



# **ANGLICAN MARRIAGE IN THE ISLE OF MAN**

## **A Guide to the Law for Clergy**

**Sodor and Man Diocesan Registry**

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*Anglican Marriage in the Isle of Man*

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## A Guide to the Law for Clergy

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### **Abbreviations**

MA	Marriage Act 1984 (of Tynwald)
PCW	parish centre of worship (see PM s.29)
PM	Pastoral Measure 1983

# **ANGLICAN MARRIAGE IN THE ISLE OF MAN**

## **A Guide to the Law for Clergy**

### **1 Introduction**

#### **1.1 Status and date of these notes**

These guidance notes are issued by the Sodor and Man Diocesan Registry, and are based, with the permission of the Registrar of the Faculty Office of the Archbishop of Canterbury, on the 3rd edition (2010) of *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* issued by that Office. They incorporate the changes in Manx marriage law made by the Marriage and Civil Registration (Amendment) Act 2011 and Civil Partnership Act 2011. They are not a complete statement of the law, but are believed to be correct as at 1st December 2011.

#### **1.2 Scope of the notes**

By virtue of its historically established position, the Church of England has a number of privileges and also a number of duties in relation to marriage in the Isle of Man. In these notes the expression 'Anglican marriage' is used as a shortened form of 'marriage according to the rites and ceremonies of the Church of England'.

To place Anglican marriage in context, and so that the clergy may have a complete picture of the alternatives available, some reference is also made to secular and nonconformist marriage, but the coverage of this area is much less comprehensive.

#### **1.3 Services of blessing**

On some occasions (for example where a divorced party is remarrying) it may be appropriate for a civil (register office) marriage to be followed by a service of blessing in church. Such a service may be very different in content from the marriage service, or very similar; but in any event it is not legally a marriage, and does not require any formal preliminaries or registration. Such services fall within the field of liturgical law rather than marriage law; and accordingly they are outside the scope of these notes. Clergy are, however, referred to 'An Order for Prayer and Dedication after a Civil Marriage' commended by the House of Bishops and published in *Common Worship: Pastoral Services*. However please see section 13 below.

### **2 The right and duty to marry**

#### **2.1 The general rule**

Where there is a right to marry in a parish church there is usually a corresponding duty on an incumbent or priest-in-charge to solemnize that marriage, or to arrange for a suitably authorised person to do so. Under the present law, the categories of person with a right to be married in a parish church are —

- (i) a person who is resident in the parish, and
- (ii) a person who is enrolled on the church electoral roll of the parish.

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Subject to a number of statutory exceptions there is a duty to solemnize the marriage of a person establishing one of these rights. A failure to do so will amount to neglect of duty if the incumbent or priest-in-charge refuses to do so, or to provide an assistant curate or other qualified person to do so in his or her place, and may give rise to disciplinary proceedings.

The Church of England Marriage Measure 2008 does not extend to the Isle of Man, and a person who has a qualifying connection with a parish under section 1 of that Measure (and is not entitled under (i) or (ii) above) does not have the right to be married in the parish church.

### **2.2 Exceptions to the rule**

Some exceptions to this duty to marry have been made by statute: these are

- (i) where there is a particular relationship of affinity between the parties (see 12.4 below), or
- (ii) where one of the parties is divorced and has a surviving former spouse (see section 13 below), or
- (iii) where one of the parties is a person of an acquired gender (see section 15 below).

In all of these cases the incumbent has a free discretion to solemnize the marriage (or to make the church available) or to decline (MA s.5A). There are no other exceptions: for example, the fact that a party (or both parties) are unbaptised does not deprive them of the right to marry after banns.

### **2.3 Practical limitations on the rule**

Where the general duty applies, the incumbent is still entitled to receive reasonable notice: in the case of banns there are specific requirements as to notice (see 7.6 below). The incumbent is entitled to appoint the date and time of the marriage, provided he/she acts reasonably (not insisting upon an unreasonable delay, or going outside the canonical hours, which are from 8 a.m. to 6 p.m.). The incumbent also decides whether to offer the services of the organist, choir and bellringers.

