This is a Working Paper circulated for comment and criticism. It does not represent the final views of the Law Commission, the Registrar General or their Joint Working Party.

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THE LAW COMMISSION

PUBLISHED WORKING PAPER

NO:35

SOLEMNISATION OF MARRIAGE

in

England and Wales

28 June 1971

The Law Commission will be grateful for comments before the end of December 1971. All correspondence should be addressed to:-

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THE LAW COMMISSION

SECOND PROGRAMME - ITEM XIX

FAMILY LAW

SOLEMNISATION OF MARRIAGE in ENGLAND AND WALES

1. The law relating to the solemnisation of marriages is a subject which falls for review as part of the Law Commission's project to codify Family Law. It is also a matter which the Registrar General has been anxious to subject to a thorough enquiry and which has become the more urgent in the light of the enquiry by the Kilbrandon Committee* into the corresponding law in Scotland. The Law Commission and the Registrar General therefore decided to set up a joint Working Party and, in view of the interest of the Home Office, to invite the Home Secretary also to nominate a representative. In December 1969 the joint Working Party was established with the following terms of reference:

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

2. The Working Party initially consisted of:-

Chairman: Sir Leslie Scarman)
Members: Mr L.C.B. Gower) of The Law Commission
Mr D. Tolstoy, Q.C.)
Mr F.A. Rooke-Matthews of the General Register Office
Mr G.I. de Deney of the Home Office

Lady Johnston was subsequently co-opted when she joined the legal staff of the Law Commission. Mr Douglas White acted as Secretary.

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* For their Report see Cmnd. 4011 (1969)

3. The Working Party has now prepared the appended consultative document which, by agreement with the Registrar General, is being circulated for comments and criticisms in the Law Commission's series of Working Papers. It does not represent the final views of either the Law Commission, the Registrar General or the Home Secretary; nor, at the present stage, does it purport to do more than to subject the law to a long overdue scrutiny and to give the provisional conclusions of the Working Party on how it might best be reformed. The Working Paper is intended to invite comments and criticisms from the public, from the legal profession and from the religious and other bodies concerned with the actual operation of this branch of the law. These comments and criticisms should be sent before the end of December 1971 and addressed to:-

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SOLEMNISATION OF MARRIAGES

in

England and Wales

WORKING PAPER

containing the

Provisional Proposals of the Joint Working Party of the Law Commission and the Registrar General

CONTENTS

SOLEMNISATION OF MARRIAGE IN ENGLAND AND WALES

I INTRODUCTORY

Scope of Paper

1. In December 1969 we were established by the Law Commission and the Registrar General as a small Working Party "to enquire into the formal requirements for the solemnisation and registration of marriages in England and Wales and to propose what changes are desirable". This enquiry forms part of the review of family law under Item XIX of the Law Reform Programme of the Law Commission. It follows an enquiry by a Departmental Committee under the Chairmanship of Lord Kilbrandon into the marriage law of Scotland, the Report of which (Cmnd. 4011) has been invaluable to us in our deliberations. Although, at this stage of our enquiry, we have not felt able to endorse, in respect of England and Wales, all the recommendations of the Kilbrandon Report we are very conscious of the desirability of harmonising the laws in the two countries and in framing our provisional proposals in this Report we have tried to eliminate needless differences.

2. Our terms of reference limit the enquiry to the formalities of marriage.[1] After outlining the purposes of the law of marriage, the Paper sets out the present law and practice, discusses the problems and difficulties which have arisen, and makes a number of provisional recommendations for reform, under the following headings:

(a) Preliminaries
(b) Place and method of solemnisation
(c) Registration
(d) Irregularities
(e) Offences

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1. This includes the requirement of parental or other consents in the case of the marriage of minors aged 16 or 17.

Our proposals do not represent our final views - or, of course, those of the Registrar General or the Law Commission. This Paper is circulated for comment and criticism and our final conclusions will be reached in the light of the response.

The Purposes of Formalities

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

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

5. It is with these objectives in mind that we have examined the present law under the various headings set out in paragraph 2. And it may be helpful if we summarise the result of the discussion

which follows by saying that the law falls woefully short of the optimum attainment of these objectives - particularly, perhaps, as regards simplicity and intelligibility. The present law is the product of history. Although most of it is now to be found in the Marriage Act 1949,[2] that was merely a consolidating (not a reforming) Act which re-enacted the substance of statutory provisions dating back to 1836 (which in turn were based on still earlier legislation). There are now two main forms of solemnisation of marriage - civil and religious. The former is relatively straightforward in that the preliminaries, celebration and subsequent registration are all handled by the civil authorities of the State. Even so, there are different types of preliminaries, differences which are not based on any very rational principle. In the case of ecclesiastical marriages there is a bewildering mixture of civil and religious administration at all stages. Except in the case of Church of England[3] marriages, the preliminaries (of which there are various types) are handled by the civil authorities and they can be so handled in the case of Church of England marriages also. The ceremony is left largely to the religious body concerned but, except in the case of the Church of England, the Jews and the Quakers, it must be in a building registered by the civil authorities, at some stage in the service particular words prescribed by statute must be used, and either a registrar or an "authorised person" certified by the Church to the civil authorities must be present. As for the subsequent registration, sooner or later notification

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2. As amended and supplemented by the Marriage Act 1949 (Amendment) Act 1954, the Marriage Acts Amendment Act 1958, the Marriage (Secretaries of Synagogues) Act 1959, the Marriage (Enabling) Act 1960, the Marriage (Wales and Monmouthshire) Act 1962 and the Marriage (Registrar General's Licence) Act 1970. The formalities prescribed by the Marriage Act, as so amended, apply to all marriages solemnised in England. It is sometimes stated, on the basis of old authority, that a marriage celebrated in a foreign Embassy or Consulate in England, will be valid here if solemnised in accordance with the form of the foreign law. But we understand that it is the view of the Foreign and Commonwealth Office that the marriage would not be recognised here unless the Marriage Act was complied with. We agree with this view.

3. Throughout this Paper this expression includes the Church in Wales.

of the marriage must appear on the civil registers but, in the case of Church of England marriages, officially recognised registers are also maintained by the Church. With this proliferation of procedures it is hardly surprising that the law is not understood by members of the public or even by all those who have to administer it. To make matters worse, there is a bewildering diversity in the consequences of a failure properly to comply with the rules. In some cases the marriage is ineffective; in others the only sanction is a criminal penalty. Whether the marriage is effective or not may depend on the knowledge of the parties regarding the failure. Nor can it be said that the sacrifice of simplicity and intelligibility has enabled the other objectives to be achieved; on the contrary, the system, if such it can be called, manifestly does not promote the uniform or effective investigation of capacity and consents by trained personnel and does not afford an adequate opportunity for objections to be declared and considered. The most that can be claimed for it is that it prevents the celebration of some irregular marriages and provides a reasonably effective, if unnecessarily complicated and diffused, method of recording marriages which have taken place. Rationalisation is clearly long overdue and should be attainable. Simplicity may be more difficult to achieve since complications are inevitable if proper precautions are to be preserved. However a measure of complication is acceptable so long as it affects only those who are professionally trained to deal with it and so long as the system is made more intelligble to members of the public so that they know what is required of them.

2 THE PRELIMINARIES TO MARRIAGE

A The Existing Procedures

Civil Preliminaries

6. All marriages other than those of the Church of England must be preceded by civil preliminaries; i.e., by giving notice to a superintendent registrar and obtaining an authorisation

from him. There are, however, three different types of authorisation which may be obtained viz., superintendent registrar's certificate, superintendent registrar's certificate and licence, and Registrar General's licence. In all these cases if a party, not being a widow or widower, is under the age of 18[4] (but over 16 - the minimum age for marriage)[5] the consent of the parent or other person specified in Schedule 2 to the Marriage Act 1949 must be given unless the court consents or the Registrar General dispenses with the consent on the ground that it cannot be obtained because of absence, inaccessibility or disability.[6] If, however, a marriage is in fact solemnised despite non-compliance with this formality the marriage is valid.

7. Superintendent registrar's certificate This was intended to be the procedure adopted save in exceptional circumstances (in fact, however, the alternative of a certificate and licence is chosen in about 30% of civil marriages).Notice in the prescribed form[7] must be given to the superintendent registrar of the registration district in which the parties have lived for the preceding seven days.[8] If they live in different districts notice must be given in each.[9] It must be given personally by one or other of the parties and no other person can lawfully do it for them, but when two notices are needed either party can give both. The notices must be accompanied by a solemn declaration that there are believed to be no lawful impediments

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4. The new age of majority: Family Law Reform Act 1969, ss. 1 and 2. The words of the Marriage Act 1949, s.3 are "Where the marriage of an infant ... is intended to be solemnized." Presumably therefore consents are not needed if the minor will be of full age before the authorisation is granted.
5. Marriage Act 1949, s.2.
6. Ibid. s.3.
7. The Registration of Births, Deaths and Marriages Regulations 1968 (S.I. 2049) Forms 15 and 16: see Appendix A.
8. Marriage Act 1949, s.27(1)(a).
9. Ibid. s.27(1)(a).

to the marriage, that the residential requirements have been satisfied and that, if one party is a minor and not a widow or widower, the requisite consents have been given or dispensed with.[10] A wilfully false statement in the declaration is an offence under the Perjury Act 1911.[11] Where the marriage is to be a Quaker one, both parties must be Quakers or authorised to be married under a general rule of the Society of Friends and there must be a declaration or certificate to that effect.[12] In the case of a Jewish wedding, although both parties must profess the Jewish religion[13] there is no similar requirement for a declaration or certificate. The notice is entered in a marriage notice book which is open to public inspection[14] and is displayed for 21 days on a notice-board in the superintendent registrar's office.[15] Any person may enter a caveat at the office[16] and any person, whose consent is required to the marriage of a minor, may forbid the issue of a certificate by writing "forbidden" by the entry and signing it with a statement of the capacity in which he purports to forbid.[17] In either event the certificate cannot be granted until the objection is withdrawn or found to be invalid. But even though neither of these steps has been taken the superintendent registrar is not to issue a certificate if "any lawful impediment ... has been shown to [his] satisfaction."[18] Otherwise he must, after the

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10. Marriage Act 1949, s.28.
11. Marriage Act 1949, s.3.
12. Marriage Act 1949. s.47.
13. Ibid., s.26(1)(d).
14. Ibid., s.27(4).
15. Ibid., s.31(1).
16. Ibid., s.29 (fee 25p). This may be entered either before or after notice has been given.
17. Ibid., s.30 (no fee). This, of course, cannot be done until after notice has been given.
18. Ibid., s.31(2)(a).

expiration of the 21 days, issue a certificate in the prescribed form[19] which must be produced to the person before whom the marriage is solemnised. In practice before issuing a certificate the superintendent registrar seeks to satisfy himself that there is no impediment (for example, if one party has formerly been married that the marriage has been ended by death or divorce) and that in the case of a minor any requisite consents have been given. It is now provided by the Family Law Reform Act 1969[20] that he may refuse to issue the certificate unless satisfied by the production of written evidence that the consent has in fact been obtained. Anomalously, however, there is no express statutory authority entitling him to demand written evidence (for example, a birth certificate) that parties who have professed that they are of full age are in fact adults.[21] The certificate is valid for three months from the date on which notice was entered in the marriage notice book.[22] The total cost of obtaining a certificate is 75p, if notice to only one superintendent registrar is needed, £1.50 if notice has to be given to two. It will be observed that the procedure demands a 21-day waiting period and that there must be a seven-day residential qualification before the notice is given.

8. Superintendent registrar's certificate and licence As we have seen, this was intended to be an exceptional procedure but is in fact used quite frequently. It enables the parties, by paying extra (bringing the total payment to £3) to avoid the 21-day waiting period and the publicity involved in the display of the notice on the notice-board. If both parties are resident in England or Wales, so long as one has lived in a registration

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19. Marriage Act 1949, s.31(2). For form of the certificate, see S.I. 1968/2049, Form 20: Appendix B.

20. s.2(3).

21. There is no statutory requirement that the age of the parties must be stated either in the notice or the declaration but the prescribed form of notice requires age to be stated.

22. Marriage Act 1949, s.33.

district for fifteen days (as opposed to the seven days in the case of a certificate alone) either party can give notice to the superintendent registrar of that district.[23] The notice is entered in the marriage notice book,[24] but not on the notice-board,[25] and unless the marriage is effectively forbidden,[26] or any lawful impediment is shown to the satisfaction of the superintendent registrar, he must, on request, after the expiration of one whole week day, issue his certificate and licence.[27] In all other respects the regulations are the same as those for a certificate alone; for example, the notice must be accompanied by a declaration and there are the same provisions regarding entering a caveat. Obviously, however, there is far less opportunity of checking the accuracy of the notice and declaration and little time for anyone to raise an objection. The authorisation remains effective for three months.[28]

9. Registrar General's licences The issue of a superintendent registrar's certificate or certificate and licence could lead to the lawful solemnisation of either a civil marriage in the register office or to a religious marriage.[29] But hitherto there has been no power for the civil authorities to authorise a marriage at any convenient time and place; the marriage has had to be in the register office or in a registered building or in a church or chapel of the Church of England or according to the rites of the Jews or Quakers. Members of the Church of England can, as we shall see, obtain a special licence from the Archbishop of Canterbury enabling them to be married at any time

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23. Marriage Act 1949, s.27(2). For forms, see S.I. 1968/2049. Forms 17 and 18: Appendix C.

24. Ibid., s.27(4).

25. Ibid., s.32(1).

26. i.e., under s.30 above.

27. Ibid., s.32(2). For the form of a certificate and licence, see S.I. 1968/2049, Form 21: Appendix D.

28. Ibid., s.33.

29. Ibid., s.26.

and place according to the rites of the Church but all other marriages (except Jewish and Quaker ones) had to be celebrated between the hours of 8 a.m. and 6 p.m.[30] in a registered building. This has caused hardship in the case of people who were seriously ill and not expected to recover. Hence as a result of the Marriage (Registrar General's Licence) Act 1970, which came into force on 1 January 1971, the Registrar General has been given a power, not unlike that enjoyed by the Archbishop of Canterbury, to license a marriage to be solemnised elsewhere than in a registered building or a register office.[31] Notice may be given by either of the parties to the superintendent registrar of the district in which the marriage is intended to be solemnised, stating the place where it is to be solemnised.[32] With minor modifications, the normal provisions relating to entry in the marriage notice book[33] and to the declaration to accompany the notice must be complied with,[34] and evidence must be produced that,

(a) there is no lawful impediment to the marriage,
(b) the requisite consents have been given,
(c) there is a sufficient reason why the licence should be granted, and
(d) one of the persons to be married is seriously ill and is not expected to recover and cannot be moved to a place at which a normal marriage could be solemnised.[35]

A medical certificate is sufficient evidence of (d).[35] Upon receipt of the notice and evidence, the superintendent registrar notifies the Registrar General and must comply with any directive

30. Marriage Act 1949, s.4.
31. Marriage (Registrar General's Licence) Act 1970, s.1(1). But the marriage must not be solemnised according to the rites of the Church of England: ibid.
32. Ibid., s.2(1).
33. Ibid., s.2(2).
34. Ibid., s.2(3).
35. Ibid., s.3.

he gives regarding investigation of the evidence.[36] Again with minor modifications, the normal provisions apply regarding caveats[37] and forbidding by any person whose consent is required.[38] But unless the marriage has been effectively forbidden or lawful impediment shown, the Registrar General must, if satisfied that sufficient grounds exist, grant a licence.[39] This enables the marriage to be solemnised, at any time[40] within one month of the day when the notice was entered in the marriage notice book,[41] at the place stated in the notice of marriage.[42] The licence costs £15 but the Registrar General has power to remit this in whole or in part if it would cause hardship to the parties.[43] It will be observed that in this case there is no prescribed waiting period at all - not even the 24 hours required in the case of the superintendent registrar's certificate and licence.

Ecclesiastical Preliminaries

10. Ecclesiastical preliminaries are used only in the case of Church of England weddings, and not always then, for a superintendent registrar's certificate can be used instead[44] (though this is very unusual). As in the case of civil preliminaries there are three types, viz., banns, common licence and special licence.[45] The main contrasts with civil preliminaries are that, except in the case of common licences, the provisions in section 3 of the Marriage Act 1949 relating to

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36. Marriage (Registrar General's Licence) Act 1970, s.4.
37. Ibid., s.5.
38. Ibid., ss. 6 and 7(b).
39. Ibid., s.7.
40. Ibid., s.8(1). This presumably means (though this is not wholly clear) that s.4 of the Marriage Act 1949 (prescribing that marriage must be solemnised between the hours of 8 a.m. and 6 p.m.) does not apply.
41. Ibid., s.8.
42. Ibid., s.9.
43. Ibid., s.17(1).
44. Marriage Act 1949, ss. 5(d) and 17. But not a certificate and licence: ibid., s.26(2) proviso.
45. Ibid., s.5.

parental or other consents in the case of minors between the ages of 16 and 18 do not apply, that no declaration is required, and that there is no legal obligation on the ecclesiastical authorities to satisfy themselves regarding the absence of impediments.

11. Banns The publication of banns is overwhelmingly the most commonly used preliminary, only about 6% of church weddings being after common or special licence. The banns must be published on three Sundays preceding the marriage.[46] If the parties reside in the same parish the banns must be published in the parish church or authorised chapel; if in different parishes, in each parish church or chapel.[47] They may also be published in any parish church or authorised chapel which is the usual place of worship of one or both of the parties[48] and this will be necessary if the parties are to be married there.[49] A clergyman is not obliged to publish banns unless the parties deliver or cause to be delivered[50] seven days' notice in writing with their full names, places of residence and the period during which each has resided there.[51] But this is the only information which the clergyman is legally entitled to require and no minimum period of residence is prescribed.[52] The banns are entered in a register book.[53] Parental or other consents are not required in the case of minors but, if any person whose consent would have been required had the marriage been intended to be solemnised on the authority of a superintendent registrar's certificate or certificate and licence or of a common licence publicly declares

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46. Marriage Act 1949, s.7.
47. Ibid., s.6(1)-(3).
48. Ibid., s.6(4).
49. Ibid., s.12(1).
50. i.e., personal attendance of the parties is not required.
51. Ibid., s.8.
52. The residential qualification is often regarded as fulfilled by booking a room in a local hotel and depositing a suitcase in it. It is expressly provided (s.24) that once the marriage has been celebrated no evidence can be given to disprove residence.
53. Ibid., s.7(3).

his dissent at the time of publication of the banns, their publication is ineffective.[54] When the marriage is celebrated in a parish other than that in which both parties reside certificates of publication of banns in the other parish or parishes must be produced to the clergyman who is to officiate.[55] The marriage must be celebrated in one of the churches or chapels in which the banns have been published within three months of the completion of their publication.[56] The cost of each set of banns is currently 52½p with an extra 35p for the certificate required if one set of banns is read in a church other than that in which the marriage is to be celebrated. It will be observed that the waiting period for a marriage after banns corresponds approximately with that of a marriage after a superintendent registrar's certificate (21 days) though it may in practice be longer if seven days' notice is insisted upon or shorter if it is waived and the marriage takes place immediately after the third Sunday.

12. Common licence Common licence corresponds to a superintendent registrar's certificate and licence; it enables the parties to marry in the Church of England without waiting for banns to be published. The licence is issued under the authority of the Bishop of the diocese by the Diocesan Registrar (who is normally a solicitor) or a Surrogate (who may be the incumbent of the parish). It can be granted only for the marriage in a church or chapel of an ecclesiastical district in which one of the parties has had his or her usual place of residence for fifteen days immediately before the grant of the licence,[57] or a parish church or chapel which is the usual place of worship of one or both of the parties.[58] Application for a licence must be accompanied by an affidavit (corresponding to the declaration

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54. Marriage Act 1949, s.3(3).

55. Ibid., s.11.

56. Ibid., s.12.

57. Cf. the 15 days' residential requirement for a superintendent registrar's certificate and licence: see para. 8 above.

58. Marriage Act 1949, s.15.

required in the case of civil preliminaries) sworn by one of the parties stating that he believes that there is no lawful impediment, that the residential qualification is complied with, and, where one of the parties is a minor and not a widow or widower, that the requisite consents have been obtained or dispensed with.[59] There is, however, no legal power to require written evidence that consent has in fact been obtained.[60] A caveat may be entered[61] but unless it is the licence must be granted immediately; there is not even a 24-hour waiting period as there is in the case of the superintendent registrar's certificate and licence. The licence lasts for three months.[62] The cost of obtaining it is £4.50.

13. Special Licences These are special dispensations granted by the Archbishop of Canterbury enabling marriages to be solemnised according to the rites of the Church of England at any convenient time and place. Unlike the new Registrar General's licence, designed to achieve a more limited object, the grant of a special licence is entirely discretionary.[63] In practice it is granted only in exceptional circumstances or grave emergencies.[64] It costs £25 which may be waived.

B Criticisms and Provisional Proposals

The need for compulsory civil preliminaries

14. We have said that the primary objectives of preliminaries are to ensure that "there should be proper opportunity for the

59. Marriage Act 1949, s.16(1).

60. s.2(3) of the Family Law Reform Act 1969 applies only to civil preliminaries under Part III of the Marriage Act 1949.

