- (f) Section 6(5) of the Scottish Act requires the marriage schedule to specify the precise date of the marriage and the place of the marriage. Many of the churches making submissions to the sub-committee consider the Scottish provision to be too prescriptive and inflexible, notwithstanding that the Act does authorise the district registrar to issue another marriage schedule specifying a new date or place or substituting or directing the approved celebrant to substitute a new place or date in the marriage schedule. Under the current law in Northern Ireland a marriage licence or certificate authorises a marriage to take place within three months of the date of entry in the register in the building specified on the licence or certificate. The rationale of the Scottish position

would appear to lie in the fact that the registrar will have to follow up any failure by parties to return the marriage schedule after the marriage with the necessary particulars required for registration. Since the date of the marriage is specified in the marriage schedule and the registrar will have details of that date in his records he will have a specific date after which he can serve a notice on either or both of the parties to the marriage to deliver the marriage schedule or send it by post to the district registrar. Thus, by section 16(1) of the Act, it is provided that where after the expiration of twenty-one days from the date when the marriage is entered in the marriage schedule and the schedule has not been returned the registrar may serve a notice requiring the parties to send him the schedule by post. If a marriage may be celebrated at any time within three months of the issue of the marriage schedule the registrar could not instigate steps to enforce the registration requirements until the expiry of the three month period and this would increase administrative difficulties in respect of the registration of marriage particulars. **On balance we provisionally conclude that the Scottish provision confers sufficiently flexible powers on the registrar to issue a fresh marriage schedule or to amend an existing marriage schedule where for some intervening reason the marriage cannot take place at the time or place specified in the original marriage schedule.** It must be recognised that the vast majority of marriages are pre-planned and time scheduled and proceed as planned at the date and place arranged. On the odd occasions when for unforeseeable reasons the marriage cannot proceed as planned the parties will have to make fresh arrangements and the requirement to apply for the issue of a fresh marriage schedule or for alterations to the existing marriage schedule in our provisional view is not excessively onerous.

- (g) The Scottish Act does not require the personal attendance of the parties before the registrar when giving notice of an intended marriage. The imposition of such a requirement could involve parties in the expense and inconvenience of travelling from outside Northern Ireland to give notice and in the absence of evidence that such a requirement is necessary to avoid some mischief the guiding principle of cost effectiveness would be against such a requirement. We are not aware that the problem of sham marriages is a pressing one in this jurisdiction and **we provisionally consider that the personal attendance of the parties when giving notice of intended marriage should not be required as a matter of law.** However, on this and all other matters we welcome views.



## CHAPTER 8

# Celebrants and Ceremonies

### Persons Authorised to Celebrate Religious Marriages

- 8.1 Under current requirements generally authorised celebrants must be in charge of a congregation meeting regularly for worship within a building which has been licensed or registered for the solemnisation of marriages. At para 1.28 infra we set out the existing law and practice.
- 8.2 In Scotland when the religious body is the Church of Scotland or prescribed by regulations then a celebrant recognised by that religious body will be the authorised celebrant without further. At para 3.7 and 3.9 above we set out details of the current law and practice.
- 8.3 While the Committee presently sees the Scottish model as being a sensible, workable and coherent system which could effectively replace the presently complex system in Northern Ireland which lacks any overriding harmony or principle, there are differences between Scotland and Northern Ireland which may call for some modification of the Scottish model.
- 8.4 A number of the larger churches in Northern Ireland have indicated that they would wish to be specifically named in primary legislation rather than in secondary legislation as bodies whose clergy would be authorised celebrants in the same way as the Church of Scotland is specifically named in the Scottish Act. In Scotland religious bodies other than the Church of Scotland are either specified by regulations (in which case their clergy have automatic rights to celebrate marriages) or are not so specified (in which case celebrants from those religious bodies must be nominated by the body and approved by the Registrar General). Since there is no established church in Northern Ireland there is a difference in the context of the Scottish legislation and any Northern Ireland legislation changing the present law. On the one hand to specify in primary legislation certain churches and not others might be open to criticism as being potentially discriminatory against the bodies who are not so named. On the other hand there are significant differences in the various church structures and disciplines which may justify a difference of treatment. The Scottish Act does not lay down the criteria for determining which religious bodies should be prescribed by regulations though the implication of section 8(1)(a)(ii) appears to be that the clergy of the prescribed religious bodies are trained or ordained or are full time clergy. Where a religious body has a trained or ordained clergy the justification for conferring solemnisation rights automatically on the clergy of such a body lies in the fact that the clergy of the body are trained for the purpose of celebrating marriage and ensuring the fulfilment of the appropriate registration and other state requirements. A requirement that all the clergy of all the churches should be nominated by their particular religious bodies and then approved by the Registrar General would present a major and unnecessary administrative burden. Without the laying down of workable criteria to specify which religious bodies should have automatic celebration rights the