The form of the service (as between the Prayer Book, Series I, Common Worship and, in certain circumstances, the rite entitled 'An Order for the Marriage of Christians from Different Churches' — see 16.2 below) is a matter to be agreed between the incumbent and the parties, or for the bishop's decision if they disagree.

It will be seen from the foregoing that the incumbent has considerable leverage over parties who insist upon invoking their strict legal right to marry; consequently, arrangements for marriage are almost always made by mutual agreement rather than in reliance upon the letter of the law.

### **2.4 ...**

*[Omitted]*

## **2.5 Considerations other than the choice of preliminary**

These notes deal with preliminaries to marriage, each type of preliminary being examined in turn. Clergy advising those who intend to marry should, however, direct their attention also at the outset to the intended place of marriage (see sections 3 to 6), possible impediments (sections 12 to 15), the question of who can conduct the marriage service (section 17), the availability of registers (section 19) and fees for the marriage itself (section 20).

## **2.6 The choice between the three preliminaries to Anglican marriage**

There are three possible preliminaries to Anglican marriage —

- (a) the publication of banns (see section 7);
- (b) a common licence (see section 9);
- (c) a special licence (see section 10).

Banns are the normal preliminary. However, banns are not appropriate —

- if one of the parties is neither a British citizen nor a national of another European Economic Area (EEA) state (see 9.5 below)
- with certain exceptions, if one of the parties lives outside the Isle of Man
- if there is urgency
- if there is a relationship of affinity between the parties
- if the parties wish to avoid local publicity.

In all of these cases some form of licence is appropriate: a common licence should be obtained where possible (see section 9).

The main reason to seek a special licence as opposed to any other preliminary is a desire to marry in a parish where neither party has a legal qualification to marry or where marriage is to be solemnized in a building not normally authorised for marriages. Good cause must be shown (see section 10).

## **2.7 Human rights**

The European Convention on Human Rights was incorporated into Manx law by virtue of the Human Rights Act 2001.

Article 12 of the Convention provides that *'Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right'*. Accordingly the fundamental right to marriage exists only between members of the opposite sex and is exercisable only according to the national laws governing marriage itself. Article 12 does not therefore —

- allow members of the same sex to marry each other
- give a right to be married in a particular place of the parties' choosing
- give a right to a marriage in church where one person is divorced.

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This is because the national law has made provisions regulating this, and the right to be married will need to be exercised within these provisions. It will not be possible for parties to a marriage to claim their human rights have been interfered with under this article unless they are frustrated in their attempt to be married by the imposition of requirements beyond those of the current law. Clergy must be careful, therefore, to ensure that they properly understand and apply the laws relating to marriage so as not to give cause for a claim that a Convention right has been breached by them in impeding a marriage that ought, under the law, to be permitted.

### **2.8 The pastoral aspect**

These notes are inevitably much concerned with law and formalities. However, clergy will be aware of the pastoral opportunities offered by 'occasional offices' such as marriage. When relying upon a residential qualification for marriage after banns or by licence there is at least the geographical scope for preparation, follow-up and pastoral care by the parties' local clergy and congregation. When a special licence is granted waiving residence requirements, care is taken to see that the parties' own local clergy are at least aware of the proposed marriage. Where a couple live at some distance from where they are to be married, thus making marriage preparation difficult (see Canon B30, para. 3), there is good opportunity to put such couples in touch with their local clergy who may be able to undertake that preparation. This is to be warmly commended. Officiating clergy, local clergy and surrogates should all be mindful of the image of the Church that a couple receives when going through the preliminaries to marriage.

## **3 Buildings available for Anglican marriage**

### **3.1 Parish churches, parish centres of worship and licensed chapels**

There is only a limited range of places where Anglican marriage may be solemnized (other than by special licence). Anglican marriage may take place in —

- a parish church (MA ss.6, 12)
- a parish centre of worship (PM s.29)
- a chapel licensed for marriages by the Bishop (MA s.14).