61. Marriage Act 1949, s.16(2). If so the licence must not issue until it is withdrawn or found to be unfounded by the ecclesiastical court: ibid. There is no procedure whereby a person whose consent is required can forbid the marriage by less formal steps.

62. Ibid., s.16(3).

63. See ibid., s.79(6) which simply says that nothing in the Act shall affect special licences.

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

investigation of capacity (and, in the case of minors, parental consent) before the marriage, and that the investigation should be carried out, uniformly for parties to all marriages, by persons trained to perform this function," and that "there should be proper opportunity for those who may know of a lawful impediment to a marriage to declare it".[65] In fact it is difficult to imagine a system less calculated to achieve these objectives. It is not uniform. It does not ensure that there is always a proper opportunity for investigation or that the investigation is carried out by those who have been trained for that role. Nor does it ensure that those whose consents are required or who may know of impediments have an adequate opportunity of stopping the marriage. These strictures are least justified in the case of marriages after a superintendent registrar's certificate. There, at any rate, there is a three-week waiting period, an opportunity of investigation by trained personnel, and some information on which to base an investigation and a right to demand some further evidence. But, even there, there is no method whereby those who wish to object can be sure of doing so effectively. Potential objectors may in practice have no idea where the couple propose to marry. It is impracticable to search every marriage notice book in the country; and a search will be ineffective if the couple choose to marry in Church after ecclesiastical preliminaries. Nor will there be time to make searches if the couple have paid a little extra in order to cut down the waiting period from 21 days to one day. The outstanding absurdity of the present position is, perhaps, that the payment of an extra fee enables the major safeguard of a waiting period to be by-passed.

15. Although in the case of banns there is generally an equally long waiting period it is a less effective safeguard. As we have seen, there is no legal requirement that the parties shall make any declaration about capacity, nor is there any legal duty upon the person to whom application is made for the publication of banns (who is not necessarily the incumbent

65. Para. 3 above.

himself) to satisfy himself on these matters although many clergymen do so. The historical justification for banns is, of course, that their publication will give adequate advance public notice of the couple's intention to marry which will enable anyone knowing of an impediment to come forward.[66] In social conditions which prevailed in this country before the present century this may have been sound. To-day, with the growth and increased mobility of the population and the increase in urban living, it clearly is not. Unless the banns happen to be published in a church regularly attended by the parties and their friends and relations the chances of any impropriety coming to light are remote.

16. In our view, it is impossible adequately to reform the present system unless uniform civil preliminaries are made compulsory in the case of all marriages and unless the civil preliminaries are themselves reformed. Only then will it be possible to ensure that there is adequate investigation and to provide an effective system of raising objections. This is far from being a novel or revolutionary suggestion. When the Marriage Bill was introduced in 1836 it in fact provided for civil preliminaries to all marriages. The clauses which required this in the case of Church of England marriages were removed during the course of the Bill's passage in order to hasten the enactment of the Bill's major reforms. But the Government of the day then expressed the view that it would be necessary on a future occasion to carry the whole of the original plan into effect.[67] Such preliminary enquiries as we have made suggest that the Church of England would not now oppose this rationalisation. It will not, of course, prevent the Church requiring publication of banns as an ecclesiastical preliminary to a Church wedding.[68] All that we are proposing is that the

66. Or, as was said in Wakefield v. Wakefield (1807) 1 Hag. Con. 394 at 401, "to designate the individual in order to awaken the vigilance of parents and guardians, and to give them an opportunity of protecting their rights".

67. (1836) Hansard Series 3, Vol. XXXV, Col. 1122.

68. This would avoid any loss of fees payable for the reading of banns.

publication of banns should cease to be a requirement of the civil law.[69] This could, if desired by the Church, be coupled with the removal of the present obligation on incumbents to marry any of their parishioners[70] (even though they have never set foot in the Church before), affording them the same freedom as ministers of the Roman Catholic and Free Churches to decide whether or not they will perform a particular marriage. Marriage by common licence would necessarily disappear. We would see no objection to the retention of the Archbishop's special licence but this would not be essential if the legislation were amended so that the Registrar General's licence could be used as a preliminary to a marriage according to the rites of the Church of England.

17. If, then, civil preliminaries are to be compulsory for all marriages, what should these preliminaries be? As the foregoing discussion will have shown, a waiting period and publicity have traditionally been the basic safeguards - though the former has been easily evaded and the latter is of dubious effectiveness. In our view, it is essential to provide for an adequate waiting period which cannot be dispensed with at the whim of the parties. To this we revert later.[71] As a preliminary we consider the question of publicity.

Publicity

18. As we have seen, the present method of publicising civil preliminaries is the entry of the notice in the marriage notice book and, in the case of a certificate (without licence), display of the notice on a notice-board. Both these are open to public inspection. But in practice ordinary members of the

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69. The Kilbrandon Committee made a similar recommendation in respect of Scotland: Cmnd. 4011 para. 51.

70. Other than a marriage of a divorced person who has a former spouse still living: Matrimonial Causes Act 1965, s.8(2). Apart from this exception "a minister could probably be compelled to celebrate the marriage of two unbaptised persons": Church and State, the Report of the Archbishops' Commission (1970, Church Information Office) para. 200.

71. See paras. 21-26 below.

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

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

20. We have found this question a difficult one. On the whole our provisional conclusion is that entry of notice in a marriage notice book open to public inspection should be retained, but we are undecided whether display on a notice-board should continue. On this matter we should welcome the views of those to whom this Paper is circulated. On one point, however, we are quite clear: publicity alone is a totally inadequate precaution.

The waiting period

21. If irregular marriages are to be prevented there must, in our view, be adequate preliminary screening. This necessarily involves a period of notice of sufficient length to enable enquiries to be undertaken and for objections to be made and considered. On the whole, the period of 21 days (which may be regarded as the present norm) seems about right. If reduced to, say, 15 days this would in most cases provide ample time for enquiries. On the other hand, it would allow little margin for public holidays or postal delays especially where evidence had to come from overseas. Hence we think that the period should be 21 days and certainly not less. Indeed, there are many people who think that a longer waiting period should be prescribed, not so much to enable irregular marriages to be prevented but so as to hinder young people from marrying in excessive haste. We ourselves are not greatly impressed by the latter consideration; we do not believe that many people marry strangers after a few days' acquaintance and we are sure that it would be impracticable to extend the period of notice to one sufficiently long to ensure that the parties know each other as well as they ideally should.[72] On the other hand, we note that the Kilbrandon Report has recommended a period of notice of 28 days.[73] If this recommendation is in fact adopted in respect of Scotland then we would, in the interests of uniformity, favour a like period for England and Wales. But whether 21 or 28 days, we do not think that it need be clear days - a concept which people find confusing. It means that the day on which notice is given and the day on which it expires must be excluded; hence if 21 clear days were required and a notice were given on a Saturday, the parties would not be able to marry until the third Sunday thereafter. Our view is that they should be able to marry on the third Saturday.

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72. Compare the observations of the Committee on the Age of Majority (1967) Cmnd. 3342, paras. 178-183 rejecting the suggestion that there should be a compulsory period of betrothal before marriage.

73. Cmnd. 4011, para. 65.

22. Our provisional conclusion, therefore, is that 21 (or 28) days' notice should be the normal requirement. And, in contrast with the present position, it should be a normal requirement that cannot be dispensed with at the whim of the parties by paying an extra fee. In other words, we recommend the abolition of the superintendent registrar's certificate and licence. On the other hand, we are conscious of the fact that to make the parties wait 21 days or 28 days in all cases could cause hardship and that not all cases of hardship could be dealt with by resort to the Registrar General's licence under the 1970 Act. One such case is where one of an engaged couple is suddenly posted abroad. Another is where a divorce has been expedited in order to enable a marriage to take place before the birth of a child.[74] If steps have been taken to hasten the divorce proceedings and to expedite the grant of a decree absolute, many people would think it objectionable, or at least unfortunate, if the need to give three weeks' or a month's notice prevented the parties from marrying before the child was born. At present, by obtaining a superintendent registrar's licence on the day when the decree is made absolute they can marry after the lapse of one clear day.

23. It is our provisional conclusion that cases of hardship should be dealt with by giving the Registrar General a discretion to authorise the superintendent registrar to issue a licence before the expiration of the full 21 (or 28) days' period if the Registrar General is satisfied, on the evidence produced,

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

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

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74. It is estimated that decrees absolute are expedited for this reason in about 1,200 cases a year.

In our view, a power to expedite, circumscribed as proposed, would deal adequately with most cases of genuine hardship (other than those covered by the Registrar General's licence under the 1970 Act) without creating too large a loophole in the normal requirements. In normal circumstances, cases in which there would be any ground for expediting would not, we think, be likely to exceed 3,000 per annum at the most, and on that basis it should be possible for all of them to be dealt with centrally by the Registrar General as we have proposed. This has three desirable results:

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

(ii) it provides a deterrent against excessive applications, and

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

24. It will be observed that under (a) in the foregoing paragraph the discretion to expedite will be exercisable only if the Registrar General is satisfied on the evidence before him that there is no impediment and that all necessary consents have been given. This is a stricter requirement than that at present applying to the grant of a certificate or licence, and than that which we recommend should apply on the expiration of the normal waiting period.[75] Under the latter requirement, the marriage has to be authorised unless the superintendent registrar believes that there is some obstacle. Under our present proposal the licence will not be expedited unless the Registrar General, on the evidence before him, is reasonably satisfied that there is none. When he is so satisfied no particular purpose is served by requiring the parties to wait. However, we regard it as important to make it clear that the normal waiting period will

75. See para. 60 below.

not be shortened merely because the Registrar General is satisfied that there are no impediments. That would encourage people to leave the arrangements until the last moment. Nor should mere forgetfulness in giving timely notice or a desire to marry as soon as possible be a ground for expediting. As (b) says, the authorisation should be expedited only if the parties could not reasonably have been expected to give notice and exceptional hardship would be caused if the waiting period were not shortened. The two obvious cases where we would regard these conditions as satisfied are where there is an unforeseen posting abroad or where the birth of a child to the woman is expected before the expiration of the waiting period. Some may argue that the latter situation is not deserving of special consideration. However, although the penalties of illegitimacy, both social and legal, are far less than they were and although a marriage legitimates a child previously born to the parties, the fact is that most people prefer their children actually to be born in wedlock, and we regard this as a natural and commendable preference to which the law should have regard. We do not suggest that these are the only circumstances where hardship might be caused or where an expedited licence would be justified. Hence, in our view, the Registrar General's discretion should not be fettered unduly; the formula which we have suggested should, we think, give him adequate freedom with protection against frivolous applications.

25. There is, however, one further matter which has caused us some concern. It arises in those cases where the birth of a child is expected immediately after the date of a decree absolute of divorce or nullity. In these circumstances great pressure will inevitably be exerted to obtain a licence to marry at the earliest possible date and it may be difficult to resist this pressure especially in cases where the divorce judge has expedited the decree in order to enable a marriage to take place before the birth. It would clearly be of assistance to the Registrar General if he were able to carry out investigations prior to the decree absolute to ensure that

there are no impediments other than the, as yet, undissolved prior marriage. We have accordingly considered whether parties should be able to give conditional notice prior to the decree absolute. This notice would give all the usual details concerning the parties and declare that they knew of no impediment other than the existing marriage in respect of which a decree nisi had been granted on a stated date with leave to apply for it to be made absolute on a stated date. The normal publicity would be given to that notice and the normal enquiries could be instituted. It would then be possible for the Registrar General to authorise the marriage so soon as the decree absolute was produced if, because for example of an impending birth, that was justified. It is for consideration whether this concession should be restricted to cases in which a child is expected or whether it should be available in all cases where the previous marriage is in process of being dissolved or annulled. In our view, it would be preferable to make it generally available but to provide that the normal waiting period should run from the date when the impediment was removed by the production of the decree absolute, subject to the power of the Registrar General to shorten the period under the procedure recommended in paragraphs 23 and 24 in cases where exceptional hardship would otherwise be caused.

26. The main objection to this proposal is that it would introduce a novel principle, which might be thought distasteful, that people already married should be able to give official notice of intention to marry someone else. Clearly, if it were possible to give notice prior to decree nisi, this objection would be overpowering. Hence, despite the fact that this will mean that the proposal will not help when, as sometimes occurs, leave is given at the hearing immediately to make absolute the decree nisi, we have limited it to applications after decree nisi. The objection in principle is then much less strong; the decision of the House of Lords[76] that after decree nisi there are no considerations of public policy which prevent the

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

making and enforcement of a promise to marry, appears to imply that there is equally nothing contrary to public policy in making arrangements for the new marriage. A subsidiary objection is that it does not necessarily follow that the decree nisi will be made absolute on the earliest day (or indeed at all). It is initially only the petitioner who can apply for it and it may well be the respondent who is anxious to re-marry immediately. Hence, it may be that the work of screening the application with a view to expediting the licence will be wasted. In practice, however, this is only likely to occur in a handful of cases and already it is not every notice that in fact leads to a marriage. It is, we think, only the objection in principle that has much weight. We ourselves are divided in opinion on the merit of this suggestion and we would particularly welcome views.

Contents of Notices and Declarations and Supporting Evidence

27. We have already pointed out that it seems anomalous that the parties are not under any statutory obligation to state their ages, or to produce evidence to verify it. In fact, the present prescribed form of notice requires ages to be stated and in practice superintendent registrars often ask for supporting evidence in the form of a birth certificate or passport. We propose that the statute (or regulations made under it) should provide for the dates and places of birth to be stated in the notice and confirmed in the declaration and that the registrar should be empowered to demand written evidence just as he now can in relation to consents.[77] This would normally be by production of a birth certificate but registrars would sometimes have to accept other evidence (for example, a passport or a statutory declaration). We think most people would expect to have to produce their birth certificates when they get married and proof of age is essential when they are not obviously over 17. We discuss later whether there should be instituted any system of annotation of the births' register with the fact of marriage.[78]

77. Family Law Reform Act 1969, s.2(3); see para. 7 above.
78. Paras. 114-115 below.

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

By whom notice should be given

29. At present two notices are required only if the marriage is by superintendent registrar's certificate and the parties live in different districts. Even then one party can give both notices. This arrangement lends itself to inaccuracies and makes it possible for false statements to be made, sometimes unwittingly, by one party about the age and status of the other. It seems unreasonable to rely on the declaration by one party regarding the other; indeed, this makes it possible for one party to avoid any perjury by lying to the other and leaving the other to make the required declaration. Hence we propose that in future both parties should be required to attend before the appropriate superintendent registrar and to give notice and make a declaration which would identify the other party but deal fully only with the age and status of him or herself.[79] Another factor supporting this proposal is that our courts are sometimes asked to rule that a marriage which has been solemnised is invalid because one party did not understand that he or she was being married or was subject to improper pressure. Precautions are taken at a later stage to ensure that such situations do not occur but if each party were required to attend to give notice their occurrence would be still more unlikely.

79. We deal below, paras. 53-58, with a possible relaxation where one party is abroad.

This proposal should not apply to marriage by Registrar General's licence under the 1970 Act; there, ex hypothesi, one party is not in a position to attend and give notice.

Where notice should be given

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

31. The notice required for marriage by Registrar General's licence is an exception to the rule that notice must be given in the district in which the parties reside; there the notice is given to the superintendent registrar of the district in which it is intended that the marriage should be solemnised. In view of the urgency this seems the most convenient arrangement and we do not suggest that it should be changed. But, for reasons given above, we do not think that a similar rule should apply to other cases.

Length of residence before notice is given

32. At present notice cannot be given until the party has "resided ... for the period of seven [or fifteen in the case of a licence] days immediately before the giving of the notice". This formula was doubtless intended to ensure that a party did not assume a new residence solely for the purpose of giving notice. In practice, however, it has precisely the opposite effect for it is treated as an invitation to assume a notional residence for seven or fifteen days, thereby enabling a person who wants to enter into a clandestine marriage to marry in a

place where he is unknown.[80] In our view, the aim would be better achieved by deleting any reference to a prescribed period and by providing that notice must be given in the district where the party has his residence at the time. It is necessary to recognise, however, that there are those , such as bargees and gypsies, who have no residence in any particular registration district. We suggest that so long as it is clear that they have the necessary residential connections with England and Wales they should be permitted to give notice in any registration district where they happen to be at the time. This would prevent hardship to them while at the same time enabling superintendent registrars to reject notices from people who had merely assumed temporary residence in this country in order to get married here, perhaps because they wished to evade the formalities or prohibitions applying in their own countries. We deal later on[81] with the question of marriages here of people from abroad.

Lodging of objections - absence of parental consents

33. We have already referred to the difficulties which an objector may face because, under the present system, an objection can be lodged only in the office where notice has been or will be given and because, thanks to the ease with which a residential qualification can be assumed, the objector has no means of knowing which office that is.[82] But before dealing with means whereby these difficulties might be obviated it may be helpful to look more closely at the present law regarding parental consents for it is the absence of these which is the most common ground of objection.

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80. Whether, in truth, a purely temporary residence suffices in law is very doubtful: cf. Fox v. Stirk [1970] 2 Q.B. 463 (C.A.). This case was concerned with "residence" for electoral purposes but it was held that the expression had no technical or special meaning in the relevant statute and that, in its ordinary sense, it implied some degree of permanence, a mere temporary presence not sufficing. It seems likely that it would be held to bear the same meaning for the purposes of the Marriage Act.

81. See paras. 44 et seq. below.

82. See para. 14 above.

34. The minimum age at which parties domiciled in England can marry anywhere or at which parties domiciled anywhere can marry in England is 16.[83] If either party is under that age the marriage is void. It is beyond the scope of our terms of reference to consider whether this rule, which relates to capacity, not to form, should be altered; it was recently considered by the Latey Committee which unanimously recommended that there should be no change.[84] If a party is aged 16 or 17,[85] parental consent is normally required, but if a marriage is solemnised in the absence of such consent the marriage is valid. The statutory provisions relating to parental consents are, however, complicated and confusing. As we have seen,[86] the provisions are less strict in the case of banns than in the case of marriages after a certificate or licence, but this difference will disappear if, as we have proposed above,[87] universal civil preliminaries are instituted.[88] More serious is the difficulty that is sometimes experienced in deciding who are the requisite persons to give consent. A glance at the Second Schedule to the Marriage Act, where the rules are laid down, will reveal some of the difficulties. It may, for example, be necessary to determine whether the parents are "living together" and if not who has "deserted" whom; if they are divorced or separated under a court order, no provision is made for a not uncommon situation

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83. Marriage Act 1949, s.2.

84. Report of the Committee on the Age of Majority (1967) Cmnd. 3342, para. 177.

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

86. Para. 15 above.

87. Para. 16 above.

88. "At the moment Marriage after Banns in the Church of England seems to afford a better chance of getting round the need for consent than other modes of marriage ... We recommend that the consent procedure should be made uniform for all modes of marriage": Report of the Committee on the Age of Majority (Cmnd. 3342, para. 185(5)). Our proposal would implement this recommendation.

in which there is no custody order or "agreement". Consents cannot be dispensed with merely because it is doubtful who ought to consent. The power to dispense deals only with another situation in which difficulties may arise, namely, where consent of a prescribed person "cannot be obtained by reason of absence or inaccessibility or by reason of his being under any disability".[89] In such circumstances either the consent may be dispensed with by the superintendent registrar, or the court[90] may consent.[89] If a person whose consent is required refuses, the court[90] may consent instead.[91] It will be observed that consent is required only in the case of a minor "not being a widower or widow".[92] If, therefore, he or she has once married (with or without consent) he may marry again without consent unless the first marriage ends by divorce[93] and not by the death of the former spouse.

35. The enforcement of the rules relating to consents is notoriously difficult and it is well known that the rules can be easily evaded. If the requirement is to remain, something must be done to make evasion more difficult; the present position merely brings the law into disrepute. It could be argued, however, that it would be better to scrap altogether the need for parental consent. The arguments in favour of this solution may be summarised as follows:-[94]

(a) The requirement is easily evaded and short of making marriages void in the absence of consents

89. Marriage Act 1949, s.3(1) proviso (a).

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

91. Marriage Act 1949, s.3(1) proviso (b).

92. Ibid., s.3(1).

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

94. For a further statement of the arguments pro and con see the Report of the Committee on the Age of Majority (Cmnd. 3342) paras. 147-165.

no steps can be taken which will be wholly effective in preventing evasion.[95]

(b) Consents are not required in Scotland and there is no pressure for their introduction there.[96]

(c) There is no available evidence to show that parents are better judges of the suitability of a match than the child who proposes to marry.

(d) It may well be that parental opposition (armed with a legal sanction) merely strengthens the child's determination.

(e) It is notorious that if the girl becomes pregnant parental opposition is likely to be withdrawn (though arguably this should be regarded as a further reason for objecting). Hence, the requirement may encourage an unwanted or premature pregnancy which places an additional strain on the marriage.

(f) Where children are living with and dependent on their parents, it may be reasonable to defer to the parents' judgment; that, however, would generally happen in practice (cf. Scotland) whether or not the law required it, and persuasion, without the teeth of legal sanctions, may well be more effective than threats. Today, however, many children are self-supporting and some are living on their own by the age of 16 or 17. In such circumstances to allow the absent parents to retain a veto on marriage is unjustified.

36. Some of us regard these arguments as powerful and are bound to say that if there were no present requirement of

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95. See para. 37 below.