Secretary of State or appropriate minister (in the event of devolution) might be open to criticism in his choice of prescribed religious bodies. Where a body is so organised that it does not have a trained clergy or persons in charge of congregations it is desirable that appropriate criteria be laid down for how authorised celebrants in that body are designated.

- 8.5 The wording of the appropriate criteria for the prescription of a religious body whose clergy are automatically to be entitled to solemnise marriages on its behalf is a matter for detailed consideration at drafting stage. **At this stage we provisionally consider that in prescribing a religious body for the purposes of the legislation the Secretary of State must be satisfied that the ministers, clergy persons, pastors, priests or persons recognised by the religious body as entitled to celebrate marriages are adequately trained in the celebration of marriages and in the fulfilment of the state marriage law requirements.** The larger churches and probably most of the religious churches and bodies in Northern Ireland would qualify as fulfilling those criteria and could be simply prescribed by regulations. As an alternative to that, the new legislation by way of schedule could list the churches or bodies clearly understood to fulfil the criteria and provide for the addition of other religious bodies to the list by regulations. In view of the strong views expressed by some of the churches to be named in the primary legislation the second alternative may ultimately be considered preferable.
- 8.6 It has been suggested that if an individual church no longer recognises one of its clergy as being authorised to solemnise marriages within that church that celebrant should no longer be entitled to solemnise marriages. If each church had to nominate and place on a register the names of individual ministers, priests or other clergymen or women as authorised celebrants the withdrawal of the church's approval of that individual could simply lead to the removal of that individual from the register (as is the case in Scotland in respect of persons nominated by religious bodies and approved by the Registrar General in the case of religious bodies not prescribed by regulations). Where the clergy of an individual church are automatically authorised to celebrate marriages (and thus do not as such appear on any register) there would, of course, be no register from which an individual's name could be removed. It would, however, be possible for any new legislation to make provision for the opening of a separate register of clerics of prescribed bodies from whom the religious body has withdrawn permission to celebrate marriages and provision could be made for the imposition of a statutory prohibition on that individual named in that register from celebrating marriage. The celebration of a marriage by that individual could be made a statutory offence.
- 8.7 In Scotland a person approved by the Registrar General to conduct marriages in religious groups not specified by regulations may be restricted in the area in which he or she may conduct marriages. **We provisionally conclude that where a person is approved by the Registrar General to conduct marriages he or she should be authorised to conduct marriages anywhere in Northern Ireland.** Northern Ireland is a small jurisdiction and we

consider that the limitation of areas in which an authorised person may solemnise marriages would be unduly restrictive and an unnecessary restriction.

- 8.8 **We also provisionally conclude that the common law rule that an episcopally ordained priest may solemnise a marriage should be expressly revoked.** As the law currently stands it confers a privilege on Catholic priests (Church of Ireland clergy being separately regulated by statute). The rule is hard to justify in terms of equal treatment of all religions and would not sit easily with the new statutory regime which we recommend.

### **Persons Authorised to Celebrate Civil Marriages**

- 8.9 Under the current law only a person acting as a registrar may celebrate a civil marriage. In some other Commonwealth jurisdictions the category of persons who are authorised to celebrate civil marriages has been widened to include for example Justices of the Peace. It is open to argument that the Registrar General should be given a wider power to authorise persons to celebrate civil marriages though it would be necessary to ensure that any such person so empowered is sufficiently trained in the celebration and registration requirements. We are not currently aware that there is any demand or need for the widening of the category of persons authorised to celebrate civil marriages but the Committee welcomes views on this amongst the other issues raised in the consultation paper.