These buildings are the only buildings to which marriage register books are issued.

Buildings which are not parish churches, and whether consecrated or not, may be licensed by the bishop for public worship. Any building so licensed may then be further licensed for the marriage of persons living in the parish in which it is situated (see 4.3 below) or designated as a parish centre of worship (PCW — see 4.5 below).

### **3.2 Cathedral**

The Cathedral Church of St German is the parish church of the parish of German, and the same rules apply to it as to other parish churches.

### **3.3 Military chapels**

No provision is made in Manx law for the licensing of military chapels for marriages.

### **3.4 Marriage of detained and housebound persons**

No special provision is made in Manx law for Anglican marriage of housebound and detained persons where they are living, receiving treatment or detained. Such a marriage may be authorised by special licence (see section 10 below).

### **3.5 Shared churches**

The fact that a building may be covered by an agreement under the Sharing of Church Buildings Act 1969<sup>1</sup> does not, by itself, confer upon the building any status as a place of marriage. A shared building which is a parish church remains a parish church; a PCW or a building licensed by the Bishop for marriages remains so authorised. A shared building which is not authorized for marriages may be subsequently designated a PCW or licensed by the Bishop despite the sharing agreement.

The only difference which a sharing agreement makes is that it becomes possible for the building to be authorized for Anglican marriage as above and at the same time registered for marriages of some other Christian denomination under MA s.29. This would not otherwise be possible, since an Anglican building cannot normally be registered under MA s.29 and a non-Anglican building would not otherwise be licensed by the Bishop for marriages.

### **3.6 Closed churches**

A church which has been declared redundant by a pastoral scheme ceases to be a parish church or to be licensed for marriages, as the case may be (PM Sch.3 para.14(3)). A special licence is required and will only be granted where there are longstanding links with the building.

### **3.7 Civil marriages**

It should be noted that the provisions (MA s.19) which allow marriage in a place (other than a register office or registered building) approved by the Chief Registrar, or in another place with the consent of the Chief Registrar, apply to civil marriages only. Anglican marriages may not be solemnized on such premises. Anglican clergy may not solemnize civil marriages and may only solemnize marriages according to the rites of the Church of England in buildings identified in this section.

### **3.8 Other places by special licence**

The Bishop of Sodor and Man may grant a special licence for Anglican marriage 'at any convenient time or place' in the Isle of Man (MA s.5(b)). This provision is very wide, and could in theory cover buildings of other Christian denominations, the open air, and territorial waters; however, in practice it is the Bishop's usual policy only to permit

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<sup>1</sup> The Sharing of Church Buildings Act 1969 (of Parliament) is extended to the Isle of Man with modifications by the Sharing of Church Buildings Act 1986 (of Tynwald).

marriage in buildings customarily used for Anglican worship. Some medical need must normally be shown for marriage elsewhere to be authorised, eg. in a hospital or private house. The Bishop has laid down guidelines for the grant of special licences (see section 10 and Appendix 3).

## **4 Factors governing the choice of location**

### **4.1 Limited choice of buildings**

Although a building may be available for the solemnization of Anglican marriage (as explained in the previous section) it does not follow that a couple can be married there simply as a matter of their personal choice. To be able to assert an entitlement to be married in a particular church one of the parties has to be able to point to a right in law to be married in the building in question. In addition, before the marriage can take place an appropriate form of preliminary must be carried out (see 2.6 above).

### **4.2 Parish churches**

The MA recognises the longstanding principle that a person who is resident in a parish has the right to be married in the parish church. The Act also confers on a person who lives in one parish, but usually worships in the parish church of another parish, the right to marry in that church provided that his or name is entered on the church electoral roll of the latter parish (MA s.18).

There is no entitlement to be married in a parish church of a parish with which a person has a 'qualifying connection' within the meaning of the Church of England Marriage Measure 2008, as that Measure does not extend to the Isle of Man (see 2.1 above).