96. But see para. 164 of the Report of the Committee on the Age of Majority (Cmnd. 3342) where it is suggested that "Scottish culture may perhaps have provided a better bulwark against any weakening of parental control".

parental consents we would not think that the case for introducing it had been made out. Nevertheless we are faced with a situation in which the requirement exists and in the present climate of opinion we do not think that it is a practical proposal to suggest that it should be scrapped. The Latey Committee, as recently as 1967, after fully canvassing the arguments,[97] unanimously recommended that it should remain;[98] indeed, two members recommended that consents should be required up to the age of 21.[99] In the face of this it is not for us to recommend the contrary.

37. It is accordingly necessary to consider how the requirement can be made more effective. The only way of making it wholly effective would be to provide that the absence of consents makes the marriage void or voidable. We doubt whether public opinion would favour such an extreme solution. Moreover, if it were adopted not only would a far more precise formulation of those whose consents are required be essential but it would seem desirable that arrangements should be made for the consents to be formally recorded and preserved and for the identity of the persons signing the consents to be established. But, even then, such a solution would be effective only in the sense that a marriage without the requisite consents would be ineffective; it would not prevent the parties from going through a form of marriage. As stressed in our statement of the objectives of a sound marriage law,[1] the aim should be to prevent invalid marriages from taking place; not to allow them to take place and then annul them.

38. We consider, therefore, that the only solution is to make it more difficult for minors to marry without obtaining the needful consents. Our foregoing proposals already go some way in this direction. If there are uniform civil preliminaries in all cases, if evidence of age and of consents has to be

97. Except that they perhaps under-estimated the difficulties of preventing evasion.

98. Cmnd. 3342, para. 165.

99. Ibid., para. 580.

1. See para. 3 above.

produced, if the trained personnel of the registration offices will have 21 days in which to make enquiries, there will be far fewer loopholes than there are at present. But these precautions will not necessarily be effective if the parties are determined to marry and are prepared to commit criminal offences in the course of doing so. If a minor obtains a certificate of the birth of an adult[2] and then marries in the name of that adult he may avoid any enquiry regarding consents. Even if he admits to being a minor he may produce what purports to be a written consent from his parents which he has in fact forged. If the superintendent registrar writes for confirmation to the parents he can prevent the letter reaching them - either by giving his own address instead of theirs or, if he is living with them, by collecting the post. To require personal attendance of the parents at the register office would often be impracticable and impersonation might escape detection.

39. Hence a further step which seems to us to be essential is to make it easier for those who wish to prevent a marriage to lodge an effective objection. This requires a system whereby objections[3] can be lodged centrally with the Registrar General. Hitherto this has not been a practicable course because banns, which are outside the control of the Registrar General, have been an alternative and commonly used preliminary. If, however, civil preliminaries are made compulsory as we have suggested, there should, we think, be no insuperable difficulties.

40. We considered whether it would be practicable to provide that the Registrar General should maintain a central register of objections and that superintendent registrars should not issue authorisations for a marriage until they had checked with the Registrar General to ensure that no objection had been lodged. We are satisfied, however, that this would not be possible. Several thousand authorisations are granted every week-day and

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

3. We mean by "objections" both the lodging of a caveat under s.29 or a "forbidding" under s.30 of the Marriage Act.

an enormous staff would be needed to deal with the enquiries which would have to be made in each case. On the other hand, we think that it would be practicable for the Registrar General's department, with only a modest increase in staff, daily to circulate to all superintendent registrars a list of the objections lodged that day so that each superintendent registrar would, after only a short delay, have a complete list of objections. The number of objections lodged is very small and is likely to remain small. The expense of any modest increase in staff would be minimal in comparison with the frustrations which parents frequently experience in attempts to prevent their minor children from marrying without their consent and in comparison with the expense to themselves and the public at present incurred when they try to do so by having their children made wards of court. As previously stated,[4] we envisage this sytem of centrally-lodged objections as a supplement to, not a substitution for, the lodging of objections at the superintendent registrar's office. But once an objection has been lodged locally the superintendent registrar should be required to notify the Registrar General who would circulate notice of it to all other superintendent registrars. This would prevent a determined couple, whose marriage in one district had been effectively prevented by a local objection, from moving to a new district and trying again there.

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

4. Para. 30 above.

registrar. But all one can do is to make it difficult to marry irregularly, and thus to deter young couples from trying, and to make it more likely that they will be detected in time if they do try.

42. We have already referred,[5] to the difficulties flowing from the terms of the Second Schedule to the Marriage Act 1949 which defines the persons whose consent is requisite. An attempt should be made in any new legislation to make this clearer and to fill the present gaps. This, as we see it, is largely a question of drafting rather than of policy, for the basic policy seems to be clear, namely that the consent of both parents is required if both are alive and, if they are not, of the surviving parent, if any, and the guardians, if any, appointed by the deceased parent. If, however, both custody and care and control have been granted to one parent, the consent of that parent alone should be needed, and if the child has been placed in the care of a local authority the latter's consent should be required instead of that of the parents. Where the parents have separated the question of who has deserted whom (which faces superintendent registrars with insoluble problems) should be irrelevant. We also question whether it is any longer desirable, having regard to the new attitudes towards illegitimacy reflected in recent reforms in the law,[6] to provide, as at present, that the father's consent is never required when the child is illegitimate. It seems to us that if he has contributed to the maintenance of the child, or possibly if he has merely acknowledged paternity, his consent should be needed. We should welcome views on this.

Other grounds of objection

43. The system proposed in paragraphs 40 and 41 would not, of course, be restricted to objections on the ground of absence of parental consent. It would be available also for use in cases where there is any impediment, for example, a previous (existing) marriage. In such cases, however, it is considerably less likely that any member of the public would lodge an

5. Para. 34 above.

6. Family Law Reform Act 1969, Part II.

objection (even the present spouse may have no particular inducement to do so); in practice, detection of this sort of impediment will have to be left to the vigilance of the superintendent registrar. Particular difficulty arises in the case of people coming here from abroad. Hitherto we have assumed in the course of this Paper that both parties are resident in England or Wales and that no foreign element enters into the consideration of whether they are free to marry. We turn now to a consideration of the very intractable problems which arise when this assumption is unfounded.

Marriage of "foreigners"

44. By the expression "foreigners" we do not mean only persons of foreign nationality. We are concerned with all cases where, because of the foreign nationality, domicil or residence of one or both of the parties, the validity of the marriage may depend on a foreign law or where the validity of a marriage here may depend upon the validity of a foreign decree of divorce or nullity, or where, although the marriage here may be valid, the parties have come here to evade restrictions upon their marriage imposed by a foreign law. It is the last of these which is perhaps the most common. Many Continental countries require parental consent up to the age of 21. Now that in England it is required only to the age of 18 some influx of couples from the Continent is to be expected and there are some indications that it has already started. Previously their traditional haven was Scotland, and Gretna Green became the best known place-name in marriage folklore. This caused some international ill-feeling and accordingly the Kilbrandon Report[7] paid particular attention to this problem.

45. The solution recommended in the Kilbrandon Report was, briefly, as follows:[8]

(a) a person resident outside the United Kingdom should be asked to produce "a Certificate of

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7. Cmnd. 4011.

8. See ibid., para. 156 (21)-(24) which summarises these recommendations.

Capacity to Marry" issued by a competent authority in his own country;[9]

(b) if he was unable to do so or if the Registrar General was otherwise in doubt about his freedom to marry, the Registrar General should, if he thought fit, transmit particulars of the person to an appropriate representative of his country to ascertain whether there was any impediment to the marriage;[10]

(c) if the representative lodged an objection the Registrar General should have regard to it if the ground of objection was

(i) a prior subsisting marriage or restriction on re-marriage,

(ii) that the parties fell within the prohibited degrees of relationship,

(iii) that parental consent was needed and had been withheld,

(iv) non-age or

(v) mental incapacity.[11]

46. This proposal, that it should be left to the applicant's country to confirm capacity or to object that there is an impediment, has great attractions and we have given it the closest attention, especially as this is pre-eminently an aspect of the subject on which there should be harmony between the laws of England and Scotland. Nevertheless at the present stage we do not feel able to recommend its adoption in England. If, as proposed in (a) of paragraph 45, the applicant is able to produce a "Certificate of Capacity to Marry", that is clearly something which would be most useful to superintendent registrars, and applicants should certainly be encouraged to produce one when-

9. Ibid., paras. 93 and 94.
10. Ibid., para. 98.
11. Ibid., para. 98.

ever possible. To that extent we fully endorse the Kilbrandon proposals. But we are satisfied that while this might be possible in the case of many visitors from Continental countries, which have a system of issuing such certificates, it would not in the case of the majority of foreigners marrying in England. In this respect the position in Scotland may well be different since the major problem there seems to arise from visitors from the Continent.

47. Where no certificate can be produced, we see difficulties in the proposal that reference should be made to "an appropriate representative of the applicant's country". Who is this? The Kilbrandon Report appears to envisage that it would be the Embassy, High Commission or Consulate "of the country of which the party is a national or in which he has his usual residence".[12] That authority would be asked to consider "whether there was any impediment to the marriage of the party under his personal law". The "personal law" would rarely be the law of the usual residence as such; more probably it would be that of the nationality or domicil. Hence, where the usual residence was different from the nationality, reference to the diplomatic representative of the former would be useless, as would reference to the representative of the latter country if the appropriate personal law was that of the domicil rather than that of the nationality. It seems to us that the registrar would sometimes be faced with difficult problems in deciding to whom to refer. On the other hand, where the parties' nationality, domicil and usual residence were the same (which would often be the case) these problems would not arise.

48. Secondly, (though this is a minor point) we think that the Kilbrandon Report understates the amount of information which would have to be given to the "appropriate representative". He would need to be given not merely "particulars of the party" but also particulars of the <u>other</u> party since without this the representative would not be able to consider whether the parties were within the prohibited degrees of relationship. Nor do we

12. <u>Ibid</u>., para. 98.

understand how the representative would be given sufficient information to express an opinion on a party's mental capacity.

49. Thirdly, we have grave doubts whether in most cases a reply would be received to the enquiry before the expiration of the 28 days from giving notice. This too may be regarded as of minor importance on the basis that the country concerned could hardly complain if a marriage was allowed to take place because of the dilatoriness of its representative. But, in practice, we suspect that the representative would ask for more time to complete his enquiries. If, despite this request, the registrar allowed the marriage to take place, the country concerned might well be incensed; and if the registrar held up the marriage the parties would certainly be incensed.

50. Fourthly, the proposals envisage that the registrar would reject the representative's objections unless these were based on one of the stated grounds. It would not, therefore, wholly obviate international complaints; indeed, it might exacerbate them. It is one thing to marry a foreigner in the absence of any formal objection from the authorities of that person's country; it is another to do so in the face of a formal and invited objection.

51. Finally, and most seriously, we think that grave difficulties might face registrars when one of the stated grounds of objection was raised. Presumably, the applicant must be allowed to dispute that the grounds of objection are valid; it can hardly be intended that a country should have a veto over the marriage of one of its nationals merely by alleging that he is under age, or has not obtained parental consent, or is already married. How then is the dispute to be resolved without offence to the country concerned? And even if the ground of objection is established, is it necessarily justified to refuse a marriage here? If a girl of 19 wishes to marry a British subject in Great Britain and to settle here, are we to refuse to allow her to do so merely because she has not obtained the parental consents required by the law of her foreign country

with which she will have no connection in future?[13] And after the passing of the Recognition of Divorces and Legal Separations Bill now before Parliament it will no longer be possible for us to recognise a restriction on re-marriage after a divorce entitled to recognition.[14]

52. For these reasons we would prefer to tackle the admitted problem by tightening up the requirements for residence in England or Wales before parties can marry here. On the other hand, if the system proposed in the Kilbrandon Report is introduced in Scotland we certainly think that it should be closely watched by the English authorites to see how, in practice, it operates in comparison with our arrangements. If it proves to be effective and not to produce the undesirable side-effects that we fear, it may well be that we should follow suit in due course. We are fully conscious of the fact that if it proves to be effective, and our proposals do not, it will be Dover or Folkestone rather than Gretna Green which will earn the undesirable reputation of being the "Cythera where minors can get married in defiance of their parents".[15]

53. Accordingly, we turn now to a consideration of how we suggest that this problem should be tackled. We do so in a wider context than that of runaway marriages. The situation where parties come here for the purpose of getting married is only one facet of a problem which arises whenever parties wish to marry here but both are or one is not ordinarily resident here. There are, as we see it, the following situations which have to be considered in the light of our foregoing proposals:-

(a) One party is resident and physically present in England or Wales and the other party is:

(i) resident in another part of the United Kingdom,

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13. Under present English practice, the parties would be allowed to marry here unless the girl lacked capacity to marry according to the law of her domicile.
14. See clause 7 of the Bill, implementing Article 11 of the Hague Convention on Recognition of Divorces and Legal Separations.
15. Cmnd. 4011, para. 100.

(ii) resident in a country to which the Marriage of British Subjects (Facilities) Acts 1915 and 1916 apply,

(iii) serving abroad on one of H.M's ships at sea,

(iv) serving in the Merchant Navy at sea,

(v) serving in H.M.'s Forces abroad but with a home here,

(vi) usually resident here but temporarily abroad,

(vii) living abroad but with a connection such as a parental home here,

(viii) resident abroad with no connection here.

(b) Neither party is physically in England but both have homes here.

(c) Neither party is physically in England but one only has a home here.

(d) Neither party has any claim to an English residence.

54. It would, we think, be generally agreed that, leaving aside cases (a)(viii), (c) and (d), no obstacle should be placed in the way of marriage here of such people. The arrangements should enable them to marry here, although sometimes it may be necessary to investigate the position under a foreign law, for example, where one party may lack capacity to marry by the law of his foreign nationality or domicil or where there has been a foreign decree of divorce or nullity of a former marriage; this indeed may be so although both parties are resident here. Under the existing law, in cases (a)(i)-(iii) notice can be given in England by the party here and the party abroad can give notice in the country where he lives[16] (or on board ship)[17] and can

16. Case (i): Scotland under Marriage Act 1949, s.37 and Northern Ireland under ibid., s.38; case (ii) under the Acts of 1915 and 1916.

17. Marriage Act 1949, s.39.

produce on arrival here a certificate which, in conjunction with the English registrar's certificate, will enable the marriage to take place here so soon as he arrives. We do not propose that there should be any change in this respect.[18]

55. In cases (a)(iv)-(vii), so long as the party who is abroad can be regarded as resident here there is no particular difficulty at present since the party physically here can give the requisite notices as regards both. Our proposal, that the need for a prescribed period of residence should be removed,[19] will not cause any difficulty; on the contrary, it will be helpful. But our further proposal that notice should be given by each party and by personal attendance at the superintendent registrar's office[20] could create hardship. We are reluctant to relax the requirement that each party shall give notice and that each shall attend before the registrar. These safeguards are no less necessary where a party is abroad; indeed, that may be precisely the case where they are most needed. We suggest, however, a relaxation to the following extent: when a party is abroad he should, so long as he fulfils the requirements entitling him to give notice, be entitled to complete the prescribed forms of notice and declaration there and to send them by post to the superintendent registrar of the district of his normal residence. But the superintendent registrar should not issue his authorisation for the marriage until the party has attended in person before him and confirmed the information to his satisfaction, and should not be bound to issue it until the expiration of seven days from such attendance. This procedure would ensure that the superintendent registrar received documents completed by each party and had a full period in which to investigate. It would also ensure that he had an opportunity

18. Except for the removal of a flaw in s.39(3) which precludes the superintendent registrar from accepting notice in respect of the girl in England until the man's commanding officer has issued his certificate. And see para. 55.

19. Para. 32 above.

20. Para. 29 above.

of seeing the party from abroad, of cross-examining him to clear up any queries arising from the investigation, and of ensuring that he (or she) fully understood the effects of an English marriage. We suggest that this method of giving notice should be an optional alternative to the special arrangements covering cases (a)(i)-(iii).

56. At present, in the remaining cases (a)(viii), (b), (c) and (d) parties can also marry here with very little difficulty; they merely both have to reside here for seven days or one has to do so for fifteen days before notice is given. This, in our view, is clearly too lax where one has or both have no real prior connection with England. What, therefore, one needs to do is to find a formula which will prevent notice being given (either in person or by post) unless the person giving it has sufficient connection with England. And this connection, we suggest, need be less close if the other party has a real connection with England. If neither has any prior connection with this country (the typical runaway marriage) notice should not be possible until a residential connection has been newly and firmly established. We accordingly suggest that a person should not be entitled to give notice, whether in person or by post, unless he is either:-

(a) domiciled and habitually resident[21] here;

(b) domiciled here and has been habitually resident here at some time during the immediately preceding 5 years;

(c) present here and the other party is habitually resident here; or

(d) resident here for 3 months immediately preceding the notice.

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21. We use the expression "habitual" rather than "ordinary" residence as the former expression is coming into general use in legislation dealing with matters of this sort: see the Administration of Justice Act 1956, s.4; the Wills Act 1963, s.1; the Adoption Act 1968, s.11; and the Recognition of Divorces and Legal Separations Bill 1971, clauses 3(1) and 5(2).

57. Case (a) takes care of the normal English permanent resident. Case (b) covers the man or woman who was formerly resident here and left less than 5 years ago and still retains his or her domicil here (the temporary expatriate). Case (c) deals with the man or woman who comes here to marry the normal English resident: Case (d) deals with the residual class where neither party has a prior connection with England. In this case neither can give notice until he or she has been resident here for three months. This, in our view, would effectively prevent England from becoming a marriage haven. We should, however, welcome the comments of those to whom this Paper is circulated. The major objection, which we recognise, is that it will require superintendent registrars to satisfy themselves as to domicil as well as residence unless the person in question has been resident here for three months. But, when that person has not been so resident, the likelihood is that registrars would, even under the present law, have to investigate domicil since on this depends capacity to marry. Hence, we do not think that in practice their difficulties will be increased. In the overwhelming majority of cases both parties will have been resident here for more than three months and there will be no need to investigate the question of domicil.

58. There is, however, one minor problem in the case of a party who is domiciled and was formerly resident here but is so no longer. In such a case to what district superintendent registrar should he give notice? The choice is between his last former place of residence in England or Wales or the district where the marriage is intended to be solemnised. In our view the former is more appropriate; he cannot have left there more than five years ago (see paragraph 56(b)) and enquiries there may be more fruitful than anywhere else in England or Wales. In view of the proposals in the next paragraph the registrar of the district in which the marriage is to be celebrated will in fact receive notice also.

Exchange of information between superintendent registrars

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

Grant of authorisation to marry

60. On the expiration of the prescribed period of notice the superintendent registrar (or registrars) to whom notice has been given should be required to issue his authorisation to each party unless, on the evidence before him, it appears that there might be an impediment to the marriage or that any of the requisite consents have not been given. This is in contrast with our recommendation regarding an expedited licence which should be granted only if the Registrar General is satisfied on the evidence before him that there is no obstacle.[22] Under the present law, the superintendent registrar is required to issue his certificate unless he is satisfied that there is an impediment. We prefer the formula suggested above; if the enquiry procedure which we have suggested is to serve its purpose the authorisation should not be granted until the enquiries have been answered and any serious doubts allayed. At present the authorisation may either be a certificate or a certificate and licence. We have already proposed that the latter should, as such, disappear.[23] Nevertheless, we think

22. See para. 23 above.

23. See para. 16 above.

that "licence" is a more appropriate description than "certificate". It better describes what the authorisation is, it is the expression used and understood by the public and it avoids confusion with other certificates (e.g., marriage certificates) which are issued in connection with marriages. Except where the licence is a Registrar General's licence (or, perhaps, where the marriage is to be a Quaker or Jewish one)[24] the licence should state the place where the marriage is to be solemnised - although for reasons stated later,[25] we think that the superintendent registrar should be empowered to amend the licence by substituting a different place. To aid identification, the licence should also state the date and place of birth of each of the parties. As at present,[26] both licences should be delivered to the person responsible for the registration of the wedding and we suggest that it should be made clear that it is an offence for any person to officiate at the wedding unless they have been so delivered.

Summary of provisional proposals on preliminaries

61. Our provisional proposals under this head are:-

(a) There should be uniform civil preliminaries for all marriages regardless of where they are to be celebrated (para. 16).

(b) The requirement of publication of banns before Church of England marriages should be repealed as a legal requirement (although the Church may wish to retain it as an ecclesiastical preliminary) (para. 16).

(c) Marriage by common licence should be abolished (para. 16).

(d) Entry of notice in a marriage notice book open to public inspection should be retained, but we

24. We consider later the question whether the Quakers and Jews should continue to be able to celebrate marriages anywhere: see paras. 81-82.

25. See para. 127 below.

26. Marriage Act 1949, s.50.

invite views on whether it should be displayed on a notice-board as well (para. 20).

(e) Twenty-one (or 28) days' notice should be the normal requirement (paras. 21-22).

(f) The Registrar General should be empowered to authorise a superintendent registrar to permit a marriage before the expiration of 21 (or 28) days, if the Registrar General is satisfied, on the evidence produced,

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

(ii) that the parties could not reasonably have been expected to give earlier notice and that exceptional hardship would be caused if the marriage had to be delayed until the expiration of the normal waiting period (paras. 23 and 24).