### **Religious Marriage Ceremonies**

- 8.10 In Northern Ireland under the current law the form of the religious ceremony is at the discretion of the individual churches. In the case of some but not all churches section 29 of the Marriages (Ireland) Act 1844 sets out a statutory declaration which must be made by the parties (see para 1.30 infra).
- 8.11 If the Scottish model were to be adopted in the case of religious ceremonies of religious bodies prescribed by regulation the form of ceremony is at the discretion of the religious body concerned. In the case of other religious bodies putting forward -0.TJ 0.03 Twmmend.

using the form of words set out in section 29 of the Marriages (Ireland) Act 1844. Under section 45 of the Marriages Act 1949 in English law no religious ceremony may be used. A religious ceremony may, however, follow a marriage in a Registry Office but the religious ceremony may not be entered as a marriage in any marriage registrar. The statutory law in Northern Ireland is less explicit than in England and Wales but as a matter of practice civil marriage does not have a religious content. **We provisionally consider that the new legislation should make the current practice statutory.**



## CHAPTER 9

# Registration of Marriages

- 9.1 Registration of marriage is essential to provide a public record of an event having important legal consequences both to the parties themselves and for the state. In addition registration is a source of statistical information which is useful to the state for various social and legal purposes. The existing law in respect of the registration of marriages after their celebration is incoherent and, as in other aspects of marriage law, differentiates between different churches and religious bodies. It is the duty of the registrar to register all marriages which have been solemnised in the registrar's office or in a registered building within his district which is not provided with a register, marriages conducted according to the rites and ceremonies of the Catholic Church in a church, chapel or other place within the registrar's district, marriages in a registered naval, military and airforce chapel within his district, and on the authority of a special licence granted by a religious denomination having power to issue special licences which took place at a church, chapel or any other place situate within the relevant district. In the case of Catholic marriages the registrar will regularly receive original certificates of Catholic marriages usually from the officiating clergyman and it is the registrar's duty to copy the particulars of all such marriages into his register of Catholic marriages without delay. These certificates are required to be forwarded to the registrar within three days of the date of marriage.
- 9.2 In the case of marriages conducted in the Church of Ireland and Presbyterian Churches the marriage register is retained in the church and the registrar knows nothing of the marriage until he obtains quarterly copies of the church's register entries. This separate system of registration is carried out by clergymen untrained in the task.
- 9.3 The current scale of errors in entries discovered by the General Registrar's Office Corrections Section is five times higher in respect of all church marriages than in the case of civil marriages and follow up work on inaccurate entries is therefore greater.
- 9.4 Under the provisions of the current legislation parties can marry by different procedures and can experience delays in obtaining a certified copy of their marriage entry if requested at the time of marriage. The table set out in the box overleaf gives examples.

<b>TYPE OF MARRIAGE</b>	<b>CERTIFIED COPY OF MARRIAGE ENTRIES MAY BE OBTAINED FROM</b>	<b>TIMESCALE</b>
Protestant	(i) Clergy	On day of marriage (but not accepted for official purposes).
	(ii) District Registrar	Immediately on day of marriage when registers are completed.
	(iii) GRO	After the end of current quarter when marriage returns are received. (There is often a delay by the clergy in completing the returns).
Special Licence	District Registrar	Usually quite some delay before the special licence certificate is received by the Registrar to enable marriage to be registered.
Catholic	District Registrar	Usually quite quickly — it is the groom's responsibility to forward the Certificate of Registration to the Registrar. However this is usually undertaken by the priests.
		NB Some certificates are never sent to GRO and sometimes this is not discovered until years later when a certified copy is requested from GRO by the parties.
Registrar's Office	Registrar	Immediately on day of marriage when registers are completed.

9.5 Under the Scottish Act a religious marriage shall not be solemnised by an approved celebrant unless the parties produce to him before the marriage ceremony the marriage schedule issued in accordance with the Act. Immediately after the solemnisation of the marriage, the marriage schedule shall be signed by the parties contracting the marriage, by both witnesses present thereat and by the approved celebrant. The parties to the marriage shall within three days thereafter deliver the marriage schedule or send it by post or arrange that it is delivered to the district registrar. As soon as possible thereafter the district registrar enters the

particulars set forth in the marriage schedule in the register of marriages kept by him. He shall not register a religious marriage until he receives a duly signed marriage schedule in respect of the marriage. If the Registrar General is satisfied that a marriage has been properly solemnised and that the marriage schedule in respect of the marriage has been duly signed but has been lost or destroyed he may direct the district registrar to complete an exact copy of the original marriage schedule and, so far as possible, arrange for its signature by those persons who signed the original schedule and as soon as possible thereafter the district registrar shall cause the particulars as set forth in that copy to be entered in the register of marriages kept by him. Where after the expiration of twenty-one days from the date of marriage as entered in the marriage schedule that schedule has not been delivered to the district registrar he may serve a notice in a prescribed form on either of the parties to the marriage requiring that party within eight days from the date of service of the notice to deliver the said schedule or send it by post to the district registrar. If any party on whom a notice has been served fails to comply with the notice the district registrar may serve on that party a second notice in the prescribed form requiring that party to attend personally at the registration office of the district registrar within eight days from the date of service of the second notice for the purpose of delivering the marriage schedule to the district registrar to enable him to register the marriage.