### **4.3 Licensed chapels**

Where the Bishop has licensed a public chapel for the solemnisation of marriages, a couple may lawfully marry in that chapel provided at least one of them resides in, or is entered on the church electoral roll of, the parish within which the chapel is situated (MA s.14(1)). The banns may then be published in that chapel (MA s.6(2)), but must also be published in the parish church of the parish and, if a party is on the church electoral roll of that parish but resident in another parish, in the parish church of the latter parish (MA s.6(1), (3)).

### **4.4 Extra-parochial places**

There are no extra-parochial places in the Isle of Man.

### **4.5 Parishes without a parish church**

Where a parish has no church, the Bishop may license a building for public worship, and may then designate it as a parish centre of worship; it is thereupon treated as a parish church for the purpose of marriages (PM s.29). A couple, either of whom resides in the parish, or is on the church electoral roll of the parish, have the right to marry in the PCW.

#### **4.6 Churches without regular services**

*[Omitted]*

#### **4.7 Church undergoing reconstruction, etc.**

If a parish church is disused in consequence of rebuilding or repairs, or for any other cause, the Bishop may direct that banns may be published and marriages solemnized in some neighbouring parish church or chapel instead of that church (MA s.14(3)).

#### **4.8 United benefices and pluralities**

A special power is given to the Bishop in relation to the publication of banns and solemnisation of marriages where two or more benefices are held in plurality or there are two or more parishes or parish churches in the area of a single benefice (PM Sch.3 para.14(4)). The bishop may make a direction as to where the banns may be published and where the marriage may be solemnized.

Where such a direction is in force a person with an entitlement to be married, whether by residence or entry on a church electoral roll, in one of the churches subject to the direction, may have his or her banns published and his or her marriage solemnized in any of the other churches subject to it. There is no obligation upon a couple to marry in the alternative church, because their right to marry in a particular church is expressly preserved (para.14(5)). Furthermore, somewhat unusually having regard to MA s.11, the marriage may be solemnized in the church where the right to marry applies, even though the banns have been published in another church in accordance with the bishop's direction (para.14(5)).

#### **4.9 Licensed military chapels**

*[Omitted: see section 3.3]*

### **5 Qualifying connections**

The Church of England Marriage Measure 2008 does not extend to the Isle of Man, and a person who has a 'qualifying connection' with a parish under section 1 of that Measure (and is not entitled by virtue of residence in, or entry on the church electoral roll of, the parish) does not have the right to be married in the parish.

However, where the couple wish to marry in a parish church, licensed chapel or other building customarily used for Anglican worship and at least one of them has a genuine connection with the place in question, it is still possible for them to apply for a special licence from the Bishop (see section 10).

### **6 The meaning of Residence**

#### **6.1 Statutory provisions**

The qualification for a person to marry in a particular place depends very much upon where that person lived, even though for most purposes there is an alternative qualification in the form of entry on the church electoral roll.

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In order to establish whether the legal requirements for solemnisation of marriage in a particular place are satisfied, it is necessary to look at the facts of the individual case in the light of the legislation which governs the type of preliminary which is to be used. The legislative provisions, so far as they relate to residence for the use of banns or a common licence are as follows:

### *Banns:*

'the parish ... in which one of [the parties] resides' (MA s.6);

### *Common licence:*

'the parish... in which one of persons to be married has had his or her usual place of residence for 15 days immediately before the grant of the licence' (MA s.12);

## **6.2 Areas of common uncertainty**

Two types of case commonly arise in considering whether the legal requirements for marriage in a particular place are satisfied. These relate to:

- (i) the person who claims an address as his or her 'home' at a time when he or she is, in physical terms, living elsewhere; and
- (ii) the person who arrives in a parish expressly in order to marry there, and so is physically resident at the relevant date or dates but may have no intention to make a permanent base in the parish.

## **6.3 Common licence — usual place of residence**

The residence test for a common licence is that of the person's 'usual place of residence', and it is necessary to satisfy that test for the whole of the 15-day period under MA s.12.