(g) Views are invited on whether it should be permissible to give conditional notice after a decree nisi dissolving or annulling a previous marriage (paras. 25-26).

(h) Each party should be required to state in the notice his date and place of birth and to confirm it in the declaration; the registrar should be empowered to demand evidence to support these statements (para. 27).

(i) Superintendent registrars should be expressly empowered to demand evidence of the effective termination of any previous marriage (para. 28).

(j) Each party should be required to attend before the appropriate superintendent registrar to give notice and to make a declaration which would name the other party but deal fully only with the age and status of himself (para. 29).

(k) In general, notice should be given in the district where the party has his residence at the time (paras. 30-32).

(l) There should be provision for the lodging of objections at the office of the Registrar General; (paras. 39-41).

(m) The statutory provisions defining the consents required on the marriage of minors should be clarified; views are invited on the position when the minor is illegitimate (para. 42).

(n) When a party is absent from England and Wales he should, if he fulfils the requirements stated in proposal (o), be entitled to complete the prescribed forms of notice and declaration abroad and to send them by post to the superintendent registrar of the district of his normal residence, but the superintendent registrar should not authorise the marriage until the party has attended in person before him and confirmed the information to his satisfaction and should not be bound to authorise it until the expiration of seven days from such attendance; this should be an optional alternative to the present special arrangements covering the situation when one party is:

(i) resident in another part of the United Kingdom

(ii) resident in a country to which the marriage of British Subjects (Facilities) Acts 1915 and 1916 apply

(iii) serving abroad on one of H.M.'s ships at sea (para. 55).

(o) It should not be permissible to give notice whether in person or by post unless the person concerned

(i) is domiciled and habitually resident here, or

(ii) is domiciled here and has been habitually resident here at some time during the immediately preceding 5 years, or

(iii) is present here and the other party is habitually resident here; or

(iv) is resident here for 3 months immediately preceding the giving of notice (paras. 56-57).

(p) A party who is domiciled here but who is no longer resident here should give notice to the superintendent registrar in the district of his last former place of residence (para. 58).

(q) Provision should be made for the exchange of notices between superintendent registrars (para. 59).

(r) On the expiration of the waiting period the superintendent registrars should be required to issue authorisations (to be known as 'licences') to marry unless on the evidence before them it appears that there might be an impediment to the marriage or that any of the requisite consents had not been given (para. 60).

(s) A licence should state the place where the marriage is to take place but the superintendent registrar should be empowered to amend this if there is good reason to change the venue (para. 60).

3 PLACE AND METHOD OF SOLEMNISATION

A The Existing Procedures

Types of marriage

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

(a) by a civil ceremony in a superintendent registrar's office,[27]

(b) after the grant of a Registrar General's licence

27. Marriage Act 1949, s.26(1)(b).

(which, as we have seen, can be granted only in very special circumstances)[28] at any place by a civil ceremony or by such form or ceremony (other than that of the Church of England) as the parties see fit to adopt,[29]

(c) according to the rites of the Church of England in any church or chapel in which banns may be published,[30]

(d) after the grant of an Archbishop's special licence (which, as we have seen, is granted only in exceptional circumstances) at any place according to the rites of the Church of England,[31]

(e) in a registered building according to such form and ceremony as the persons to be married see fit to adopt,[32]

(f) according to the usages of the Society of Friends (Quakers) at any place,[33]

(g) between two persons professing the Jewish religion, according to the usages of the Jews at any place.[34]

There are also special provisions relating to marriages in naval, military or air force chapels[35] but only service personnel or their daughters may marry therein.[36] We do not in this Paper deal further with these latter provisions though doubtless they will be reviewed by the authorities concerned to see whether

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28. Para. 9 above.
29. Marriage (Registrar General's Licence) Act 1970, s.10(1).
30. Marriage Act 1949, ss. 12, 15, 17.
31. See para. 13.
32. Marriage Act 1949, s.26(1)(a).
33. Ibid., s. 26(1)(c).
34. Ibid., s. 26(1)(d).
35. Ibid., Part V.
36. Ibid., s. 68.

any modernisation is needed in any legislation which may result from our deliberations.

Places of marriage

63. It will be observed that in cases (a), (c) and (e) the place where the marriage takes place is prescribed, i.e., it must be a register office, a church or chapel of the Church of England, or a "registered building". Quakers and Jews, on the other hand, can marry at any place; members of the Church of England or other religions can do so only if they obtain a special licence or a Registrar General's licence. Where the marriage was preceded by the reading of banns, the ceremony must be in one of the churches of chapels in which banns were read.[37] Where it was by common licence, or superintendent registrar's certificate (with or without licence) the church, chapel, registered building, register office or other place in which it is to be celebrated will be stated in the licence[38] or certificate[39] and the marriage is invalid if knowingly and wilfully celebrated anywhere else.[40] Normally, the place of solemnisation must be in the district in which one of the parties resides.[41] Hence, generally speaking, whether the marriage was preceded by banns, licence or certificate and licence parties can marry only in the parish or district in which one (or both) is resident. This, however, does not apply to Quaker or Jewish weddings.[42]

Nature of ceremony

64. In the case of all religious weddings other than those of the Church of England, the Quakers or the Jews, the ceremony

37. Marriage Act 1949, s.12(1).

38. Ibid., ss. 15 and 16.

39. Ibid., s. 27(3), 31(3), 32(3) and 35.

40. Ibid., ss. 25 and 49(e).

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

42. Ibid., s. 35(4).

must be attended either by a registrar or an "authorised person",[43] and in some part of the ceremony each party[44] must make the declaration and statement in the prescribed statutory words declaring that he or she knows no impediment and saying that he or she takes the other to be his or her lawful wedded wife or husband.[45] These words must also be used at any civil ceremony.[46] At a Church of England wedding there must, in addition to the officiating clergyman, be present at least two witnesses.[47] At any civil ceremony there must be the superintendent registrar, the registrar, and at least two witnesses.[48] At a marriage in a registered building there must be either a registrar or an "authorised person" and at least two witnesses.[49] In the case of a marriage in a registered building or register office the marriage must be celebrated "with open doors",[50] i.e., the public must be allowed in.

Hours

65. Marriages must be solemnised between the hours of 8 a.m. and 6 p.m.[51] This appears to apply to all marriages, other than those by Archbishop's special licence or, less clearly, by

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43. Marriage Act 1949, s.44(2). On "authorised persons" see para. 68 below. Marriages under a Registrar General's licence (except, again, in the case of Quakers or Jews) must be attended by a registrar: Marriage (Registrar General(s Licence) Act 1970, s. 10(2).

44. It is implicit in this that both parties must be present.

45. Marriage Act 1949, s. 44(3).

46. Marriage Act 1949, s.45(1); Marriage (Registrar General's Licence) Act 1970, s.10(3). No religious service may be used at a marriage solemnised in a register office: ibid., s. 45(2). But the marriage may be followed by a religious ceremony elsewhere ibid., s. 46 and Marriage (Registrar General's Licence) Act 1970, s. 11.

47. Marriage Act 1949, s.22.

48. Ibid., s. 45(1); Marriage (Registrar General's Licence) Act 1970, s. 10(3).

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

50. Ibid., ss. 44(2) and 45(1).

51. Ibid., s. 4.

Registrar General's licence.[52] Whether Quakers and Jewish weddings are intended to be included is not certain since the only express sanction in the event of a breach is that the solemniser incurs the risk of prosecution and this expressly does not apply to Quaker or Jewish weddings.[53]

Marriages in registered buildings

66. The statement in paragraph 62(e) that a marriage in a registered building can be by "such form and ceremony as the persons to be married see fit to adopt" might give the impression that the parties can dictate the form of the wedding and that this can be as unconventional and devoid of religious content as they wish. But although the quoted formula is that employed by the Act it is somewhat misleading. This is because:-

(a) a registered building must be a "separate building"[54] which,

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

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

52. See para. 9, fn. 40 above.

53. Marriage Act 1949, s. 75(1)(a).

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

of public religious worship and that they desire it to be registered;[55] and

(b) no marriage can be solemnised in any registered building "without the consent of the minister or of one of the trustees, owners, deacons or managers thereof, or in the case of a registered building of the Roman Catholic Church, without the consent of the officiating minister thereof".[56]

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

67. The Registrar General can be faced with difficult and embarrassing problems in deciding whether to permit the registration of a building in accordance with the provisions summarised in paragraph 66(a). This is well illustrated by the recent "Scientologist" case - R. v. Registrar General, ex parte Segerdal.[57] In that case the acting chaplain of a building in Sussex known as a chapel of the Church of Scientology had applied to the Registrar General for the recording under the 1855 Act of the building as a place of meeting for religious worship. The Registrar General, after lengthy enquiry and copious correspondence, refused, taking the view that the chapel was not used for public religious worship. Application was therefore made for an order of mandamus to compel him to record the building. It was held that, although the Registrar General's duty was enforceable by mandamus, he was not, in the instant case, in breach of that

55. Marriage Act 1949, s.41(2). For the provisions relating to cancellation and substitution of another building, see s. 42 as amended by the 1958 Act.

56. Ibid., s. 44(1) proviso.

57. [1970] 2 Q.B. 697, C.A.

duty since he was entitled, and indeed bound, to satisfy himself that the building was a place of meeting for religious worship. The religion, or, more properly perhaps, philosophy, of the Scientologists did not involve any congregation or assembly for reverence or veneration of God or a supreme being or entity. Hence there was no element of "religious worship" in their ceremonies and the Registrar had rightly refused registration. Clearly, however, the niceties with which the Registrar General may have to wrestle in deciding whether an ostensible religion is a religion and, if so, whether its ceremonies involve "worship" are more suited to a theologian than a civil servant. He also has to satisfy himself that the building is a "separate" one[58] and that the religious worship is "public"; but these fortunately involve issues of fact rather than theology.

Authorised persons

68. As mentioned above,[59] all marriage ceremonies in a registered building (i.e., all save those of the Church of England, the Quakers or the Jews or those in a register office) must be attended by a registrar or by an "authorised person". His function is not only to ensure that the subsequent process of registering the marriage is duly carried out but also to ensure that the preliminaries have been duly completed and that the formalities are properly observed, for if they are not he will, or should, refuse to allow the marriage to take place. The object of allowing an "authorised person" to act instead of a registrar is to minimise the discrimination against religions other than the Church of England, Quakers and Jews by allowing one of their officials to be present instead of a representative of the State. Hence, the trustees or governing body of the registered building may authorise a person (who may be the minister or some other official of the church or chapel) to be present at weddings in that building and may certify his name and address to the Registrar General and the local superintendent registrar.[60]

58. Except in the case of Roman Catholic chapels: see fn. 54 above.

59. See para. 64.

60. Marriage Act 1949, s.43.

No particular qualifications are prescribed. Marriages may then be solemnised in a registered building in the presence of the duly certified authorised person of the building or of another registered building in the same registration district.[61] These provisions relating to authorised persons also have the desirable consequence of relieving the civil authorities of the heavy burden of having to make a registrar available at every marriage in a registered building.

B Criticisms and Provisional Proposals

The need for greater uniformity

69. Many of the same criticisms as those applied to preliminaries apply equally to the arrangements for solemnisation. Once again there is no uniformity and the proliferation of the many different types of marriage ceremony is not best calculated to ensure that irregularities are avoided so that "doubts do not arise, either in the minds of the parties or in the community, about who is married and who is not".[62] The principal safeguards adopted by the law are prescribed places for solemnisation of marriage, prescribed persons to be present at marriages and prescribed words to be used in their celebration. But from all of these, Quaker and Jewish weddings are exempt and in other cases the requirements vary according to whether the marriage is in a register office, in a church or chapel of the Church of England, or in a registered building of another denomination. The system is wasteful of the time of registrars since they have to attend marriages not only in register offices but also in registered buildings which have no "authorised person". This obligation tends to hamper the recruitment of staff since it is understandably regarded as a considerable burden, especially

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61. Marriage Act 1949, s.44(2). I.e., one authorised person per district could in theory act at weddings in all registered buildings in that district. In practice, however, each sect has its own authorised person or relies on the presence of a registrar. But a single authorised person may act in respect of a number of different churches or chapels of the same sect.

62. See para. 3 above.

in relation to weddings on Saturday afternoons, Sundays, and public holidays. It can also inconvenience the public since the times available for weddings are to some extent limited by the availability of registrars. Moreover, the mixture of civil preliminaries handled by the superintendent registrar and religious ceremonies arranged with the religious body adds complications and is liable to cause confusion.

70. There is no doubt that the simplest and most effective method of meeting these criticisms would be to follow the example of many other countries by making a civil ceremony compulsory, allowing it to be followed by a religious service if the parties wish.[63] This would be a logical sequel to our previous proposal that civil preliminaries should be universal and, since civil registration is already compulsory, would produce uniformity throughout the whole marriage formalities. It would also have the result that Church of England clergymen would no longer be bound, as they are at present (except in the case of divorced persons)[64] to marry any of their nominal parishioners even though they are not church-goers and simply regard the church as a more impressive and prestigious venue for a social occasion than a register office. On this ground it would certainly have the support of some church-goers. But it is our impression that it would be likely to arouse strong opposition from the majority of ministers both of the Church of England and of other denominations, and from the general public.[65]

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63. This is already permissible after a civil wedding: see above, para. 64, fn. 46.

64. Matrimonial Causes Act 1965, s.8(2).

65. The Kilbrandon Committee took the same view: Cmnd. 4011, paras. 106-108. But for a criticism by Prof. T.B. Smith, Q.C., see 1969 S.L.T. (News) 189. It should be emphasized that we are not thinking of the extreme solutions rejected in Marriage Divorce and the Church, the recently published Report of the Commission appointed by the Archbishop of Canterbury to prepare a statement on the Christian Doctrine of Marriage (S.P.C.K. 1971, see paras. 133-137), under which the civil solemnisation would be the registration of a marriage contract leading to a dissoluble union and the Church marriage would be indissoluble, or under which the State would legislate for two different kinds of marriage - a dissoluble civil one and an indissoluble Church one.

Moreover, if all the marriages which are at present celebrated in churches, chapels and registered buildings had to be channelled into register offices their accommodation would be inadequate and some increase of staff would also be essential. Hence, although we invite views on the adoption of this solution, it is our impression that it will not find favour unless, at any rate, no other satisfactory reform of the present arrangements is possible. Accordingly, we turn to a consideration of less extreme measures. As we have said, the present arrangements for solemnisation of marriage place emphasis on prescribed places, persons, words and hours, and it is convenient to take each of these in turn.

Prescribed places of solemnisation

71. The first question for consideration is whether celebration of marriages should continue to be confined in general to register offices, churches and chapels of the Church of England and to other places of worship registered for the solemnisation of marriage. There is no such restriction under Scottish law and the Kilbrandon Committee recommended that it should not be introduced there and that, indeed, a registrar should be permitted to celebrate marriages outside his office.[66] Moreover, there is no such restriction in the case of Quaker and Jewish weddings in England and its absence does not seem to have led to any difficulty or abuse. These, on the face of it, are powerful reasons in favour of its repeal. On further scrutiny, however, they do not appear to us to be so powerful as first appears. In this respect Scottish and English traditions have long diverged and there does not seem to be any overwhelming reason for uniformity between the two countries in this particular respect. Scottish law has placed much greater emphasis on restrictions on the celebrants of weddings, and at present these are limited to registrars and to ministers of Christian denominations.[67] The Kilbrandon Committee in recommending an

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

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

extension to ministers of other religions, coupled this with recommendations for still closer control of the right to act as celebrant.[68] We are not convinced that the introduction of such control over celebrants (as opposed to "authorised persons" in respect of their functions as such)[69] is desirable in England and Wales or that it would be acceptable to the religious bodies. Nor do we think that the absence of any evidence of abuse in the case of marriages of Quakers and Jews, sects which have long been established in this country, is necessarily a sound reason for extending a like concession to other sects many of which are newly established here and some of which do not have long-standing traditions or have traditions which are different from ours.

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

73. Nevertheless we think that certain changes in the present rules would be desirable in relation to "registered buildings". In the first place we doubt whether any useful purpose is still served by retaining the dual requirement of "recording" under the Places of Religious Worship Act 1855 followed by registration under the Marriage Act.[70] The main reason why the former step is taken is because it is an essential preliminary to the latter. Nevertheless, as Lord Denning, M.R., pointed out in R. v. Registrar General ex parte Segerdal,[71] it confers certain other privileges,

68. Ibid., paras. 114-116.

69. See paras. 89 and 90 below.

70. See para. 66 above.

71. [1970] 2 Q.B. 697, C.A., at p.704.

for example, exemption from rates[72] and from the obligation to register with the Charity Commissioners.[73] As we understand it, the fact that the Registrar General has recorded a building as a place of religious worship cannot be decisive in determining whether it is entitled to these other privileges; it would be an extraordinary anomaly if it were, for the Registrar General makes no claim to be an arbiter on exemption from rates or from the jurisdiction of the Charity Commissioners. It would be absurd if his decision, taken with quite different considerations in view, should, if favourable, bind the rating authority and the Charity Commissioners who were not parties to his decision and cannot appeal against it. Nevertheless, recording by the Registrar General is, at present, an essential preliminary to obtaining these exemptions and, in practice, cogent evidence of entitlement. It seems to us anomalous that this should be so. Although this is not strictly within our terms of reference, we would, therefore, express the hope that, if recording under the 1855 Act has to be retained for these other purposes, the recording could be by some more appropriate authority. We think that the Registrar General should simply be required to register places where marriages can be celebrated on being satisfied that the other conditions in section 41 of the Marriage Act are fulfilled. This would simplify the procedure and confine the Registrar General's role to one legitimately related to his functions.

74. Unfortunately, it would not relieve him of the difficult and embarrassing task[74] of deciding (subject to review by the court if his decision is adverse) whether a particular place is a place of public religious worship. But so long as religious marriages continue to be legally recognised we see no alternative to leaving him with some such role. Whether, as in England, the emphasis is on the place of religious worship or, as the

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72. General Rate Act 1967, s. 39(2)(a). See also Highways Act 1959, s. 184 exempting from expenses of private street works.

73. Charities Act 1960, s. 4(4) and (9).

74. See para. 67 above.

Kilbrandon Committee recommend in respect of Scotland, on the marriage being celebrated by a religious institution,[75] someone has to decide whether a particular sect is a religion or not and it is this that constitutes the difficult and embarrassing part of the task. Although, as we have said, we do not regard the Registrar General or a court as a particularly appropriate judge of the meaning of "the chameleon word 'religion' or 'religious'"[75] we are unable to suggest any other person or body which would be likely to be both better qualified and as generally acceptable. Nor was the Kilbrandon Committee able to suggest any alternative.[76] Hence, although we invite views, our provisional conclusion is that, if religious marriages are retained, so must the present role of the Registrar General and the courts in deciding what is a religion.

75. It has been suggested, however, that although it may be necessary to retain the limitation to places where religious observances take place, there is no need to have the stricter limitation to religious worship. As we have seen,[77] this has been held to require that the place is used for reverence or veneration of a supreme being or entity. This clearly precludes bodies such as the humanists from having their buildings registered for marriages. It also, as we have seen, excluded the Scientologists. Both, however, would probably be excluded anyway on the basis that they practise a philosophy rather than a religion. On the other hand there undoubtedly are religions which everyone would recognise as such but which do not believe in a supreme being[78] and there may be others which do, but which

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

76. Cmnd. 4011, paras. 115, 116.

77. Para. 67 above.

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

do not worship him at their meetings. Hence, we are bound to say that we are not altogether happy about the retention of the emphasis on "worship" and we shall welcome views on whether a better formula can be found. The Kilbrandon Committee dealt with this problem by proposing that a "church" should be entitled to celebrate marriages subject to the observance of certain formalities, the word "church" meaning

> "an institution which carries on the religious work of the denomination whose name it bears. On the one hand, the religion need not be Christian, and on the other hand, bodies incorporated merely for charitable or philosophical purposes may find themselves excluded".[79]

The Committee admitted that a formulation on these lines would be likely to give rise to controversy but thought that this could be satisfactorily resolved by the Registrar General subject to an appeal to the courts.[79] Adapted to the English concept of "registered building", any test which retained the element of religious observance but rejected that of worship would, we think, result in substituting for "usual place of public religious worship" some such expression as "usual place at which members of a religious denomination publicly assemble to conduct the rites of their religion". We have no doubt, however, that this would make the task of the Registrar General and the courts somewhat more difficult; religious worship does at least provide some objective criterion even if it is not a wholly satisfactory one. Hence, unless a more satisfactory formula is suggested in the course of consultations on this Working Paper, we incline to the view that "religious worship" should be retained. Nevertheless we think that it is eminently desirable that England and Scotland should not adopt tests which might lead to some sects being recognised as religions in the one country but not in the other.

76. In any event we do not think that there is any case for going wholly outside the ambit of religion so as to enable any body of persons, who regularly assemble together for <u>any</u> purpose,

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79. Cmnd. 4011, para. 115.

to celebrate marriages between their members. It seems to us that the underlying intention of the Marriage Acts has always been

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

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

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

77. We do think, however, that the present condition that every registered building should be a "separate" one is unnecessary. It has already been relaxed in the case of Roman Catholic chapels,[80] but it remains in other cases and operates unfairly against some of the smaller denominations who may use part only of a building as their place of worship. Moreover, in city centres there is a tendency for places of worship of

80. Marriage Act 1949, s.41(7).

even the larger denominations to be incorporated in what is, by normal tests, part of a building the rest of which is used for other purposes. As a result, the boundaries of what can be regarded as "separate buildings" have, in practice, had to be somewhat artificially extended.