- 9.6 If the Scottish model were to be applied in Northern Ireland it would result in placing the onus on the parties to the marriage rather than on the celebrant to return the registerable particulars for the purpose of registration. There are advantages and disadvantages in that as compared to the existing procedure in Northern Ireland. It would free the clergy from an administrative burden which has nothing to do with their spiritual functions. On the other hand the parties to a marriage have hereto relied on the clergy and the relevant registrar to look after the administrative side of registration. In the sub-committee's discussions with the various churches the prevailing view was that the religious celebrant should return the marriage schedule with the registerable particulars. Section 16 of the Scottish Act makes provision for the serving of a notice in the prescribed form on either of the parties to the marriage requiring the party within eight days from the date of service of the notice to deliver the marriage schedule where after the expiration of twenty-one days from the date of marriage is entered in the marriage schedule the schedule has not been delivered to the district registrar. If a party to the marriage fails to comply with the notice the district registrar may serve a second notice requiring that party to attend personally at the registration office within eight days of the date of service of the second notice. By virtue of section 25 it is an offence to fail to comply with such a notice. The imposition of such penalties on parties to the marriage where they have the responsibility of returning the marriage schedule makes sense and ensures compliance with the legislation. It is open to question whether it would be at all desirable to impose such sanctions on a clergyman who has omitted to return a marriage schedule. **On balance the Committee provisionally considers that the Scottish procedure imposing an obligation on the parties to the marriage to return the marriage schedule makes more practical administrative sense.** Parties to the marriage may by

arrangement agree with the clergyman that he should return the marriage schedule to the registrar for registration purposes but if there is any default in the returning of the document to the registrar **we provisionally consider that the parties to the marriage should be answerable for the default.**

## **Transjurisdictional Marriages within the United Kingdom**

- 10.1 Under the current law where parties from different jurisdictions within the United Kingdom wish to marry in one or other of the parts of the United Kingdom there are complex statutory provisions whereby preliminary steps taken in one jurisdiction by one of the parties may be recognised in another part of the United Kingdom.

### **Marriage in Northern Ireland where One Party Lives in England and Wales**

- 10.2 In the case of a marriage by licence issued by a Church of Ireland licenser or Presbyterian licensing minister, where one party resides in Northern Ireland and fulfils the statutory conditions, that party can take all the steps necessary to obtain the licence and the residence of the other party is immaterial.
- 10.3 For a marriage in the Church of Ireland when both parties are Protestant episcopalians and one of them lives in England or Wales, banns may be published in respect of the latter party in the parish or place of residence in England and Wales and in such cases banns should also be published in the parish or district residence of the party living in Northern Ireland. As already noted earlier banns are increasingly uncommon even in the Church of Ireland.
- 10.4 In the case of an intended marriage in Northern Ireland for which authority from a registrar is needed and where one of the parties lives in England or Wales, the party living there should give notice to the superintendent registrar of the district where he or she resides and seven days later obtain from him a certificate. A further seven days must elapse before the certificate becomes valid for the purpose of marriage in Northern Ireland. The certificate must be given to the registrar in Northern Ireland who may issue his authority for the marriage provided that a party living in his district has also taken the necessary steps there and if notice is given for marriage by registrar's certificate the authority cannot be issued until twenty-one days from the date that notice was given.

### **Marriage in Northern Ireland where One Party Lives in Scotland**

- 10.5 A party living in Scotland who is a member of the Church of Scotland may obtain a certificate signed by the minister of the congregation of which he or she is a member stating that banns of the intended marriage have been proclaimed on three Sundays. Seven days must elapse before the certificate becomes valid for the purpose of marriage in Northern Ireland. The certificate should be given to the registrar in Northern Ireland who may issue his authority for the marriage provided that the party living in his district has taken the required step there, and the certificate regarding banns is not required if the marriage is to take place by licence issued by a licensing minister or by special licence. In other cases the

person living in Scotland would have to establish the appropriate residence in Northern Ireland before notice of the marriage may be given.

