

225th Report
Ecclesiastical Committee

Church of England Marriage Measure

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The Ecclesiastical Committee

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

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

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

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

Current Membership

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Remit

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

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

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

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

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

Publications

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

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

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
REPORT		5
COMMENTS AND EXPLANATIONS OF THE GENERAL SYNOD		2
	6	
Introduction	2	8
The Object and Main Provisions of the Measure	2	8
The current law	3	8
The need for a change in the law	5	9
The changes made by the Measure	8	9
Background and Legislative History	9	9
Guidance Material and Training	12	10
The Main Provisions of the Measure and the Main Issues Considered by the General Synod	13	11
A. Section 1(1) and (12)(b)—The Right to Marry in the Parish Church of a Parish with which the Person Concerned has a Qualifying Connection	16	13
B. Section 1(3), (4), (12)(C), (13) and (14)—The Qualifying Connections	44	20
C. Section 1(2), (10) and (11)—Places where Marriages may be Solemnised under the Measure	63	26
D. Section 1(12)(a)—The “Minister”	76	29
E. Section 1(8)–(9)—Information to be Provided to Establish a Qualifying Connection	78	30
F. Section 1(5)–(8)—Publication of Banns	82	32
G. Section 2—Common Licence	84	33
H. Section 3—Guidance	89	34
I. Sections 4 and 5—Supplementary Provisions, Citation, Commencement and Extent	93	35
Conclusion	97	36
Appendix: Suggested Additional Qualifying Connections		37
PROCEEDINGS OF MEETING WITH REPRESENTATIVES OF THE GENERAL SYNOD, 28TH APRIL 2008		39

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

The Ecclesiastical Committee has met and considered the

Church of England Marriage Measure

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

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

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

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

The Measure:

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

The Measure does not affect the legal principles governing:

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

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

INTRODUCTION

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

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

The Object and Main Provisions of the Measure

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

The current law

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

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

The need for a change in the law

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

The changes made by the Measure

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

Background and Legislative History

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

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

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

	Ayes	Noes
Bishops	26	0
Clergy	106	3
Laity	126	3

Guidance Material and Training

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

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

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

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

15. The paragraphs which follow use the following abbreviations:

“the 1949 Act” – the Marriage Act 1949;

“the 1983 Measure” – the Pastoral Measure 1983;

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

“the HRA” – the Human Rights Act 1998;

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

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

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

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

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

Matters raised before the Revision Committee and the General Synod

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

The case for section 1(1)

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

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

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

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

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

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

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

Right rather than discretion

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

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

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

"Opt-out" for individual parishes

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

Modification of licence system

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

Rights subject to qualifications or restrictions

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

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

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

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

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

Matters raised before the Revision Committee and the General Synod

General considerations

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

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

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

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

Baptism and confirmation

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

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

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

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

Parent/grandparent and marriage of a parent or grandparent

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

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

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

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

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

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

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

59. As regards these provisions:

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

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

Other suggested qualifying connections

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

Pastoral reorganisation and changes in parish boundaries

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

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

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

Matters raised before the Revision Committee and the General Synod

Cathedrals

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

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

“Greater churches”

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

Non-parochial places of worship

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

Specially designated “wedding churches”

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

D. SECTION 1(12)(A)—THE “MINISTER”

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

Matters raised before the Revision Committee and the General Synod

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

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

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

Matters raised before the Revision Committee and the General Synod

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

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

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

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

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

Matters raised before the Revision Committee and the General Synod

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

G. SECTION 2—COMMON LICENCE

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

Matters raised before the Revision Committee and the General Synod

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

H. SECTION 3—GUIDANCE

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

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

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

Matters raised before the Revision Committee and the General Synod

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

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

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

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

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

Matters raised before the Revision Committee and the General Synod

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

CONCLUSION

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

On behalf of the Committee

Philip Giddings
(Deputy Chair)

17th January 2008

APPENDIX: SUGGESTED ADDITIONAL QUALIFYING CONNECTIONS

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

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

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