78. Finally, we think that the wording of the Marriage Act might be amended so as to allow marriages to take place within the curtilage of a registered building although not indoors under its roof. This is particularly important if the concept of registered building is to be extended to Jewish weddings, a question explored in paragraphs 81 and 82. We are informed that traditionally Jewish marriages were solemnised out of doors and that some Orthodox Jews cling to this practice. We see no reason why a marriage in the garden of a synagogue should not be regarded as taking place in the synagogue or why other religious bodies should not be able, if they wish, to celebrate marriages in their churchyards or gardens of their chapels. Far from promoting clandestinity this would make the marriage still more public.

79. As we have seen,[81] the present requirements result in the general rule that marriages must be celebrated in the parish or district in which one of the parties resides. The object of this was, no doubt, to avoid clandestinity and to allow for possible objections to the marriage by ensuring that the parties wed in the area where one at least was well known. But in practice, the requirement can in some cases defeat its own object. Where parties wish to marry in a church or register office outside their place of residence, because it is more fasionable, beautiful or convenient, they may 'acquire' a residential qualification, real or false, in the desired area. The proposals made in the foregoing Part 2 of this Paper are designed to prevent this and to ensure that notice is given only in their true place of residence.[82] But although it is unlikely that parties will be tempted to seek to evade this requirement

81. Para. 63 above.

82. Paras. 29-32 above.

so long as it is limited to the place where notice is to be given, they would undoubtedly find it irksome and seek to evade it if applied to the place of celebration also. In our view, that further requirement no longer fulfils any essential purpose. Under the proposals which we made in the foregoing part of this Paper potential objectors to a marriage will be afforded far better opportunities than they have at present effectively to voice their objections. The only purpose that might be served by seeking to insist that the marriage takes place in the district where notice is given would be to make it a little easier for objections to be made at the last minute by making them during the ceremony. In practice, however, this is not something that is likely to happen (it is almost unheard of at present). Moreover, as we have said, to retain the present rule would encourage evasion of the requirements regarding notice and therefore tend to defeat the object of alerting potential objectors. Hence, we propose that the parties should be allowed to marry at any church, registered building or register office specified in their notice in whatever district that may be - subject, of course, to the agreement of the appropriate authorities in the case of churches or registered buildings.

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

Places of solemnisation of Quaker or Jewish weddings

81. One of our main concerns throughout this Paper is to seek to remove so far as possible the present differences between the

83. The Archbishops' Commission also favoured the end of the obligation: Church and State, paras. 200-205.

privileges accorded to different religions in respect of marriages. At present there is a conspicuous contrast between Quaker and Jewish weddings and all others. In advocating that these differences should be removed we should emphasize at the outset that we are not suggesting that the special privileges of the Quakers and Jews have in any way been abused; we are quite satisfied that they have not. Our reasons are simply that any form of discrimination inevitably breeds resentment on the part of those discriminated against and that we feel that this is particularly regrettable in the religious sphere. We have already given our reasons why we believe that in principle the "registered building" concept is a sound one and why we should be reluctant to see it discarded as one of the corner-stones of our system. The exclusion of Quakers and Jews from the normal requirements was made when it was provided that marriage must take place in a place of worship of the Church of England since it was recognised that this was a requirement with which they could not be expected to comply. When other denominations were allowed to celebrate their own marriages, the opportunity was not taken to put all denominations on the same footing. Hence the anomaly that the registered building concept still has no application to Quakers and Jews. As a result it is difficult to reconcile other religions to the continued application to them of that concept. We hope, therefore, that the Quakers and Jews will, in the interests of inter-religious harmony, earnestly consider whether the "registered building" concept, if relaxed as proposed above, could not be extended to their weddings.

82. It seems to us that this should not present any serious difficulties. The Quakers, by their own rules, normally marry in a Meeting House or where there is none, in a building where meetings habitually take place and which is advertised as such. In the light of our foregoing proposals there seems no reason why this should not be registered for the celebration of marriages. If that were agreed there would be no need to retain the present special certificates required in the case of a Quaker marriage.[84]

84. See para. 7 above.

Jewish weddings are normally celebrated in synagogues. The very small number that take place out of doors are almost invariably in the garden attached to the synagogue and our recommendation is paragraph 78 would cover that. A few, however, take place in private houses, hired halls, hotels or restaurants - although the authorities of the synagogues now take full control of and responsibility for the proceedings. It is only in their case that, as we see it, the extension of the registered building concept might cause difficulty. We question, however, whether it is still necessary to retain the possibility of these extra-synagogue weddings. In the past it may have been justified on the basis that there were few synagogues and those few were concentrated in particular areas. Hence, in days when travel was more difficult, it was unreasonable to expect Jews outside those areas to travel long distances in order to marry. This justification is now of much less weight and is, indeed, weightier in the case of some of the smaller Christian sects and, for example, Moslems and Sikhs, than of Jews. We hope, therefore, that the authorities of the various Jewish denominations will feel able to agree that their synagogues should be registrable for the celebration of marriages and to give up the little-used privilege of celebrating marriages elsewhere.

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

83. We do not consider that there is any need to bring Church of England marriages within the registered building concept. Except with the dispensation of an Archbishop's special licence, such marriages can be celebrated only in parish churches or in chapels licensed or authorised by the bishop of the diocese.[85] These are notified to the Registrar General who publishes a list of them. Hence the purpose of the registered building concept is already served.

85. Marriage Act 1949, ss. 20 and 21.

Prescribed persons at solemnisation

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

(a) both parties,
(b) two witnesses,
(c) the celebrant, and
(d) a person authorised to undertake the formalities regarding registration (the registrant).[86]

It must be admitted, however, that if this is the intention it is not articulated very clearly. As regards (a), it is nowhere expressly stated that both parties must be personally present, although the whole tenor of the legislation, and in particular the provisions regarding the exchange of vows,[87] makes it abundantly clear that they must. As regards (b) the presence of two witnesses appears to be required in the case of all types of weddings. Concerning (c) and (d) the need for separate celebrants and registrants now applies only to marriages in register offices, where the presence is statutorily required of the superintendent registrar (qua celebrant) and the registrar (qua registrant) and to marriages in registered buildings if, but only if, the celebrant is not an authorised person. The emphasis is, however, placed on the presence of the registrant rather than that of a celebrant; it is indeed only in the case of Church of England and register office weddings that a celebrant qua celebrant is statutorily required.

85. In our view, the legislation should emphasize still more emphatically that at every wedding of whatever type both parties must be present in person and at the same time. This is not a purely academic point. Some Eastern sects refuse to allow women in their places of worship and one case has been brought to our attention where an attempt (frustrated by the registrar)

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

87. See para. 64 above.

was made to celebrate a marriage in the registered building of such a sect in the absence of the bride.

86. As regards the need for two witnesses, we have no proposals to make. The need for witnesses is an obvious precaution against clandestinity and ensures that evidence will be available should any doubts arise whether the marriage was properly solemnised. In Scotland it is statutorily provided that the witness to a civil wedding must be aged 16 or over and the Kilbrandon Report recommended that this should apply to religious marriages also.[88] We think that this is a matter which can safely be left to the good sense of celebrants and registrants; there is no general rule prescribing a minimum age for witnesses and a special rule for this particular case does not appear to be justified.

87. On the other hand, we see no reason for attempting to preserve the remnants of the rule that there must be separate persons to perform the functions of celebrant and registrant. This rule has never applied to Church of England weddings where the presiding minister fulfils both functions. It has never been a legal requirement in relation to Quaker or Jewish weddings where, indeed, there is no express provision that there should be present either a celebrant or a registrant.[88] It no longer necessarily applies to marriages in registered buildings since the celebrant can be, and often is, the "authorised person". Only in the case of marriages in register offices is it essential for two distinct officials, the superintendent registrar and a registrar, to be present.

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

88. Cmnd. 4011, paras. 124-125.

of Quaker weddings, we understand that one or more nominated members of the Society of Friends are always present to ensure that everything is conducted in accordance with the rules of the Friends, and that among those present will be the registering officer appointed by the Society for the district in which the marriage is solemnised.[89] In the case of Jewish weddings, wherever they are celebrated, the synagogue takes full responsibility for the wedding and the secretary of the synagogue is responsible for the registration of it[90] and is always present at it. This does not seem to differ, except in name, from the concept of the "authorised person" required in the case of marriages in registered buildings. As we see it, the nominal difference in this respect between Quaker and Jewish weddings and those of other religions, could easily be eradicated. As regards civil weddings, we see no reason why the law need provide that a registrar be present as well as a superintendent registrar. We appreciate that there may be advantages in having a second person to undertake the clerical work so that the superintendent registrar can concentrate on conducting the solemnisation with a proper degree of dignity, but we do not think that the law need provide that this second person must be a registrar.

Authorised persons

89. The functions of an authorised person are (a) to be present to ensure, by inspecting the required documents, that the proper preliminaries have taken place, to hear the statutory words spoken, and generally to ensure that no patent irregularities occur and (b) to register the marriage. Although in the case of most religious weddings these functions are fulfilled by the celebrant, it is only in the case of Church of England weddings that he must do so because the Church authorities cannot appoint

89. Marriage Act 1949, s.53(b).

90. Ibid., s. 53(c). The statutory responsibility, however, is that of the secretary of the husband's synagogue which will not necessarily be the synagogue where the marriage is solemnised. We would have thought that, if our proposals in paras. 81 and 82 are accepted, the responsibility should be that of the secretary of the latter synagogue.

an authorised person or call upon a registrar. We later suggest for consideration that they might be empowered to do so.[91] This suggestion is made primarily in order that overworked incumbents might be relieved of the administrative details of acting as registrant and it is convenient therefore to postpone a discussion of this suggestion to the next part of this Paper. In the case of most other religious weddings (and all if the assimilation suggested in the immediately preceding paragraph is achieved) either an authorised person or a registrar must carry out these functions. We have already pointed out some of the disadvantages of requiring registrars to attend weddings at places other than register offices.[92] Hence we think that it should be regarded as normal practice for the authorities of a registered building to appoint an authorised person rather than to leave his task to be performed by a public official paid from the public purse. We do not propose that this should be made an essential condition of registration of a registered building, if only because this might derogate from the object sought to be achieved by the proposal in the next paragraph. Nevertheless, we do think that where there is a large congregation it should be regarded as their responsibility to appoint a suitable authorised person instead of relying on the services of a registrar. At present economic considerations provide no encouragement to do so. The charge for attendance by a registrar at a wedding is only 75p which must often be insufficient to cover travelling expenses, let alone loss of time. We suggest that the fee should be raised to a sum which would be both a realistic reimbursement of the cost and some inducement to dispense with the need for a registrar by appointing an authorised person.

90. At present the Registrar General has no power to reject the nomination of any person as an "authorised person" or to

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91. See para. 116 below.

92. Para. 69 above.

insist upon his replacement if he proves to be inefficient. Authorised persons, in the performance of their duties, are subject to regulations made by the Registrar General and they may commit offences if they fail to carry out the requirements of the Marriage Act. But this is the extent of the control over them. Prosecution for offences is an extreme measure which is rarely resorted to: it is a cumbersome method of dealing with minor breaches of the law normally resulting from forgetfulness rather than vice, and fails completely to deal with omissions which fall short of being offences. We accordingly suggest that the Registrar General should be empowered

(a) to reject a nomination and

(b) to require the authorities of the congregation in question to cancel the appointment and either to nominate another or to have marriages registered instead by a registrar.[93]

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

Prescribed words

91. As already pointed out,[94] at civil marriages or marriages in registered buildings, certain words have to be used during the ceremony. These words consist merely of the following statements by the parties:

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

and

> "I call upon these persons here present to witness that I, A B, do take thee, C D, to be my lawful

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

94. Para. 64 above.

wedded wife [or husband]."[95]

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

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

may be omitted.[96] Words very similar to the statutory ones form part of the Church of England marriage service except that the parties are not then required to repeat the declaration that they know of no impediment; the minister instead requires them to disclose any impediment if they know it and their silence is treated as a negative response.

92. It seems to us that these words do not make it sufficiently clear that the marriage is monogamous. In times past this may have been regarded as too obvious to need saying. But it clearly is not any longer. There are now buildings registered for the celebration of marriages where the service will be in accordance with the rites of a religion which permits polygamy. If marriages complying with the Marriage Act are solemnised there they will be monogamous ones, as the religious authorities fully recognise, but the present prescribed words hardly ensure that this is made clear to the parties (or indeed to those present). We regard it as vital that they should. We invite views on exactly how this should be achieved. Perhaps the best way would be to require each party to declare:

> "I, A B, take you,[97] C D, to be my one and only wife [or husband] to the exclusion of all others"

It seems to us that words like "lawful wedded" are better omitted since they may suggest that wives (or husbands) other than the "lawful wedded" one are permissible.

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95. Marriage Act 1949, ss. 44(3) and 45(1).

96. Ibid., s. 44(3).

97. The time has surely come when "you" should be substituted for "thee"?

93. The second major weakness is that the celebrant is not required to declare that the parties have become man and wife. This omission means that it may not be crystal clear to both that they have been married, as opposed to merely betrothed. We think, as did the Kilbrandon Committee,[98] that it should be prescribed that after the parties have exchanged vows the celebrant should declare that they have become man and wife. On the other hand, we do not think that this declaration should be treated as essential in the sense that no marriage could come into being unless and until it was pronounced. As we understand it, at present the marriage is concluded once the parties have exchanged their vows[99] and any subsequent pronouncement by the celebrant is in confirmation of what the parties have already done rather than the conferment upon them by the celebrant of the status of husband and wife. We doubt if it would be advisable to alter this. But we do suggest that it would be desirable to make clearer than it is at present exactly at what moment of time the parties become husband and wife, since circumstances could occur in which this could be of importance.[100] We propose that this moment should be immediately after the exchange of vows.

94. Finally, there is the question of the language in which the prescribed words are pronounced. As we understand it, at present they have to be pronounced in English except that, in weddings "in any place where the Welsh language is commonly used",[1] Welsh may be used instead.[2] But there is no statutory requirement that the celebrant should ensure that English or Welsh is intelligible to both parties and the witnesses. While

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98. Cmnd. 4011, para. 115, rule 1.

99. See Quick v. Quick [1953] V.R. 224

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

1. This is interpreted as meaning Wales and the county of Monmouth.

2. Marriage Act 1949, s. 52.

we think it right that the statutory words should be said in the official language of the country, it is even more important that they should be understood. At present the very few statutory words may be the only words of English or Welsh used in the course of a ceremony conducted in another language (which may or may not be understood by most of those present), and the parties merely have to repeat the words to the celebrant's dictation. We suggest that today this is not an adequate safeguard and that the celebrant should be required to satisfy himself that both parties and the two witnesses have a sufficient grasp of English or Welsh to understand the prescribed words and, if they do not, should be required to ensure that the words are repeated in a language or languages which they do understand.[3]

95. The foregoing proposals regarding prescribed words are not intended to be limited to religious marriages in registered buildings. It is equally necessary that they should apply to civil weddings.[4] We would hope, too, that the Quakers and the Jews would not find it impossible to agree to their extension to their weddings. We appreciate that the relative informality of marriages celebrated according to the rites of the Society of Friends may present difficulties if only because in their case there may be no clearly defined celebrant in the strict sense. But these difficulties may apply equally to certain sects which are already required to use the prescribed words.[5] In any event, we are sure that the authorities would fully

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3. This might arise not only where, say, the parties' language is Urdu, but also where a Welsh-speaking husband insisted upon a service being conducted in that language although the wife or the witnesses did not understand it.

4. For some years the Registrar General has in fact required superintendent registrars to read to the parties a statement which makes it clear that the marriage is monogamous and to make sure that where one party is a foreigner who does not fully understand English (or Welsh) that the prescribed words are translated into a language which he does understand.

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

accept the need to ensure that words are used which comply with the minimum requirements mentioned in paragraph 92 and we should welcome their views on how this could best be achieved. We would also hope that the authorities of the Church of England would review the words of its marriage service in the light of the foregoing.[6] In most respects that service already achieves the aim of our proposals; for example, the celebrant does formally pronounce the parties to be man and wife. But, the parties are not required to repeat a declaration of no impediment, there is no requirement that they should understand English, the language in which the ceremony would be conducted and the questions addressed to them, and the fact that the marriage is monogamous hardly seems to be sufficiently stressed.[7] It may be said that this last point is invalid since all Christians know that a Christian marriage is monogamous. That would doubtless be true if all who married in Church were true practising Christians; at present many of them are not; it will not be true so long as the incumbent is required to marry all parishioners (other than divorcees).

Prescribed hours

96. Today[8] the sole objects of prescribing that marriages must be solemnised between the hours of 8 a.m. and 6 p.m. are

(a) to prevent clandestine marriages in the middle of the night and

(b) to protect those entitled to celebrate marriages from being called upon to do so at abnormal hours.

These objects appear to us to be worthy ones. No doubt there are some people who would like to see the evening hour extended

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

7. It is, of course, implicit in the words "and, forsaking all others, keep thee only unto her [him] ..."

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

to 7 or 8 p.m. so that the ceremony could immediately precede a dinner reception. But we see no strong case for such an extension and do not know of any widespread demand for it. Our provisional view is that the hours should remain as at present. However, in any revised legislation the opportunity should be taken of making it clear that these hours apply to any sort of wedding, except one following a Registrar General's licence[9] or an Archbishop's special licence.

Enforcement

97. To encourage observance of the rules regarding the presence of both parties and two witnesses, prescribed words and prescribed hours, we suggest that it should be made a condition of registration of a registered building that the religious authorities undertake that the rules will be followed in every marriage solemnised in the building. The Registrar General should be empowered to cancel the registration if this undertaking is not observed. If this were coupled with the greater control over "authorised persons" which we have suggested,[10] the risk of irregularity in solemnisation should be reduced.

Summary of provisional conclusions on place and method of solemnisation

98. Our provisional conclusions under this head can be summarised as follows:-

(a) The requirement that marriages can be solemnised only in prescribed places should be retained (paras. 71 and 72).

(b) As regards "registered buildings":-

(i) the dual requirement of "recording under the Places of Religious Worship Act 1955 and registration under the Marriage Act should be replaced by a single registration under the latter (para. 73);

9. As pointed out (see paras. 10 and 65) the wording of the 1970 Act does not make this wholly clear.

10. See paras. 89 and 90 above.

(ii) registration should be restricted to buildings of "public religious worship" (paras. 74-76);

(iii) such buildings need not be "separate" buildings (para. 77);

(iv) it should be permissible to solemnise marriages within the curtilage of the building (para. 78).

(c) The prescribed place need not be located in the district in which the parties reside (paras. 79-80).

(d) It is greatly to be hoped that the foregoing proposals could be applied to Quaker and Jewish marriages (paras. 81-82).

(e) It should be clearly stated in the legislation that both parties and the witnesses must be personally present at the same time at the solemnisation of the marriage (para. 85).

(f) The requirement of two witnesses should be retained but we see no need to prescribe a minimum age (para. 86).

(g) Registering officers of the Society of Friends and secretaries of synagogues should become "authorised persons" of the places in which their marriages take place (para. 88).

(h) The legal requirement that a registrar, in addition to the superintendent registrar, must be present at a civil wedding should be abolished (para. 88).

(i) The charge for attendance at a wedding by a registrar should be raised to a figure which is commensurate with the true cost and an inducement to appoint an authorised person instead of relying on registrars (para. 89).

(j) The Registrar General should be empowered to reject a nomination of an authorised person and to require the authorities of the congregation to cancel the appointment of an authorised person and to appoint another in his place or to have their marriages attended by a registrar (para. 90).

(k) The prescribed words to be used during some part of the ceremony:

(i) should be amplified so as to emphasize that the marriage is monogamous and so that the celebrant declares that the parties are man and wife (paras. 92-93);

(ii) should be spoken in English (or Welsh where that is permitted) but the celebrant should be required to ensure that the parties and the two witnesses have a sufficient grasp of English (or Welsh) to understand them; if they do not, the prescribed words should be repeated in a language or languages which they do understand (para. 94);

(iii) should so far as possible be used at all types of wedding (para. 95).

(l) The Act should state that the marriage relationship is established when the parties have exchanged the vows that they take each other as man and wife (para. 93).

(m) It should be made clear that all marriages must be celebrated between the hours of 8 a.m. and 6 p.m. except that marriages by Registrar General's licence or special licence may be solemnised at any hour (para. 96).

(n) It should be made a condition of registration as a registered building that the religious authorities

undertake that marriages solemnised there will comply with the requirements proposed in (e), (f), (k) and (m); and the Registrar General should be empowered to cancel the registration if this undertaking is breached (para. 97).

99. Implementation of the foregoing proposals would, we think, afford an adequate alternative to the admittedly simpler and more effective solution referred to in paragraph 70 of providing for a compulsory civil ceremony. If, however, they are not regarded as practicable, it is our opinion that serious consideration will have to be given to the solution referred to in paragraph 70 notwithstanding the objections that that is likely to arouse and the temporary administrative difficulties regarding staff and accommodation which it would cause. In that event the foregoing proposals in so far as they relate to civil marriages would still be needed.