### **Marriage in England or Wales where One Party Lives in Northern Ireland**

- 10.6 Where a marriage is intended to be solemnised in England or Wales on the authority of a certificate of a superintendent registrar without licence between parties of whom one is residing in Northern Ireland and the other in England or Wales the party residing in Northern Ireland may give notice of marriage in the form used for that purpose in Northern Ireland or to the like effect to the registrar of the district in Northern Ireland in which he or she has resided for not less than seven days immediately before the giving of the notice. The notice must state the name and surname, marital status, occupation, age and place of residence of each of the persons to be married and the period, not being less than seven days, during which each of them has resided in that place, and the church or other building in which the marriage is to be solemnised. The notice must be dealt with and a certificate issued on the expiration of twenty-one days from the day on which the notice was entered in the marriage notice book in the manner prescribed by the law of Northern Ireland. The production to the person solemnising the marriage of a certificate so issued is as valid for authorising that person to solemnise the marriage as would be the production of a certificate of marriage of a superintendent registrar of the district in England in the case of a person residing in that district.

### **Marriage in Scotland of a Person Residing in Northern Ireland**

- 10.7 In the case of an intended marriage in Scotland where one party lives in Northern Ireland notice is not required to be given to the registrar in Northern Ireland. It is not necessary for either of the parties to reside in Scotland before notice is given to the registrar there. Notice may be given either in person or by post and it is recommended that about six weeks before the date of the marriage enquiries should be made with the Scottish registrar in whose district the marriage is to take place.

### **Possible Framework for Reform**

- 10.8 If Northern Ireland followed the law in Scotland and abolished residential requirements then parties from outside the jurisdiction could simply give notice of intention to marry to the registrar of the area in which they intend to marry and apply for the issue of a marriage schedule (or whatever other name is given to the relevant licence to marry). In Scotland the marriage schedule may be issued to one or both of the parties to the intended marriage. This would avoid the complexities of the current law and replace it with a simple and easily administered system. **The Committee provisionally consider that this would represent a sensible reform.**
- 10.9 To deal with the situation where a person living in Northern Ireland wishes to marry in England and Wales it would be necessary to keep in place some mechanisms such as

presently exist whereby a registrar in Northern Ireland could issue an authority for a marriage to be solemnised in England in respect of a person resident in Northern Ireland.

- 10.10 Under section 7 of the Scottish Act where a person residing in Scotland is a party to a marriage intended to be solemnised in England or Wales to a party residing in that jurisdiction or in any country, territory or place outside Great Britain, and for the purpose of complying with the law in force in that country, territory or place, the person residing in Scotland is required to obtain from a competent authority in Scotland a certificate in respect of his legal capacity to marry. He may submit in the form, and with the fee and documents specified in the Act, notice of intention to marry to the district registrar for the district in which he resides, as if it were intended that the marriage should be solemnised in that district. The appropriate registrar shall, if satisfied after consultation if he or she considers it necessary with the Registrar General, that the person who has submitted a marriage notice to him is not subject to any legal incapacity in terms of Scots law which will prevent him marrying, issue to that person a certificate in the prescribed form that he is not known to be subject to any such incapacity. A person may at any time before a certificate is issued under this provision submit to the appropriate registrar an objection in writing to such issue and the objection should be taken into account by the appropriate registrar in deciding whether in respect of the person to whom the certificate would be issued he is satisfied for the purposes of the provision. **The Committee provisionally consider that a similar provision should be inserted into any new legislation in Northern Ireland reforming marriage law.**





## CHAPTER 11

### **Consequences of Procedural Irregularity**

- 11.1 Under Article 13(1) of the Matrimonial Causes (Northern Ireland) Order 1978 a marriage is void on the following grounds:—
- (a) that the parties are within the prohibited degrees of relationship;
  - (b) that it is not a valid marriage under the provisions of the Age of Marriage Act (Northern Ireland) 1951 (persons under 16);
  - (c) that it is not a valid marriage by reason of non-compliance with any statutory provision or rule of law governing the formation of marriage;
  - (d) that at the time of the marriage either party was already lawfully married;
  - (e) that the parties are not respectively male and female;
  - (f) in the case of a polygamous marriage entered into outside Northern Ireland, that either party was at the time of the marriage domiciled in Northern Ireland.

For the purposes of paragraph 1(f) a marriage may be polygamous although at its inception neither party had any spouse additional to the other.