So far as situation (i) in 6.2 above is concerned, it appears that throughout the relevant period there must be a place in the parish which can properly be regarded as that person's 'home'. If that is the case, the fact that he or she is physically absent for the whole or part of the 15 day period, eg. on holiday, does not prevent the test being satisfied.

Two situations which have given rise to particular difficulties in the past have been —

- students who live away from the parental home in term-time or even for longer periods, but who return there regularly
- persons who have to live away from the parental home for longer or shorter periods in order to be at or near their place or work although again they return regularly

Examples of the latter include members of the armed forces and diplomats sent abroad for a tour of duty. The central issue here is whether the parental home remains that person's 'home', or whether he or she has established a 'home' elsewhere and is merely a visitor when he or she returns to the parental home.

One significant factor, although it is not conclusive on its own, is whether he or she has a room in the parental home which is regarded as 'his/her room', with his or her belongings, which remains unoccupied in his or her absence. The payment of council tax may likewise not be conclusive. The nature of his or her accommodation where he or

she is working or studying may also be relevant; eg. a student who gives up his or her lodgings, or has to leave his or her hall or residence, during the vacations, or a person working away from the parental home who has nowhere else to go during a period of leave, is much more likely to have his or her 'home' at the parental home than, say, a student who has rented or joined with others in renting a house or flat near the university or college and lives there for much of the vacations as well as in term time.

As regards situation (ii) in 6.2 above, a person who lives in accommodation in the parish for 15 days, even if this is clearly only a temporary arrangement, could be said to have his or her 'usual place of residence' there for that period.

#### **6.4 Superintendent Registrar's Certificate**

*[Omitted]*

#### **6.5 Banns — residence**

Uniquely, the original residence requirement for banns under MA s.6 does not have to be satisfied over a stated period, but simply at one instant in time — that is, at the moment when the prescribed application for the calling of banns is given to the minister or someone acting on the minister's behalf. Moreover, the test is that the person concerned must 'reside' in the parish at that moment, not (as in 6.3 above) that he or she has a 'usual place of residence' there. This might suggest that the residence has to be physical residence but without an element of recurrence.

#### **6.6 Conclusion**

Although it has been possible to give some clear guidelines in this section on the various legal provisions regarding residence as a qualification for marriage in a particular place, there will always be cases where it is possible to argue for more than one view of a given individual's legal position. In the final analysis, clergy and those issuing common licences will have to reach their own conclusion on whether the person genuinely satisfies the relevant test, on the basis of common sense and the general guidance given above.

### **7 Banns**

#### **7.1 Publication in parish of residence**

Where a marriage is to be solemnized after banns in the parish church, PCW or licensed building of the parish where one of the parties resides, banns must be published (i) in that church, and (ii) in the corresponding church of the parish or district where the other party resides (MA s.6). (As to 'residence', see section 6 above.)

#### **7.2 Publication in usual place of worship**

Where a marriage is to be solemnized in a church or chapel which is a person's 'usual place of worship' (see 4.2 above), banns must be published —

- in that church or chapel, and
- in the parish church(es) of the parish(es) where each party resides.

A church or chapel is a person's 'usual place of worship' if and only if he or she is entered on the church electoral roll of the parish in which it is situated (see 4.2 above).

### **7.3 Publication in case of a qualifying connection**

*[omitted]*

### **7.4 Special cases**

Where a marriage is to be solemnized in the church of a neighbouring parish because one of the parties lives in a parish where there is no church or only a PCW (see 4.5 above), banns must be published —

- in the church where the marriage is to be solemnized and
- in the parish church of the parish where the other party resides.

Where a marriage is to be solemnized in another building because a church is closed for repairs or reconstruction (see 4.7 above), banns must be published —

- in that other building and
- in the church of the parish or district where the other party resides.

Where the bishop has given directions under PM Sch.3 para.14 (see 4.8 above), the banns for any marriage taking place by virtue of those directions must comply with them. They may permit the banns to be published in one church and the marriage to take place in another.