4 REGISTRATION OF MARRIAGES

Reasons for registration

100. A system of registration of marriages is required so that there is a public record of an event which has important legal consequences both for the parties themselves and for third parties and for the State. The parties need such a record so that their marriage relationship can be established beyond doubt and so that they can present proof of it to others. Third parties need it so that they can determine the status of the parties and the status (e.g. legitimacy) of themselves and others in so far as that is dependent on the marriage of the parties. The State needs it because upon it may depend rights and obligations owed by or to the State in relation, for example, to tax, social security, and allegiance. The need is especially great in a country such as England and Wales where the married state necessarily involves formal solemnisation of a marriage and where there is, in contrast with Scotland, no such thing as

marriage by repute. With us cohabitation and reputation may give rise to a rebuttable presumption that a marriage was solemnised but cannot create a marriage if it can be shown that none was ever solemnised. An effective system of registration affords means of proof or disproof and avoids uncertainty where certainty is essential. In addition registration provides statistics regarding marriage which are vital for any serious research into legal, social or demographical problems.

A The Existing Procedures

101. Recording of marriage was originally undertaken by the Church. A system of State registration has been superimposed, with the result that we now have a system whereby the Church of England,and other religious bodies which have appointed authorised persons,register marriages celebrated by them but later have to take steps to ensure that copies of their registers become available for recording by the State. As a result there may eventually be three copies of the register: at the church or chapel, in the office of the superintendent registrar of the district, and at the office of the Registrar General. Only where a marriage is solemnised in a registered building which does not have an authorised person or in a register office is the registration undertaken by the State alone and no official copy of the register is maintained elsewhere than at the office of the Registrar General and the superintendent registrar.

102. Provisions for registration of marriages solemnised in this country are now laid down in Part IV of the Marriage Act 1949 and in regulations made thereunder. In the case of a civil marriage in a register office the registrar is responsible for registering the marriage.[11] In the case of religious marriages the responsibility, in the case of a Church of England

11. Marriage Act 1949, s. 53(f). And see the Marriage (Registrar General's Licence) Act 1970, s. 15.

wedding, is that of the clergyman who solemnised the marriage,[12] in the case of a Quaker wedding that of the registering officer of the Society of Friends of the district,[13] in the case of a Jewish wedding that of the secretary of the synagogue of which the husband is a member,[14] and in the case of a wedding in a registered building, that of the registrar[15] or authorised person.[16] In every type of marriage, therefore, there is a designated person responsible for ensuring that it is registered. In this Paper we describe him as "the registrant".[17] Marriage register books and forms for making certified copies (i.e., marriage certificates) are made available to each type of registrant by the Registrar General.[18] Immediately after the marriage[19] that person is required to register it in duplicate in two register books, except that where the marriage is in a register office or a registered building without an authorised person registration by the registrar in one book suffices.[20] The entry must be signed by him and by the parties and the two witnesses as well as by the celebrant where the registering

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12. Marriage Act 1949, s. 53(a).
13. Ibid., s. 53(b).
14. Ibid., s. 53(c).
15. Ibid., s. 53(d).
16. Ibid., s. 53(e).
17. See para. 84, fn. 86 above.
18. Ibid., s. 54.
19. Or "as soon as conveniently may be after the solemnization" in the case of a Quaker wedding: ibid., s. 55(1). This recognises that at a Quaker wedding the registering officer is not required to be present (although we understand that in practice he will be: see para. 88). Although the secretary of the husband's synagogue is equally not compelled to be present at a Jewish wedding, the alternative formula is not used in his case. Both are required before registration to satisfy themselves that the marriage was conformable to the usages of their respective faiths: s. 55(1) proviso (b).
20. Ibid., s. 55(1)(a).

officer is a registrar.[21] There is express power to ask the parties for the needed particulars.[22]

103. As a result of the foregoing, the marriage will have been registered locally but not centrally and not necessarily by any public officer. This further step is achieved by the following process: in the months of January, April, July and October the registrant is required to deliver to the superintendent registrar of the district a certified copy of all entries made during the previous quarter.[23] At the end of those months the superintendent registrar, having done his best to collect any entries omitted,[24] forwards the certified copies to the Registrar General, and they are then entered in the central register maintained at Somerset House.[25] At this stage, however, the superintendent registrar does not attempt to complete a register at his office. Only when the register books kept by registrants are filled do they have to be delivered to the superintendent registrar of the district and kept with his records,[26] thus belatedly completing the register at district level.

104. The result of this process is that there will at the end of the quarter be at least two, and generally three, copies of the register in existence. Eventually one will be kept at the church or chapel, one by the superintendent registrar of the district and one maintained centrally by the Registrar General.

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21. Marriage Act 1949, s. 55(2).

22. Ibid., s. 56. Under our foregoing proposals this section will be largely redundant since the superintendent registrar's licence will contain all the information needed for registration unless there has been a change, for example, of address since the date of the licence.

23. Ibid., s. 57. "Nil returns" are required: s. 57(1)(b).

24. Ibid., s. 58(1). Note also s.61 regarding power to correct mistakes in entries in the register books.

25. Ibid., s. 58.

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

The first of these (when it exists at all) is really of concern only to the church and not to the State. Nevertheless, the Act requires it to be maintained and there are provisions for its custody,[27] for searches in it and for the provision of certified copies of entries.[28] But only in the case of the other two registers are there provisions for indexes to be kept so as to facilitate searches[29] and it is only in the case of certificates of entries in the central register that there is express provision in the Marriage Act that these are to be received as evidence of the marriage without further proof of the entry.[30]

B Criticisms and Provisional Proposals

The need for speedier complete registers

105. As we have already said,[31] the system of registration outlined above "provides a reasonably effective, if unnecessarily complicated, method of recording marriages which have taken place". Its complication will be apparent from the above summary. It also has the disadvantage that it is slow in producing complete central or district registers. Until the central register at Somerset House is completed, certificates can be obtained only from the registrant, who may be the incumbent, the registrar or the authorised person, and unless the person wishing to obtain a certificate already knows exactly where the marriage was solemnised he will not know

27. Marriage Act 1949, s. 60(1). Those maintained in respect of Church of England weddings have a somewhat more official status than those of other religions since they form part of the registers of the parish or other ecclesiastical district. See also s. 62 regarding the registers when a church or chapel ceases to be used.

28. Ibid., s. 63.

29. Ibid., ss. 64 and 65.

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

31. Para. 5 above.

where to go. If the register book which he wishes to inspect is maintained by a registrar it may not be available when he calls because it has been taken by the registrar to a wedding in a registered building.[32] Entries do not get on to the central register until between one and four months after the wedding when the quarterly returns by the original registrant to the superintendent registrar are sent on by the latter to the Registrar General. A composite index is not available until several months later. Complete entries for the district do not become available at the office of the superintendent registrar until an uncertain and variable time dependent on whether the original registrants' marriage register books fill quickly or slowly. The public have no means of knowing when that will be and it may take years before the marriage register book of a small religious community becomes full;[33] until then the district superintendent registrar will have no record of its marriages and the original signed registers will not be in the custody of any state official. Moreover, when the superintendent registrar eventually receives the records he gets them in a form which makes it impossible to produce any consolidated chronological register of marriages in his district. What he receives is a large number of different register books from different places covering marriages there for different periods of time. He may be able to produce an index which reduces the difficulties of searching these books but he cannot re-organise them into a coherent register.

106. It has, accordingly, been suggested that we might adopt instead the "marriage schedule" system which has been in operation in Scotland since 1854 and is said to work satisfactorily there.[34] Under this system, before the marriage but after the

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

33. The press recently reported a case where a register book of a parish had lasted 132 years (during which time there had been seven vicars).

34. Kilbrandon Report, Cmnd. 4011, para. 60.

necessary preliminaries have been fulfilled, the registrar of the district where the marriage is to take place completes a schedule of the various particulars required for registration. If there is to be a civil marriage he retains the schedule and after the ceremony it is signed by him, the parties and the witnesses and the marriage is registered by him. If there is to be an ecclesiastical marriage he issues the unsigned schedule to the parties who have to produce it to the celebrant and after the ceremony it is signed by the celebrant, the parties and the witnesses. The signed schedule must be returned to the registrar within three days of the ceremony so that he can register the marriage. We understand that by convention it is regarded as the obligation of the best man to ensure that it is duly returned. In effect, one single document acts both as the registrar's licence to marry[35] and the initial record of the marriage from which the register is completed. It avoids the need for a registrar to attend any weddings except those in his register office and it leads to the completion of the registers at district level within three days and would enable the central register also to be completed early.[36]

107. Although this system has advantages, there are a number of serious objections to its adoption in England and Wales. The first is that the public in this country are quite unused to having to make their own arrangements to secure the registration of the marriage. The tradition of "signing the register in the vestry" and obtaining the "marriage lines" immediately after the ceremony is ingrained as part of the ritual of the wedding. It seems probable that there would be great difficulty, certainly in the early years of a new system, in securing the prompt and unfailing return of the completed

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

36. We understand, however, that in fact it is brought up to date once a year only.

schedule without which the marriage could not be registered. Secondly, the system would make it easier than ours both to avoid the registration of a marriage which had taken place and to register one which had not in fact taken place. And, thirdly, apart from deliberate fraud, the safeguards against irregular marriages (i.e., those void or of doubtful validity for want of form) would be seriously weakened by the removal of the requirement that every marriage must be attended by a responsible officer whose duty it is to see that all the formalities required by law are complied with and that the marriage is solemnised in due form. Experience shows that, understandably enough, certain sects try to adhere strictly to marriage rites which are very different from those known to English law, and which may not comply with its essential requirements.

108. Having regard to these considerations we do not feel able to propose the adoption here of the Scottish system. The situation in the two parts of Great Britain is different both in regard to social habits and legal norms. In Scotland the marriage schedule system has become traditional; in England it would be a startling novelty. In Scotland the law is such that there is both a closer control over celebrants and less extreme consequences if there are defects in the formalities since a valid marriage can be established by cohabitation with habit and repute.[37] Hence the parties may become validly married notwithstanding defects in the ceremony or, indeed, notwithstanding that there never was a ceremony.[38] The need to be able to prove the due performance of a marriage ceremony is accordingly less important. Moreover, hitherto Scottish law has made no provision for the celebration of marriages according to the rites of sects other than Christian denominations or Jews.[39]

37. See the Kilbrandon Report (Cmnd. 4011) paras. 135-143. No change in the law was recommended.

38. This, no doubt, also acts as a deterrent against attempts to trap innocent victims into marriage ceremonies known to be invalid since the trapper may find himself married despite the invalidity of the ceremony.

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

109. It has, moreover, been represented to us that, however old fashioned the present English system may appear, it works well in practice and gives general satisfaction to the public. This is a matter on which we shall particularly welcome views. If it be a fact that the objections summarised above are theoretical rather than real there is no point in changing the procedure merely for the sake of appearing more modern and businesslike. As a result of the proposals which we make below for greater information in the registers, existing register books would, in any case, have to be replaced by new ones; with the information now available as to the approximate annual numbers of marriages, in smaller parishes smaller register books could be issued so as to remove the great delay which sometimes occurs before they are delivered to the superintendent registrars. We think, however, that it would be possible to go further than this, if it was thought desirable, and to change the present system so that it would more closely accord with that prevailing in Scotland while avoiding the disadvantages which we foresee if the Scottish system were introduced here.

Suggested new procedure

110. We suggest that all registrants should be supplied with two marriage register books, the pages of one being perforated so that they could be detached. Both registers would be completed and signed, but after the wedding the detachable perforated page would be despatched to the superintendent registrar of the district. He would immediately send a copy of it[40] to the Registrar General to enable the central register to be completed, and then insert the signed original in his register. Under such a system complete entries would be available both at the central and the district registries within a very short time after the wedding - although it would take rather longer before effective searches could be made because this necessarily depends upon the completion of an index. A

40. This would not be needed where the marriage was registered by a registrar: the perforated copy could be sent on to the Registrar General.

signed original would immediately come into the custody of a state official, the superintendent registrar, and in a form which would enable him to incorporate it into his register without transposition. Church of England clergymen and authorised persons would have only one completed marriage register book instead of two and could retain that indefinitely. We envisage that quarterly returns from clergymen and authorised persons would still be required as a means of enabling the superintendent registrar to check that he had received copies of all the entries and as a means whereby the clergyman or authorised person could claim payment. But the return would be much simplified; it would merely list the serial numbers of the entries despatched and confirm that no other marriages had been solemnised by him during the preceding quarter.[41]

111. As we see it, this would remove virtually all the disadvantages of the present system and secure most of the advantages of the marriage schedule system with none of its disadvantages. The one thing that it would not achieve would be the removal of the need for registrars to take original marriage register books with them when they attend marriages in registered buildings. But if the advantage of having marriages registered immediately on their solemnisation (an advantage which the marriage schedule system does not achieve) is to remain, either the parties have to go to the register (i.e., to marry only at a register office, in the Church of England or at a registered building with an authorised person) or the register has to go to the parties. Peripatetic registers, though they may be regarded as objectionable in theory, do not appear to have given rise to any problems in practice.[42]

Information in register

112. The present form of the marriage register has been criticised on the ground that the information contained in it

41. Nil returns would be required as at present.

42. In rural areas the movement of register books occurs also in relation to registration of births and deaths since registrars attend different registration offices in the district on different days.

does not always enable the parties to be identified at later dates. Entry of age, for instance, is not always sufficient to distinguish one person with a common forename and surname from others. This defect is made worse by the practice of entering such expressions as "Full age" for all persons over 21 (perhaps now 18). The Registrar General has been urged by a number of prominent bodies, including the Medical Research Council, to prescribe a form of register in which all persons registering marriages should be required to enter the date and place of birth of the bride and bridegroom. The proposals which we have made in relation to preliminaries will make it easy for this to be achieved. Each party will have been required to state his or her date and place of birth (and to produce evidence of it)[43] and this information will be stated in the superintendent registrar's licence.[44] We suggest that it should also be stated in the registers themselves. We also suggest that details should there be given of the date and place of issue of the superintendent registrar's licence; this would help to ensure that the registrant checked both the existence of the licence and its current validity.

Marriage certificates

113. Official certified copies of entries in the marriage register should, of course, continue to be issuable, initially by the registrant and thereafter by the superintendent registrar or Registrar General. Under the present system, the Registrar General is not in a position to issue a certificate until some time after the date of the marriage and until then people wishing to obtain a certificate will be in a difficulty unless they know exactly where the marriage was solemnised. If our proposals are adopted these disadvantages will disappear; certificates will be obtainable more promptly either from the office of the Registrar General or from that of the superintendent registrar (as well as from the original registrant). We also

43. Para. 27 above.

44. Para. 60 above.

suggest that the Marriage Act itself should state that a certificate issued from any of these sources is sufficient proof of the celebration of the marriage.[45]

Annotation of birth registers?

114. The suggestion has been made that particulars of the marriage should be recorded against the parties' birth entries. The Kilbrandon Committee said that they would have liked to recommend this in respect of Scotland since they thought it would provide a good safeguard against bigamous marriages. They refrained from recommending it "only because we realise that it would be a very expensive process, both in staff time and money, as the birth entries of about 80,000 persons would have to be searched for and annotated each year".[46]

115. The introduction of such a system in England would, of course, be still more expensive since the numbers involved would be over 400,000 annually. Nevertheless, we have considered the suggestion since on the face of it it is an attractive one. But we have concluded that in itself it would not be worthwhile, apart altogether from the question of expense. In England the various registers are in no sense registers of current status but merely of past events; in this respect our marriage register differs from the Scottish. There, the marriage register is annotated if the marriage is dissolved or annulled and therefore forms something in the nature of a current register of marital status. The suggested annotation of birth registers would carry this a stage further and be a step in the direction of making the registers a genuine National Register. The case for such a Register is, in our view, a strong one - though we are well aware that it is anathema to many. But merely to annotate the birth register in the way suggested would not, in our view, be worthwhile. We say that for the following reasons:-

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45. As pointed out above (para. 104) the present provision in the Act relates only to certificates of the Registrar General; the effect of the others depends on common law and the Evidence Act 1851.

46. Cmnd. 4011, para. 128.

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

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

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

(d) Presumably, full birth certificates would show any annotations to the registered entries - this would be essential if the system was to achieve its purpose. Hence, production of an up-to-date birth certificate not showing any annotation would lead people to assume that the person to whom it related had not married. This, however, would be an unsafe assumption since the register would not record a marriage celebrated abroad, or before the scheme came into operation, or too recently to have become annotated (some time-lag would be inevitable).

(e) It would be likely to lead to demands for production of <u>up-to-date</u> copies of <u>full</u> birth certificates, thus greatly increasing demands on the registry and trouble and expense to the public.

(f) It would be unlikely effectively to deter a determined bigamist.

Registration of Church weddings

116. We have already suggested that there should be greater control over "authorised persons",[47] and the need for this is particularly great in relation to their functions as registrants. However, inadequacy in relation to registration of marriages is not found only among authorised persons. The pressure of pastoral duties is such that some Church of England clergymen find it difficult to keep up-to-date with the returns on which the efficiency of the registration system depends. In such circumstances the Church authorities might welcome it if they had the same power as other denominations to appoint an authorised person. It may be that some clergymen, with heavy pastoral duties to which they rightly give priority, might welcome being relieved of this task. We think that in most parishes little difficulty would be experienced in finding a businesslike lay man or woman connected with the church who, having given up work on retirement or marriage, would welcome a part-time appointment of this nature. On the rare occasions when he or she was unable to attend a wedding it would be necessary for a registrar (or another authorised person) to do so, but we do not envisage that the practice of relieving incumbents would become sufficiently common to make this a serious objection. We should particularly welcome the views of the Church authorities on this suggestion.

Summary of provisional conclusions relating to registration

117. Our provisional proposals in respect of registration are:-

(a) The system of registration should be speeded up and simplified by the introduction of a new type of marriage register book in which entries would be made and signed in duplicate and one copy despatched promptly to the superintendent registrar of the district who would promptly send a copy of it to the Registrar General and complete the district register (paras. 110, 111).

47. Para. 90.

(b) The registers should contain all the details regarding the parties given in the superintendent registrar's licence (including dates and places of birth) and particulars of the licence (para. 112).

(c) The Marriage Act should provide expressly that official copies of entries in the registers whether issued by the original registrant, the superintendent registrar or the Registrar General should be sufficient evidence of the celebration of the marriage to which it relates (para. 113).

(d) We do not favour the annotation of birth registers with notice of a marriage (paras. 114-115).

(e) In view of the burdens borne by incumbents it is for consideration whether the authorities of the Church of England should not be empowered to relieve them by appointing authorised persons (para. 116).

5 EFFECTS OF IRREGULARITIES

A The Present Position

118. The Marriage Act 1949 expressly states that certain irregularities make a purported marriage void, that others do not affect the validity of the marriage and that others make it void if the parties who married irregularly did so "knowingly and wilfully". The first class, those in which the marriage is expressly declared to be void irrespective of the knowledge of the parties, relate to matters of capacity to marry or to marry each other (and not to formalities with which alone this Paper is concerned). They have been dealt with in the recent Report of the Law Commission on the Nullity of Marriage (Law Com. No.33) and include non-age[48] and

48. Marriage Act 1949, s.2.

consanguinity and affinity.[49] Moreover, as regards the essential, as opposed to the formal, validity of a marriage, there are certain other grounds of voidness and more of voidability, which are also dealt with in that Report, but which are not mentioned in the Marriage Act and some of which are not at present expressly stated in any statute. If the Nullity of Marriage Bill, appended to that Report and now before Parliament, is enacted, all of these grounds of voidness or voidability will be stated in a single statute. However, as regards non-compliance with formalities, all that statute will say is that a marriage is void if "it is not a valid marriage under the provisions of the Marriage Acts 1949-1970 (that is to say where ... (iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage)".[50] In the present state of the law that is all it can say, for, unfortunately, the Marriage Act deals with the effects of non-compliance with its provisions in a singularly confusing fashion.

119. As we have said, the Act expressly provides that certain formal defects do not avoid the marriage. This class includes lack of parental consent,[51] failure to publish banns or to give notice in the correct parish or district or to have the marriage solemnised in the correct parish or district,[52] or solemnisation in a building which was not duly certified or not the parties' usual place of worship.[53] It also expressly provides that certain other irregularities avoid the marriage if both parties have acted "knowingly and wilfully". This class includes, in the case of Church of England weddings,

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49. Marriage Act 1949, s.1.