- 11.2 Under Article 14 of the 1978 Order provision is made for a marriage being voidable on certain grounds. These include non-consummation, lack of consent, pregnancy by some other person other than the petitioner or on the ground that the respondent was suffering from venereal disease in a communicable form at the time of the marriage.
- 11.3 The Committee are not aware of any perceived short-comings in the existing law in respect of the statutory guidance for the annulment of marriage under Article 13(1)(a), (b), (d), (e) or (f) or under Article 14.
- 11.4 Where there has been a procedural irregularity it is necessary to distinguish between three categories of irregularities:—
- (a) those which invalidate the marriage;
  - (b) those which have no effect on the validity of the marriage; and
  - (c) those as to the consequence of which the legislation is silent.
- 11.5 The general principle is that only contumacious disregard of the marriage formalities will invalidate a marriage. Thus under section 49 of the Marriages (Ireland) Act 1844 a marriage

is void if not duly solemnised with the knowledge of both parties. It has never been determined whether in this context it is enough for the parties to know that the formality has not been observed or whether they must also know that the defect will in law invalidate the marriage (per Lord Penzance in **Greaves v Greaves** [1862] LR 2 P&D).

11.6 The legislation specifies certain defects evidence of which is not to be given in proceedings touching the validity of the marriage. This class includes, for example, the failure to obtain parental consent (see section 1(5) of the Marriages Act (Northern Ireland) 1954).

11.7 The legislation is sometimes silent as to the consequences of certain irregularities such as the requirements that the ceremony take place between the hours 8.00am and 6.00pm with open doors and using prescribed words. The prevailing view is that such irregularities do not affect the validity of the marriage.

11.8 It is undesirable that the law should be left uncertain in relation to the consequences of procedural irregularity and any new law should spell out clearly what effect procedural irregularity should have on the validity of a marriage.

11.9 Under section 23 of the Scottish Act as originally enacted it was provided that if a marriage in respect of which an entry had been made in a register of marriages is found to be void the Registrar General must direct the cancellation of the entry. This provision was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980. The new section 23A provides:—

“(1) Subject to sub-sections 1 and 2 of, and without prejudice to section 24(1) of, this Act, where the particulars of any marriage at the ceremony in respect of which both parties were present are entered in a register of marriages by or at the behest of an appropriate registrar, the validity of that marriage shall not be questioned in any legal proceedings whatsoever on the grounds of failure to comply with the requirement or restriction imposed by, under or by virtue of this Act.

(2) In sub-section (1) above ‘appropriate registrar’ means—

(a) in a case of a civil marriage, an authorised registrar; and

(b) in any other case, a district registrar”.

11.10 The Scottish Act does not make clear whether a party may challenge the validity of a marriage between the completion of a purported marriage ceremony and registration or whether the registrar could decline to register a marriage if he obtained evidence that there had been a procedural irregularity.

11.11 **We provisionally consider that the law should be clear and certain in this field and that procedural irregularity should not invalidate a marriage unless both parties knowingly**

**disregard the procedural requirements with knowledge that the procedural irregularity will in law invalidate the marriage.** We see force in the Scottish provision that once the particulars of any marriage at the ceremony in respect of which both parties were present are entered in a register of marriage by or at the behest of an appropriate registrar the validity of the marriage shall not be questioned in any legal proceedings whatsoever on the ground of procedural irregularity. We do not consider that the registrar should be called on to consider questions as to the procedural irregularity of a marriage after the marriage ceremony. **If the effect of registration is to lead to a conclusive presumption of procedural validity we provisionally conclude that a party to the marriage wishing to prevent a registration which would give rise to such a presumption should be entitled to apply to the court to challenge the validity of the marriage and a party to such proceedings should be given the right to apply to the court for an order to stay any registration pending the final determination of any such proceedings.**

- 11.12 Northern Ireland law does not currently make clear at what moment of time the marriage is complete, a question which could be important to rights of succession. It is probable that the crucial moment is the formal exchange of consent rather than when the celebrant declares the parties man and wife (see, for example, Principles of Family Law 5th edition Cretney and Morrison at 25). This was the approach adopted in the Australian case of **Quick v Quick** [1953] VR 224. In that case the parties had exchanged the consent to marriage but before the priest had declared the parties man and wife the wife changed her mind and ran from the church. The court held that the marriage had taken place. **We provisionally consider that the law should make the point clear.**



## CHAPTER 12

# Criminal Sanctions

### Existing Law

- 12.1 Under the current law there exist numerous offences arising from infringement of the various requirements of the Marriage Acts. Set out below the reader will find the main statutory offences created by the Marriage Acts.