50. Clause 1(a) of the Bill.

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

52. Ibid., ss. 24 and 48(1)(a) and (e).

53. Ibid., s. 48(1)(c) and (d) and (2).

marriages otherwise than in a church or chapel where banns may be published, failure to publish banns or to obtain a common licence or superintendent registrar's certificate, marriages after banns have been forbidden or a common licence or superintendent registrar's certificate has expired, marriages following a superintendent registrar's certificate other than in the church or chapel specified therein, and marriages by a person not in Holy Orders.[54] In the case of marria other than those of the Church of England, this class includes marriages without due notice or without a certificate, marriages after the certificate has expired, marriages in a place other than that specified in the certificate, and marriages in the absence of the registrar, authorised person, or superintendent registrar.[55]

120. Unfortunately, these two classes do not cover the whole ground. There are some requirements of the Act which are not included in either. Among these are, first, celebration of a marriage otherwise than between the hours of 8 a.m. and 6 p.m. This requirement appears as the last of four sections in Part I of the Act which applies to all types of marriage. In the case of the other three sections, it is expressly provided in two of them that a marriage which offends their provisions is void,[56] and in the case of the third, that it is valid.[57] Nothing is said in the case of the fourth section. Its wording suggests that the marriage would not be avoided[58] and it is most unlikely that any court would today hold that it was. Another omission relates to failure to use the "prescribed

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54. Marriage Act 1949, s. 25.

55. Ibid., s. 49.

56. Ibid., ss. 1 and 2.

57. Ibid., s. 48(1)(b).

58. It says "A marriage may be solemnized at any time between" the hours of 8 a.m. and 6 p.m., not, like ss. 1 and 2, "A marriage solemnized [otherwise than between the hours of 8 a.m. and 6 p.m.] shall be void".

words" at the ceremony. Here the position appears to be that a failure to repeat the words verbatim would not avoid the marriage but that a total failure to exchange vows would.[59] Furthermore, although the Act never declares the marriage to be void for lack of form unless the parties acted knowingly and wilfully, there may be some formal defects so fundamental that in law there is no marriage even if the parties, or one of them, acted in good faith. For example, if a layman purported to celebrate a marriage, without a licence and in a private house,[60] it seems likely that there would be no marriage even if one party, being, say, a recent immigrant, genuinely believed that the celebrant was a clerk in Holy Orders, that the needful preliminaries had been complied with and that the house was a place where marriages could lawfully be solemnised by him. This, it is suggested, would not be so much a void marriage as no marriage at all. As has been judicially said of the Marriage Act:[61]

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

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

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59. Hill v. Hill [1959] 1 W.L.R. 127, P.C. Breach of the requirement that marriages must be "with open doors" is also omitted; presumably, this would not avoid the marriage. So is absence of witnesses, which is also not fatal: see Wing v. Taylor (1861) 2 Sw. & Tr. 278.

60. Cp. R. v. Bham [1966] 1 Q.B. 159, C.C.A. where the facts were somewhat similar except that the celebrant was a minister of religion and not a mere layman and the ceremony was an Islamic one.

61. R. v. Bham, supra, at p.169. The "marriage", being in a form which could only have led to a potentially polygamous union, was held not to be a marriage within the meaning of the Act.

B Criticisms and Provisional Proposals

The need for greater certainty

121. The uncertainty produced by the present state of the law will have been apparent from the foregoing paragraphs. Nor does uncertainty result only when the legal provisions are obscure. The fact that voidness or validity may depend on the knowledge or absence of knowledge of the parties in itself produces uncertainty. Indeed it may come close to leaving it to the option of the parties whether their marriage is to be treated as void or valid, for if they allege that they had knowledge of an irregularity it will be virtually impossible to disprove it, and if they allege that they had not, it will normally be extremely difficult to prove the contrary. As a result the dishonest may be more favoured than the scrupulous. But it is not only the deliberately dishonest who may benefit undeservedly for most people have no difficulty in sincerely convincing themselves that what they would like to have occurred is what in fact occurred, so that the nature of their subsequent testimony about their state of knowledge is likely to vary according to whether they wish to be relieved of the marriage or to remain married. All this causes great difficulty to the Registrar General and to his officers and to the Home Office. Where irregularities come to light which are such that they might affect the validity of the marriage the Registrar General's officials may have to consider whether they should notify the parties and advise a fresh marriage or whether it can safely be assumed that the parties did not act knowingly and wilfully. Sometimes there may be serious doubts affecting a number of marriages celebrated irregularly by a particular celebrant or in a particular place which cannot be resolved by re-marriage (because, for example, one of the parties has died). In these circumstances the Home Secretary may have to exercise the statutory powers which he now has to validate the marriages by Provisional Order.[62] This provisional

62. Provisional Order (Marriages) Act 1905, as amended by the Marriage Validity (Provisional Orders) Act 1924 and S.I. 1949 No. 2393. In the past such Orders have been quite numerous though there has been none in recent years.

order procedure, though simpler than the passage of a special public or private Act, can be quite complicated and expensive since the draft Order has to be advertised and any objections considered, a local inquiry may have to be held, and the Order must be confirmed by Parliament.

Irregularities avoiding a marriage

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

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

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

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

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

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

(i) There is no case for a general widening of the present grounds on which a marriage may be regarded as void for formal irregularities;[63] on the contrary they should be narrowed, for not all are of sufficient importance to merit such an extreme consequence which may have calamitous results to innocent parties such as a bereaved woman with young children who finds on the death of her "husband" that she was not legally married. Our foregoing proposals would remove some of the possible irregularities, but would retain some and add others. These are of varying importance. Only non-fulfilment of those that can properly be regarded as fundamental should prevent the marriage being constituted.

(ii) The fundamentals are the issue of a superintendent registrar's licence[64] (or a Registrar General's or special licence) and solemnisation of a marriage substantially in accordance with the legal provisions regarding solemnisation. If that has occurred the marriage should be regarded as valid as to form,[65] notwithstanding non-fulfilment of some of the steps which should have been taken as a preliminary to the issue of a licence, mistakes in the licence, or non-substantial errors or omissions in the solemnisation.

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63. Equally, there is, in our view, no case for elevating parental consent from a formal requirement, breach of which does not annul the marriage, to an essential requirement, breach of which would do so: see para. 37 above.

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

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

124. It is the detailed working out of the latter part of the second corollary which causes difficulty. The first part of it seems to us to be clear. Under our proposals regarding preliminaries the superintendent registrar will be given adequate time and opportunity to investigate before he issues a licence. If he issues it and the marriage takes place, it should not, in our view, be possible to attack the validity of the marriage on the ground that the preliminaries were not properly fulfilled or because there were errors in the licence.[66] We appreciate that this means that the marriage may be valid notwithstanding that both parties have wilfully deceived the superintendent registrar. That should be an offence for which they should be liable to punishment. But the punishment should not take the form of avoiding the marriage. The second part of the corollary is, however, much less clear. What exactly is meant by "substantially in accordance with the legal provisions regarding solemnisation"? To attempt an answer involves separate consideration of each of the legal provisions concerning solemnisation.

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

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

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

(c) The marriage must take place

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

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

(ii) with open doors, and

(iii) while the licence remains valid (i.e., within 3 months).

(d) The marriage must be solemnised in the presence of:-

(i) the parties,

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

(iii) two witnesses.

(e) The parties must speak the prescribed words.

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

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

126. Of these requirements, it seems plain that a breach of (c)(i) or (ii) should not annul the marriage; as we understand it, would not do so under the present law.[67] Nor, again, should non-fulfilment of (f); as we have already stated, the marriage should be regarded as complete when the parties exchange their vows and the subsequent pronouncement should merely be confirmatory.[68] Accordingly, this leaves requirements (a), (b), (c)(iii), (d) and (e).

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

(i) neither might be mandatory,

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67. Para. 120 above.

68. Para. 93 above.

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

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

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

Of these four possibilities, we prefer (iii). We reject (i) because, for reasons which we have already given,[69] we regard prescribed places of celebration as an essential precaution under the English system. It is true that it can be dispensed with by a Registrar General's or special licence but this dispensation is intended only for cases of dire necessity or very special circumstances. We reject (iv) because it is for the superintendent registrar to check that the place named in his licence is one in which marriages may be lawfully celebrated and if he makes a mistake his error should not be visited on the parties. We prefer (iii) to (ii) because the latter would not afford the same protection against clandestine or fraudulent marriages. In our view a licence to marry in building X should not enable a valid marriage to take place in buiding Y. We are, however, conscious of the fact that hardship could be caused if, for example, building X was destroyed shortly before the wedding and if the marriage could not be celebrated elsewhere without going through the formalities and incurring the delay of obtaining a new licence. It is for this reason that we have recommended that the superintendent registrar should be entitled to amend the licence,[70] by substituting another place.

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69. Paras. 71 and 72 above.

70. Para. 60 above.

128. As regards requirement (c)(iii), it is tempting to say that the fact that the licence has expired should not annul the marriage, since if a marriage is celebrated after its expiry this is essentially the fault of the celebrant, registrar or authorised person. But this would not be so if the date of the licence had been altered by one of the parties - an alteration which it might not be difficult to make. If one introduced a special exception to cover that case one would be re-introducing something like the very unsatisfactory "knowingly and wilfully" test. Moreover, if the existence of a licence is to be regarded as fundamental, as we think it must, it ought, in our view, to be a valid licence and not one which has ceased to be valid. Hence, we think that the marriage should be void if the licence has expired.

129. Requirement (d) provides first for the presence at the solemnisation of both parties. We have no doubt that this should be regarded as fundamental and that the marriage should be void unless both are there. It provides secondly for the presence of the prescribed celebrant/registrant; i.e., a superintendent registrar in the case of a civil wedding, a minister in Holy Orders in the case of a Church of England wedding or an authorised person or registrar in the case of any other wedding. We have found the question whether the absence of these should make the marriage void a most difficult one. On the one hand, it may be said that a Church of England wedding not conducted by a minister of the Church or a civil wedding not conducted by an official of the civil arm is a travesty which obviously should be void. On the other hand, it can be argued that although the parties can reasonably be expected to know whether or not there is a valid licence and whether or not the marriage is performed in the prescribed place, they cannot be expected to check whether the clergyman or superintendent registrar is properly qualified. Moreover, it would seem particularly hard to impose on them the onus of checking that at religious weddings other than those of the Church of England there is present a duly qualified authorised person or registrar. It may further be said that if one makes

mandatory a valid licence and celebration at a prescribed place it goes too far also to make mandatory the presence of prescribed people. As we understand it, the theoretical basis of our type of marriage is that the parties marry themselves by exchanging vows. The role of the celebrant is to ensure that they do so properly: he is, as it were, an umpire who sees that the rules are observed; if despite his absence, the rules are observed the match should not be nullified. Moreover, it can be argued with some force that the onus should be on the civil or religious authorities of the prescribed place to ensure that marriages are not conducted there unless the prescribed people are present and that these authorities, unlike the parties, are able to check credentials. Nor, we think, is there anything in the contrary argument that, unless the presence of properly qualified prescribed persons were regarded as fundamental, parties would conspire to have marriages celebrated by bogus celebrants. Having obtained a valid licence and attended at the prescribed place, it is difficult to see why they should want to have a bogus celebrant unless their aim was to deceive their relations into believing that they had been validly married when they had not; the best way of deterring them from that is surely to defeat their aim by making the marriage valid? We would also emphasize that all who were knowing parties to the celebration of a marriage by an unauthorised person would, of course, commit a serious criminal offence; all that is being discussed is whether the marriage should be void or valid. We think that the balance of these arguments is in favour of its being valid.

130. There is, however, one consideration to the contrary which we regard as weighty. If marriages are to be valid notwithstanding the absence of anyone whose duty it is to see to their registration, there will be an increased risk of marriages which are valid but which are not registered. A possible compromise solution which would minimise this risk would be to provide that the marriage should be valid so long as someone holding himself out as a superintendent registrar, minister, authorised person or registrar was present. On that

basis the marriage would be void if no ostensible celebrant/ registrant was present, but would be valid if one was, even though he was not properly qualified. This would greatly reduce the risk of there being a valid marriage which did not become registered, for holding oneself out as a registrar or authorised person would normally involve at the very least registering the marriage. We do not think that any difficulty would be experienced in the case of a civil or Church of England wedding in deciding whether someone had held himself out, for the ostensible superintendent registrar or clergyman would conduct the wedding. Nor would there be difficulty in the case of other religious weddings where the presiding minister himself purported to be the authorised person. It might, however, be more difficult in other cases where the authorised person or registrar would play a less obvious role until after the ceremony. But if, thereafter, someone registered the marriage this would be cogent evidence that an authorised person or registrar was present and that the marriage was valid, whereas if no one registered it that would be some evidence that no purported authorised person or registrar was present and that the marriage was therefore void. This is the result desired. Hence, we provisionally propose this compromise solution.

131. Finally, requirement (d) provides for the presence of two witnesses. Under the present law it appears that this requirement is directory and not mandatory and that, accordingly, a marriage celebrated in the presence of only one witness (or presumably none) is valid.[71] Despite what we have said about the desirability of narrowing rather than widening the grounds which avoid a marriage, we think that here an exception should be made; in our view, the presence of witnesses should be regarded as a fundamental requirement. Since no particular qualifications are required of witnesses, all the parties have to do is to ensure that two other people are present. To insist on this cannot impose any hardship and seems to us to be

71. Wing v. Taylor (1861) 2 Sw. & Tr. 278.

eminently desirable both as a safeguard against clandestine marriages or those under duress and as a means of ensuring that evidence can be given on whether the wedding was properly conducted. Whereas, as we have said, we would not regard the "open doors" requirement as fundamental, the presence of witnesses ought to be.

132. Finally, we come to the requirement of prescribed words. In our view, it would be wholly wrong to say that every failure to repeat these verbatim should annul the marriage. Nor do we regard the declaration of "no impediment" (which merely repeats the declaration that will have been made on giving notice to lead to the licence) as of the same importance as the declaration that the nature of the marriage is understood and that they take each other for man and wife. Provided that declarations to the latter effect are exchanged we think that the marriage should be valid but otherwise void.

133. If any of these fundamental conditions was not fulfilled, the marriage should be void, irrespective of the knowledge or connivance of the parties. If all of these were fulfilled, the marriage should be valid as to formalities irrespective of any irregularities and irrespective of whether the parties knew of or connived at the occurrence of these irregularities.[72]

Validation of void marriages

134. We have referred to the possibility of validating void marriages by the procedure under the Provisional Order (Marriages) Act 1905.[73] If the procedures proposed in this Paper are accepted there will be still fewer occasions where validation will be needed because there will be less risk of invalid marriages being celebrated. But, a procedure for validation will have to remain as a long-stop. We do not regard it as within our terms of reference to make any detailed proposals for the simplification and improvement of the

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

73. Para. 121 above.

procedure but we would suggest that this is a matter to which consideration might be given. It seems to us that public and private interests might be adequately protected if the Registrar General were simply empowered to make validating orders. The matter appears to be more appropriately the concern of the Registrar General than the Home Secretary and the present elaborate and expensive safeguards seem unnecessary. The Registrar General could be relied on not to make an order without enquiring among those concerned and without considering any objections. We doubt the need to retain the power to hold a local enquiry; none has been held for many years.

Provisional conclusions on the effect of irregularities

135. Our provisional conclusions under this head can be summarised as follows:-

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

(i) a licence had been granted and was still current when the marriage was solemnised,

(ii) the marriage was solemnised in the place named in the licence (if the marriage was by Registrar General's or special licence solemnisation anywhere would be sufficient)

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

(iv) each of the parties during the solemnisation had made declarations substantially to the effect stated in paragraph 92, namely, that he or she took the other to be his or her one and only spouse to the exclusion of all others.

If any of the above conditions was not fulfilled the marriage should be void irrespective of the knowledge or complicity of the parties (paras. 121-133).

(b) Consideration should be given to the simplification of the procedure under the Provisional Order (Marriages) Act 1905 (para. 134).

6 OFFENCES

A The Present Position

136. Section 75 of the Marriage Act 1949 sets out certain offences whereby any person who "knowingly and wilfully" solemnises a marriage in breach of specified provisions of the Act is liable to imprisonment.[74] The maximum term is 14 years in some cases and five years in others. Similar offences are created by the Marriage (Registrar General's Licence) Act 1970 in respect of breaches of that Act but lesser penalties are provided.[75] Criticism of the penalties provided in the 1949 Act was expressed during the Parliamentary passage of the 1970 Act; it certainly seems excessive that, for example, the solemniser of a marriage at five minutes before 8 in the morning or five minutes past 6 in the evening, should be liable to imprisonment for 14 years. Section 76 of the 1949 Act sets out offences relating to registration of marriage. Here the

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

75. s.16. The maximum term is 3 years and the maximum fine £500.

penalties are more restrained; they range from a maximum fine of £10 for failing to send in quarterly returns to 5 years' imprisonment for knowingly and wilfully registering a marriage which is void by virtue of any provision of Part III of the Act.[76] Finally, section 77 imposes penalties on authorised persons who fail to comply with the provisions of the Act or regulations made thereunder. Unless the offence is one for which a specific penalty is provided by sections 75-76 the maximum fine is £50 and the maximum term of imprisonment 2 years, but on conviction the culprit ceases to be an authorised person.

B Criticisms and Provisional Proposals

The need for rationalisation

137. Already the offences do not seem to be wholly appropriate and many of the maximum penalties seem excessive. Both will, in any event, need to be reviewed so as to be made appropriate to any new procedures introduced as a result of our proposals. In general the right pattern regarding penalties seems to be set by the 1970 Act which, as we have seen,[77] has made greater use of realistic fines and less use of excessive terms of imprisonment. At present it is not made a specific offence to solemnise a marriage known to be void unless the ground of voidness is failure to comply with certain specified provisions of the Act. The offence does not extend to a case where it is known that the parties are within the prohibited degrees or that one is under age or already married. We think it should; and indeed, that it should cover the cases where the celebrant knows that a party has not validly consented to the marriage because of duress, mistake, unsoundess of mind or otherwise.[78] Similarly, penalties are incurred by a registrar only if he registers a marriage known to be void for failure to comply with the formalities prescribed by Part III of the Act and not,

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

77. Para. 136 above.

78. Under clause 2(c) of the Nullity of Marriage Bill at present before Parliament absence of consent renders a marriage voidable not void.

for example, if it is void for lack of capacity. It seems that the registrar, far from committing a crime if he registers such a wedding, may do so if he refuses to register it. The reason for this is, no doubt, that a registrar is more likely to know whether the formalities have been observed than whether the parties have capacity to marry each other. Nevertheless, if he in fact knows that the marriage is void for whatever reason, our view is that he should not register it and should be criminally liable if he does. He need not fear that this would render him unduly vulnerable to the criminal law; the prosecution would have the burden of proving beyond reasonable doubt that he had registered it knowing (beyond reasonable doubt) that it was void. But registration, as opposed to celebration, of a marriage known to be voidable for lack of consent[78] should not be an offence. Since the marriage is effective until annulled it ought to be registered. Further the present anomaly that it is only a registrar, and not a clergyman or authorised person, who is liable for registering a void marriage should be removed. For such an offence there should be a relatively severe penalty since an entry in the register may be almost as valuable (for example in obtaining social security benefits) as having actually contracted a valid marriage. Another anomaly that would need to be corrected is that while failure to register a marriage may have very serious consequences for the parties, at present the maximum penalty is the inadequate sanction of a £50 fine.

Solemnisation of bogus marriages

138. The principal weakness which has come to light is that the present offences do not provide an effective deterrent to a growing mischief - namely, the deliberate solemnisation of invalid marriages. This does not occur in the case of civil weddings or those of the Church of England or of other long-established religious groups, but there is evidence that a fair number of such marriages are being solemnised by ministers of some religions newly established in this country, generally outside their registered buildings without any attempt at

compliance with the Marriage Act, but occasionally in those buildings. R. v. Bham, which has already been cited,[79] affords one illustration. There is little doubt that in many of these cases both parties, and probably the bride in nearly all of them, think that a proper marriage has been contracted and enter into cohabitation in that belief. It is only later when such things as claims for social security benefits bring the position to light that the truth is revealed to them. It may then be possible to regularise the position for the future - though not retrospectively - but not, of course, if what has brought the facts to light is the death of one of the parties. Marriages of this sort will not be saved by our foregoing proposals to restrict the grounds on which marriages are formally invalid; we are dealing here with marriages which make no pretence at complying with the formalities of English law, which are often according to rites of religions which permit polygamy and which are generally performed outside any prescribed place. We have to fall back on the deterrent effect of liability to serious punishment.

139. Section 75 of the Marriage Act makes it an offence knowingly and wilfully to solemnise various forms of invalid marriage. Unfortunately, the courts have felt constrained to construe the word "marriage" as used in this section so that it covers only "a ceremony in a form known to and recognised by our law as capable of producing ... a valid marriage".[80] Hence, as in R. v. Bham,[79] no offence is committed if the ceremony, because, for example, it is polygamous in character, is incapable of producing a valid marriage according to English law. Hence the section has become useless as a means of dealing with the mischief. Anomalously, the greater the irregularity the less the risk of committing a crime.

140. In our view, it should be made a serious offence to perform or permit to be performed any type of ceremony, whether

79. [1966] 1 Q.B. 159, C.C.A.; see para. 120 above.
80. [1966] 1 Q.B. at 169; see para. 118 above.

it purports to be religious or civil, monogamous or polygamous, which leads either party or which could reasonably lead either of them or any other person, to believe that a legal ceremony of marriage has taken place, unless the ceremony complied with the provisions of the Act. An offence so worded would cover not only irregularities (as the present section does) but also "non-marriages" which pretend to be marriages. It would cover not only "marriages" which have misled the parties but also those which were designed, for example, to satisfy their relations. An issue of any document described in any way as a certificate of marriage would obviously be cogent evidence of the celebration. On the other hand, it would not be an offence to portray a wedding during the Christmas charades or as part of a theatrical performance; that could not lead anyone into believing that a legal marriage had been constituted. The statutory provision would need to be worded in such a way as not to apply to a religious[81] ceremony after a valid civil one.[82]

Summary of provisional conclusions on Offences

141. Our provisional conclusions regarding offences are that:

(a) The offences and the penalities should be rationalised and, in general, maximum penalities reduced with greater use of fines instead of imprisonment except for the serious offences (para. 137).