### Marriage (Ireland) Act 1844

Section 45 Solemnising marriage elsewhere than in a licensed church or certified Presbyterian meeting house, or in a registered building or office specified in notice and certificate unless in cases of special licence or Catholic Marriages

Solemnising marriage in registered building or office in the absence of registrar when registrar's presence is necessary

Solemnising marriage without licence within 21 days after entry of notice to registrar

Solemnising marriage by licence within 7 days after day of entry in marriage notice book

Solemnising marriage after 3 calendar months after day of such entry

Section 46 Solemnising marriage without banns or licence or issue of registrar's certificate

Publishing banns after having been lawfully forbidden

Granting licence after issue has been lawfully forbidden

Section 47 Registrar of marriages — issuing certificate of marriage after expiration of 3 calendar months from day of entry of notice

Registrar of marriages — Registering any marriage declared null and void

Registrar of marriages — Issuing certificate where issue has been lawfully forbidden

Registrar of marriages — Solemnising or permitting to be solemnised in his office any marriage declared null and void

Registrar of marriages — issuing certificate of marriage without licence before expiration of 21 days after day of entry of notice

Registrar of marriages — Issuing certificate for Marriage by Licence before expiration of 7 days after day of entry of notice

Registrar of marriages — Issuing Licence after 3 calendar months after day of entry of notice

Section 74 Refusing or omitting to register a marriage

Carelessly losing or injuring, or allowing to be injured any register book or certified copy

### **Marriage Law (Ireland) Amendment Act 1863**

Section 7 Solemnising marriage or pretended marriage in registered building contrary to statutory requirements.

Section 10 Minister of registered building neglecting or refusing to register marriage.

Section 14 Registrar of marriages omitting to forward copy notice of marriage.

### **Registration of Marriages (Ireland) Act 1863**

Section 11 Failure of husband to deliver certificate of Catholic marriage to registrar.

Section 23 Forging registers of marriage.

Making false entries in copies of register of marriage.

Section 24 Registrar of marriages refusing or omitting to fill up certificate of marriage or register a marriage certificate

Carelessly losing or injuring or allowing to be injured any register book (26 & 27 Vic cap 90).

### **Matrimonial Causes and Marriageable Law (Ireland) Amendment Act 1871**

Section 22 Husband for not sending certificate of marriage by special licence to Registrar General.

### **Marriages Act (Northern Ireland) 1954**

Section 1(3) Consent to the marriage of a minor— any person who knowingly and wilfully acts in contravention of this section is guilty of an offence.

## **Marriage Act 1983**

Section 7 Purporting to solemnise a marriage on the authority of the Registrar General's licence in any place other than that specified in the licence; or

Purporting to solemnise a marriage on the authority of that licence without the presence of the registrar of the district in which it is solemnised unless the marriage is solemnised in accordance with the rites of the Catholic Church; or

Solemnising a marriage on the authority of that licence at any other time than between 8.00 am and 6.00 pm; or

Purporting to solemnise a marriage on the authority of that licence after the expiration of three months beginning on the day on which notice of marriage is entered on the marriage notice book.

## **Framework for Reform**

12.2 We provisionally conclude that any new legislation should make provision for criminal sanctions in respect of infringement of the statutory requirements of the legislation. The provisions of section 24 of the Scottish Act set out a number of offences which could be usefully included in any Northern Ireland legislation. Under the Scottish Act any person is guilty of an offence who —

- (a) falsifies or forges any marriage schedule, certificate or declaration issued or made or purporting to be issued or made under the Act;
- (b) knowingly uses or gives or sends to any person as genuine any false or forged marriage schedule, certificate, declaration or other document issued or made or purporting to be issued or made or required under the Act;
- (c) being an approved celebrant solemnising a marriage without a marriage schedule in respect of the marriage issued in accordance with the Act being available to him at the time of the marriage ceremony;
- (d) not being an approved celebrant or an authorised registrar, conducts a marriage ceremony in such a way as to lead the parties to the marriage to believe that he is solemnising a valid marriage;
- (e) being an approved celebrant or an authorised registrar solemnises a marriage without both parties to the marriage being present.

In addition any person who—

- (a) solemnises a marriage in an area in which by virtue of section 9(4)(b) he is not permitted to solemnise a marriage;
- (b) solemnises a marriage in contravention of section 10(5) of the Act;
- (c) being a person temporarily authorised under section 12(a) of the Act solemnises a marriage not specified in that authorisation;
- (d) solemnises a marriage in contravention of section 14 of the Act;
- (e) being a party to a marriage fails to comply with a notice served under section 16(2) of the Act;

shall be guilty of an offence.

12.3 **Any Northern Ireland legislation should introduce similar offences but we also provisionally conclude that where a person is authorised to act as a celebrant in a religious body that is not specified by regulations the authorisation should cover the whole of Northern Ireland and accordingly it would not be necessary to have an offence of solemnisation of a marriage in an area outside one permitted. In addition we also provisionally conclude that it should be an offence for a minister, priest or other clergyperson whose recognition to solemnise marriages is withdrawn by his or her church or religious body to solemnise a marriage at any time after the withdrawal of recognition is notified to the Registrar General.**



## CHAPTER 13

### Questions for Consultees

The paper sets out the Committee's provisional recommendations for reform of the law. The Committee is, however, anxious to obtain the views of all interested parties and bodies on the topics raised in this paper. Without prejudice to the generality of views which consultees may wish to express, the Committee in particular seeks the comments of interested parties on the following questions:

- (1) Do consultees agree that the guiding principles for reform are correct? (para 4.5)
- (2) Do consultees consider that the law in Scotland represents a model which could be adapted for Northern Ireland? If so, would consultees favour any revision of that system to take into account the needs of this jurisdiction? (para 4.7)
- (3) Do consultees consider that the present age requirements, in particular the minimum age of 16, are satisfactory? (para 5.4)
- (4) Do consultees consider that the current rules in respect of forbidden degrees of relationship are satisfactory? (5.5)
- (5) Do consultees agree that the current rules relating to religious marriage venues lead to inequality, and that the introduction of a common and non-discriminatory system is desirable? (para 6.2)
- (6) What suggestions would consultees make for simplifying and harmonising the law between the various churches and religious groupings and what specific aspects of the current law would consultees consider amending? (para 6.2)
- (7) Do consultees see any problems in having no registration requirements for the location in which religious marriages may be conducted? (para 6.3)
- (8) Do consultees consider that directing the focus on the authorisation of the celebrant rather than the place of celebration would be advantageous? (para 6.3)
- (9) Do consultees agree that the law should not prescribe the location in which religious marriage ceremonies may be conducted? (para 6.7)
- (10) Do consultees agree that the existing law in relation to authorised places for civil marriages is unduly restrictive? (para 6.13)
- (11) Do consultees agree that there are cogent arguments in favour of adopting an approach such as that now adopted in England and Wales, and that a system should be put in place to allow the registration of venues at which civil marriages may be conducted over and above the existing limited facilities on council premises? (para 6.13)

- (12) Do consultees agree that the power to register venues for civil marriage should vest in local authorities? (para 6.14)
- (13) Do consultees agree that premises registered for civil marriages may also be used for religious marriages provided that no civil marriage shall include any religious content? (para 6.15)
- (14) Do consultees agree that the present residential requirements are outdated and should be abolished and that Northern Ireland should follow the Scottish example and introduce a system of universal civil preliminaries? (para 7.3)
- (15) Do consultees agree that primary legislation rather than prescribing the information and documents should empower the making of regulations prescribing what information and documents should be submitted with the notice of intended marriage? (para 7.4(a))
- (16) Do consultees agree that the parties should be able to submit separate notices or a joint notice provided that each party furnishes the requisite information and documentation? (para 7.4(b))
- (17) Do consultees agree that there should be no requirement that the parties state their religious affiliation in the notice of intention to marry? (para 7.4(b))
- (18) Do consultees agree that any new legislation in Northern Ireland should state explicitly that the grant of a marriage schedule or licence by the state authorising a marriage does not impose any obligation on a particular church or celebrant to conduct such a marriage? (para 7.4(c))

- (23) Do consultees agree that in prescribing a religious body for the purposes of any new legislation the Secretary of State should be satisfied that the ministers, clergy persons, pastors, priests or persons recognised by the religious body as entitled to celebrate marriages are adequately trained in the celebration of marriages and in the fulfilment of the

- (35) Do consultees agree that it should be an offence for a minister, priest or other clergy person whose recognition to solemnise marriages has been withdrawn by his or her church or religious body to solemnise a marriage at any time after the withdrawal of recognition is notified to the Registrar General? (para 12.3)