(b) It should be made a serious offence to perform or permit to be performed any type of ceremony which led either party, or which could reasonably lead either of them or any other person, to believe that a legal ceremony of marriage had taken place unless the ceremony or a previous civil

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81. Or other traditional form, such as a Romany wedding.

82. This is permissible under s. 46(1) of the Marriage Act 1949.

ceremony complied with the provisions of the Act (paras. 138-140).

7 SUMMARY OF CONCLUSIONS

142. 1. Preliminaries

(a) There should be uniform civil preliminaries for all marriages regardless of where they are to be celebrated (para. 16).

(b) The requirement of publication of banns before Church of England marriages should be repealed as a legal requirement (although the Church may wish to retain it as an ecclesiastical preliminary) (para. 16).

(c) Marriage by common licence should be abolished (para. 16).

(d) Entry of notice in a marriage notice book open to public inspection should be retained, but we invite views on whether it should be displayed on a notice-board as well (para. 20).

(e) Twenty-one (or 28) days' notice should be the normal requirement (paras. 21-22).

(f) The Registrar General should be empowered to authorise a superintendent registrar to permit a marriage before the expiration of 21 (or 28) days, if the Registrar General is satisfied, on the evidence produced,

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

(ii) that the parties could not reasonably have been expected to give earlier notice and that exceptional hardship

would be caused if the marriage had to be delayed until the expiration of the normal waiting period (paras. 23 and 24).

(g) Views are invited on whether it should be permissible to give conditional notice after a decree nisi dissolving or annulling a previous marriage (paras. 25-26).

(h) Each party should be required to state in the notice his date and place of birth and to confirm it in the declaration; the registrar should be empowered to demand evidence to support these statements (para. 27).

(i) Superintendent registrars should be expressly empowered to demand evidence of the effective termination of any previous marriage (para. 28).

(j) Each party should be required to attend before the appropriate superintendent registrar to give notice and to make a declaration which would name the other party but deal fully only with the age and status of himself (para. 29).

(k) In general, notice should be given in the district where the party has his residence at the time (paras. 30-32).

(l) There should be provision for the lodging of objections at the office of the Registrar General (paras. 39-41).

(m) The statutory provisions defining the consents required on the marriage of minors should be clarified; views are invited on the position when the minor is illegitimate (para. 42).

(n) When a party is absent from England and Wales he should, if he fulfils the requirements stated in proposal (o), be entitled to complete the prescribed forms of notice and declaration

abroad and to send them by post to the superintendent registrar of the district of his normal residence, but the superintendent registrar should not authorise the marriage until the party has attended in person before him and confirmed the information to his satisfaction and should not be bound to authorise it until the expiration of seven days from such attendance; this should be an optional alternative to the present special arrangements covering the situation when one party is:

(i) resident in another part of the United Kingdom

(ii) resident in a country to which the Marriage of British Subjects (Facilities) Acts 1915 and 1916 apply

(iii) serving abroad on one of H.M.'s ships at sea (para. 55).

(o) It should not be permissible to give notice whether in person or by post unless the person concerned

(i) is domiciled and habitually resident here, or

(ii) is domiciled here and has been habitually resident here at some time during the immediately preceding 5 years, or

(iii) is present here and the other party is habitually resident here; or

(iv) is resident here for 3 months immediately preceding the giving of notice (paras. 56-57).

(p) A party who is domiciled here but who is no longer resident here should give notice to the superintendent registrar in the district of

his last former place of residence (para. 58).

(q) Provision should be made for the exchange of notices between superintendent registrars (para. 59).

(r) On the expiration of the waiting period the superintendent registrars should be required to issue authorisations (to be known as 'licences') to marry unless on the evidence before them it appears that there might be an impediment to the marriage or that any of the requisite consents had not been given (para. 60).

(s) A licence should state the place where the marriage is to take place but the superintendent registrar should be empowered to amend this if there is good reason to change the venue (para. 60).

2. Place and Method of Solemnisation

(a) The simplest and most effective solution would be to make a civil ceremony (reformed as proposed below) compulsory, allowing it to be followed by a religious ceremony if the parties wish. We doubt whether this would be acceptable and accordingly propose the following alternatives which, if accepted would, we think, be adequate (paras. 70 and 99).

(b) The requirement that marriages can be solemnised only in prescribed places should be retained (paras. 71 and 72).

(c) As regards "registered buildings":-

(i) the dual requirement of "recording" under the Places of Religious Worship Act 1955 and registration under the

Marriage Act should be replaced by a single registration under the latter (para. 73);

(ii) registration should be restricted to buildings of "public religious worship" (paras. 74-76);

(iii) such buildings need not be "separate" buildings (para. 77);

(iv) it should be permissible to solemnise marriages within the curtilage of the building (para. 78).

(d) The prescribed place need not be located in the district in which the parties reside (paras. 79-80).

(e) It is greatly to be hoped that the foregoing proposals could be applied to Quaker and Jewish marriages (paras. 81-82).

(f) It should be clearly stated in the legislation that both parties and the witnesses must be personally present at the same time at the solemnisation of the marriage (para. 85).

(g) The requirement of two witnesses should be retained but we see no need to prescribe a minimum age (para. 86).

(h) Registering officers of the Society of Friends and secretaries of synagogues should become "authorised persons" of the places in which their marriages take place (para. 88).

(i) The legal requirement that a registrar, in addition to the superintendent registrar, must be present at a civil wedding should be abolished (para. 88).

(j) The charge for attendance at a wedding by a registrar should be raised to a figure which

is commensurate with the true cost and an inducement to appoint an authorised person instead of relying on registrars (para. 89).

(k) The Registrar General should be empowered to reject a nomination of an authorised person and to require the authorities of the congregation to cancel the appointment of an authorised person and to appoint another in his place or to have their marriages attended by a registrar (para. 90).

(l) The prescribed words to be used during some part of the ceremony:

(i) should be amplified so as to emphasize that the marriage is monogamous and so that the celebrant declares that the parties are man and wife (paras. 92-93);

(ii) should be spoken in English (or Welsh where that is permitted) but the celebrant should be required to ensure that the parties and the two witnesses have a sufficient grasp of English (or Welsh) to understand them; if they do not, the prescribed words should be repeated in a language or languages which they do understand (para. 94);

(iii) should so far as possible be used at all types of weddings (para. 95).

(m) The Act should state that the marriage relationship is established when the parties have exchanged the vows that they take each other as man and wife (para. 93).

(n) It should be made clear that all marriages must be celebrated between the hours of 8 a.m. and 6 p.m. except that marriages by Registrar

General's licence or special licence may be solemnised at any hour (para. 96).

(o) It should be made a condition of registration as a registered building that the religious authorities undertake that marriages solemnised there will comply with the requirements proposed in (f), (g), (l) and (n); and the Registrar General should be empowered to cancel the registration if this undertaking is breached (para. 97).

3. Registration

(a) The system of registration should be speeded up and simplified by the introduction of a new type of marriage register book in which entries would be made and signed in duplicate and one copy despatched promptly to the superintendent registrar of the district who would promptly send a copy of it to the Registrar General and complete the district register (paras. 110, 111).

(b) The registers should contain all the details regarding the parties given in the superintendent registrar's licence (including dates and places of birth) and particulars of the licence (para. 112).

(c) The Marriage Act should provide expressly that official copies of entries in the registers whether issued by the original registrant, the superintendent registrar or the Registrar General should be sufficient evidence of the celebration of the marriage to which it relates (para. 113).

(d) We do not favour the annotation of birth registers with notice of a marriage (paras. 114-115).

(e) In view of the burdens borne by incumbents it is for consideration whether the authorities of the

Church of England should not be empowered to relieve them by appointing authorised persons (para. 116).

4. Effects of Irregularities

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

(i) a licence had been granted and was still current when the marriage was solemnised,

(ii) the marriage was solemnised in the place named in the licence (if the marriage was by Registrar General's or special licence solemnisation anywhere would be sufficient)

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

(iv) each of the parties during the solemnisation had made declarations substantially to the effect stated in paragraph 92, namely, that he or she took the other to be his or her one and only spouse to the exclusion of all others.

If any of the above conditions was not fulfilled the marriage should be void irrespective of the knowledge or complicity of the parties (paras. 121-133).

(b) Consideration should be given to the simplification of the procedure under the Provisional Order (Marriages) Act 1905 (para. 134).

5. Offences

(a) The offences and the penalities should be rationalised and, in general, maximum penalities reduced with greater use of fines instead of imprisonment except for the serious offences (para. 137).

(b) It should be made a serious offence to perform or permit to be performed any type of ceremony which led either party, or which could reasonably lead either of them or any other person, to believe that a legal ceremony of marriage had taken place unless the ceremony or a previous civil ceremony complied with the provisions of the Act (paras. 138-140).

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

APPENDIX A

MARRIAGE ACCORDING TO THE LAW OF THIS COUNTRY IS THE UNION OF ONE MAN WITH ONE WOMAN, VOLUNTARILY ENTERED INTO FOR LIFE, TO THE EXCLUSION OF ALL OTHERS.

NOTICE OF MARRIAGE BY CERTIFICATE WITHOUT LICENCE.—(*Pursuant to the Marriage Act 1949 and 1954*)

(Form prescribed by the Registration of Births, Deaths and Marriages Regulations 1968)

—For Persons each of whom is either 18 years or over, or, if under 18, a widower or a widow.

PARTICULARS RELATING TO THE PERSONS TO BE MARRIED

Name and surname (1)	Age (2)	Marital Status (3)	Occupation (4)	Place of residence (5)	Period of residence (6)	Church or other building in which the marriage is to be solemnized (7)	District and county of residence (8)

To the Superintendent Registrar of the district of.....in the county.....

1. I, the above-named....., give you notice that I and the other person named above intend to be married by certificate without licence within three months from the date of entry of this notice.

2. I solemnly declare that I believe there is no impediment of kindred or alliance or other lawful hindrance to the marriage, and that I and the other person named above have for the period of seven days immediately preceding the giving of this notice had our usual places of residence within the districts named in column 8 above.

3. And I further declare that I am not under the age of eighteen years or, if under that age, am a widower or widow, and that the other person named above is not under the age of eighteen years, or, if under that age, is a widower or widow.

4. I declare that to the best of my knowledge and belief the declarations which I have made above and the particulars relating to the persons to be married are true. I understand that if any of the declarations are false I MAY BE LIABLE TO PROSECUTION UNDER THE PERJURY ACT 1911.

5. I also understand that if, in fact, there is an impediment of kindred or alliance or other lawful hindrance to the intended marriage the marriage may be invalid or void and the contracting of the marriage may render one or both of the parties GUILTY OF A CRIME AND LIABLE TO THE PENALTIES OF BIGAMY OR SUCH OTHER CRIME AS MAY HAVE BEEN COMMITTED.

(Signed)..... Date.....

In the presence of.....(Signature of registration officer)

Official designation .....

Registration district of.....

Place of residence.....

MARRIAGE ACCORDING TO THE LAW OF THIS COUNTRY IS THE UNION OF ONE MAN WITH ONE WOMAN, VOLUNTARILY ENTERED INTO FOR LIFE, TO THE EXCLUSION OF ALL OTHERS.

NOTICE OF MARRIAGE BY CERTIFICATE WITHOUT LICENCE.—*(Pursuant to the Marriage Act 1949 and 1954)*

(Form prescribed by the Registration of Births, Deaths and Marriages Regulations 1968)

—For Persons either of whom is under 18 years and not a widower or widow.

PARTICULARS RELATING TO THE PERSONS TO BE MARRIED

Name and surname (1)	Age (2)	Marital status (3)	Occupation (4)	Place of residence (5)	Period of residence (6)	Church or other building in which the marriage is to be solemnized (7)	District and county of residence (8)
	years						
	years						

To the Superintendent Registrar of the district of.....in the county.....

1. I, the above-named....., give you notice that I and the other person named above intend to be married by certificate without licence within three months from the date of entry of this notice.

2. I solemnly declare that I believe there is no impediment of kindred alliance or other lawful hindrance to the said marriage, and that I and the other person named above have for the period of seven days immediately preceding the giving of this notice had our usual places of residence within the districts named in column 8 above.

3. And I further declare that in respect of myself —

*(i) the consent of † ..... whose consent only is required by law has been obtained;

(ii) the necessity of obtaining the consent† ..... has been dispensed with as provided by law;

(iii) there is no person whose consent to my marriage is required by law;

(iv) I am over the age of eighteen years or if under that age am a widow/widower.

.....

and in respect of the said‡ .....

*(i) the consent of† ..... whose consent only is required by law has been obtained;

(ii) the necessity of obtaining the consent† ..... has been dispensed with as provided by law;

(iii) there is no person whose consent to his/her marriage is required by law;

(iv) he/she is over the age of eighteen years or if under that age is a widow/widower.

.....

4. I declare that to the best of my knowledge and belief the declarations which I have made above and the particulars relating to the persons to be married are true. I understand that if any of the declarations are false I MAY BE LIABLE TO PROSECUTION UNDER THE PERJURY ACT 1911.

5. I also understand that if, in fact, there is an impediment of kindred or alliance or other lawful hindrance to the intended marriage the marriage may be invalid or void and the contracting of the marriage may render one or both of the parties GUILTY OF A CRIME AND LIABLE TO THE PENALTIES OF BIGAMY OR SUCH OTHER CRIME AS MAY HAVE BEEN COMMITTED.

* Delete the alternatives which do not apply; if none applies (e.g., the.....Court has consented to the marriage) insert the appropriate declaration as to consent in the space provided.

† Insert the name(s) of the person(s) whose consent is/are required.

‡ Insert the name of the other party.

(Signed)..... Date.....

In the presence of .....(Signature of registration officer)

Official designation .....

Registration district of.....

Place of residence.....

APPENDIX B

CERTIFICATE FOR MARRIAGE *WITHOUT* LICENCE

(Marriage Act 1949, Section 31)

(Form prescribed by the Registration of Births, Deaths and Marriages Regulations 1968)

*

I,.....Superintendent Registrar of the district of....., in the county..... of..... hereby certify that on the..... day of..... 19..... notice was duly entered in the Marriage Notice Book of the said district of the marriage intended to be solemnized between the parties hereinafter named and described.

CANCELLED

Name (1)	Age (2)	Marital status (3)	Occupation (4)	Place of residence (5)	Period of residence (6)	Church or other building in which the marriage is to be solemnized (7)	District and county of residence (8)
	years						
	years						

I further certify that the issue of this certificate has not been forbidden by any person authorised to forbid the issue thereof.

Date.....

Signature.....
Superintendent Registrar.

Note.—This certificate will be void if the marriage is not solemnized within three months from the date of entry of notice given above (See †).

* ***When the marriage has been solemnized the No. of the Entry in the Marriage Register Book must be entered in this space.***

APPENDIX C

MARRIAGE ACCORDING TO THE LAW OF THIS COUNTRY IS THE UNION OF ONE MAN WITH ONE WOMAN, VOLUNTARILY ENTERED INTO FOR LIFE, TO THE EXCLUSION OF ALL OTHERS.

NOTICE OF MARRIAGE BY CERTIFICATE AND LICENCE.—*(Pursuant to the Marriage Act 1949 and 1954)*

(Form prescribed by the Registration of Births, Deaths and Marriages Regulations 1968)

—For Persons each of whom is either 18 years or over, or, if under 18, a widower or widow.

PARTICULARS RELATING TO THE PERSONS TO BE MARRIED

Name and surname (1)	Age (2)	Marital status (3)	Occupation (4)	Place of residence (5)	Period of residence (6)	Church or other building in which the marriage is to be solemnized (7)	District and county of residence (8)

To the Superintendent Registrar of the district of.....in the county.....

1. I, the above-named....., give you notice that I and the other person named above intend to be married by certificate and licence within three months from the date of entry of this notice.

2. I solemnly declare that I believe there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that *I have/the other person named above has for the period of fifteen days immediately preceding the giving of this notice had *my/his/her usual place of residence within the above-mentioned district of.....

3. And I further declare that I am not under the age of eighteen years or, if under that age, am a widower or widow, and that the other person named above is not under the age of eighteen years, or, if under that age, is a widower or widow.

4. I declare that to the best of my knowledge and belief the declarations which I have made above and the particulars relating to the persons to be married are true. I understand that if any of the declarations are false I MAY BE LIABLE TO PROSECUTION UNDER THE PERJURY ACT 1911.

5. I also understand that if, in fact, there is an impediment of kindred or alliance or other lawful hindrance to the intended marriage the marriage may be invalid or void and the contracting of the marriage may render one or both of the parties GUILTY OF A CRIME AND LIABLE TO THE PENALTIES OF BIGAMY OR SUCH OTHER CRIME AS MAY HAVE BEEN COMMITTED.

* Delete the alternatives which do not apply.

(Signed)..... Date.....

In the presence of.....(Signature of registration officer)

Official designation .....

Registration district of.....

Place of residence.....

MARRIAGE ACCORDING TO THE LAW OF THIS COUNTRY IS THE UNION OF ONE MAN WITH ONE WOMAN, VOLUNTARILY ENTERED INTO FOR LIFE, TO THE EXCLUSION OF ALL OTHERS.

NOTICE OF MARRIAGE BY CERTIFICATE AND LICENCE.—(*Pursuant to the Marriage Acts 1949 and 1954*)

(Form prescribed by the Registration of Births, Deaths and Marriages Regulations 1968)

—For Persons either of whom is under 18 years and not a widower or widow.

PARTICULARS RELATING TO THE PERSONS TO BE MARRIED

Name and surname (1)	Age (2)	Marital status (3)	Occupation (4)	Place of residence (5)	Period of residence (6)	Church or other building in which the marriage is to be solemnized (7)	District and county of residence (8)
	years						
	years						

To the Superintendent Registrar of the district of.....in the county.....

1. I, the above-named ....., give you notice that I and the other person named above intend to be married by certificate and licence within three months from the date of entry of this notice.

2. I solemnly declare that I believe there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that *I have/the other person named above has for the period of fifteen days immediately preceding the giving of this notice had *my/his/her usual place of residence within the above-mentioned district of .....

3. And I further declare that in respect of myself

*(i) the consent of †.....whose consent only is required by law has been obtained;

(ii) the necessity of obtaining the consent of†.....has been dispensed with as provided by law;

(iii) there is no person whose consent to my marriage is required by law;

(iv) I am over the age of eighteen years or if under that age am a widow/widower.

.....

and in respect of the said‡

*(i) the consent of†.....whose consent only is required by law has been obtained;

(ii) the necessity of obtaining the consent of†.....has been dispensed with as provided by law;

(iii) there is no person whose consent to his/her marriage is required by law;

(iv) he/she is over the age of eighteen years or if under that age is a widow/widower.

.....

4. I declare that to the best of my knowledge and belief the declarations which I have made above and the particulars relating to the persons to be married are true. I understand that if any of the declarations are false I MAY BE LIABLE TO PROSECUTION UNDER THE PERJURY ACT 1911.

5. I also understand that if, in fact, there is an impediment of kindred or alliance or other lawful hindrance to the intended marriage the marriage may be invalid or void and the contracting of the marriage may render one or both of the parties GUILTY OF A CRIME AND LIABLE TO THE PENALTIES OF BIGAMY OR SUCH OTHER CRIME AS MAY HAVE BEEN COMMITTED.

* Delete the alternatives which do not apply; if none applies (e.g., the ..... Court has consented to the marriage) insert the appropriate declaration as to consent in the space provided.

† Insert the name(s) of the person(s) whose consent is/are required.

‡ Insert the name of the other party.

(Signed) ..... Date.....

In the presence of ..... (Signature of registration officer)

Official designation .....

Registration district of .....

Place of residence .....

APPENDIX D

CERTIFICATE AND LICENCE FOR MARRIAGE

Marriage Act 1949, Section 32

(Form prescribed by the Registration of Births, Deaths and Marriages Regulations 1968)

*

I,.....Superintendent Registrar of the district of....., in the county.....of.....hereby certify that on the†.....day of.....19.....notice was duly entered in the Marriage Notice Book of the said district of the marriage intended to be solemnized between the parties hereinafter named and described.

Name (1)	Age (2)	Marital status (3)	Occupation (4)	Place of residence (5)	Period of residence (6)	Church or other building in which the marriage is to be solemnized (7)	District and county of residence (8)
	years						
	years						

CANCELLED CANCELLED

I further certify that the issue of this certificate has not been forbidden by any person authorised to forbid the issue thereof.

Now therefore I, the said Superintendent Registrar, grant to the above-named parties licence to contract and solemnize their intended marriage.

Date..... Signature.....

Superintendent Registrar.

Note.—This certificate and licence will be void if the marriage is not solemnized within three months from the date of entry of notice given above (See †).

**When the marriage has been solemnized the No. of the Entry in the Marriage Register Book must be entered in this space.*