### **7.5 Publication outside the Isle of Man**

A marriage may take place after banns in the Isle of Man if one of the parties lives in England, Wales or the Channel Islands. Publication of banns takes place as usual in the place in the Isle of Man where the marriage is to be solemnized; but the other party's banns may be published at a church of the Church of England in England or the Channel Islands, or any church of the Church in Wales, according to the law or custom there prevailing (MA s.6(4)).

The publication of banns as a preliminary to marriage has been discontinued in Scotland and Northern Ireland, so if one party lives there (or elsewhere outside the British Islands), the recommended course is to marry by common licence.

### **7.6 Dates and time of publication**

Banns are to be published on three Sundays preceding the marriage (MA s.7). There is no requirement that these should be three successive Sundays, although this may be a convenient way of ensuring that the banns are called the requisite number of times before the date fixed for the marriage to take place. They may be published at a morning, afternoon or evening service.

The incumbent is not obliged to publish the banns unless at least seven days beforehand the parties have provided written notice of their full names, their places of residence, and the length of time for which each one has resided at the place of residence stated (MA s.8). It is within the incumbent's discretion to go ahead with

publishing the banns even when such information is not provided within the prescribed time.

### **7.7 By whom published**

If there are clergy officiating at the service when banns are published, they must be published by a member of the clergy (MA s.9(1)). If there are no clergy officiating, then provided the service is Morning or Evening Prayer and at the usual time when banns are published in that church, a lay person may publish the banns (MA s.9(2)(b)); this would normally be the Reader officiating at the service.

### **7.8 Wording of banns**

The wording of banns is laid down by statute (MA s.7(2)), and either of the following forms may be used:

- I publish the banns of marriage between A.B. of \_\_\_\_\_ and C.D. of \_\_\_\_\_.  
If any of you know any cause or just impediment why these two persons should not be joined together in holy matrimony, ye are to declare it. This is the first [second or third] time of asking.
- I publish the banns of marriage between A.B. of \_\_\_\_\_ and C.D. of \_\_\_\_\_.  
This is the first [second or third] time of asking. If any of you know any reason in law why these persons may not marry each other, you are to declare it now.

Where marriage is taking place in a church which is not either person's parish church but is where one or both are members of the church electoral roll, the requirement laid down by MA is to have banns read in that church and in the parishes of residence. There is no requirement to state that the party to the marriage has a legal qualification with the parish in which he or she is marrying.

It will be noted that neither form requires the parties' current marital status to be stated.

### **7.9 Banns for minors**

Banns are published for minors (persons under 18) in the same way as for adults, and parental consent is not required when a minor applies to have banns published. The remedy of a parent of a minor who does not consent to a marriage is to object when banns are published.

### **7.10 Objections to banns**

Where the consent of a person is required to the marriage of a minor, that person is entitled to object to the marriage.

The consent of the following is normally required to the marriage of a minor (unless the minor is a widow or widower) —

- (a) any parent of the child who has parental responsibility for him or her; and
- (b) any guardian of the child.

However, this is qualified in certain cases, as follows —

## *Anglican Marriage in the Isle of Man*

- (c) where a residence order is in force, the consent of the person or persons with whom the child lives or is to live under the terms of the order is required (*instead of* the consents in (a) and (b));
- (d) where a care order is in force, the consent of the authority in whose care he or she is by virtue of the order is required (*in addition to* the consents in (a) and (b));
- (e) where a residence order was in force immediately before the child attained the age of 16, the person or persons with whom he or she was to live under the terms of the order (*instead of* the consents in (a) and (b)). (MA s.3)

Orders for custody are no longer made. Where the parents are divorced or separated by court order they will both automatically have parental responsibility (unless deprived of it by order of a court). A parent with parental responsibility is entitled to object to the marriage of a minor child whether or not the child is living with that parent, except where (c) above applies.

The natural father of an illegitimate child is not as such entitled to object to his child's marriage. He is entitled to object if he has parental responsibility, either because he has entered into a parental responsibility agreement with the mother or because the court has made an order giving him parental responsibility (Children and Young Persons Act 2001 s.4).

In order to object, the parent or guardian must openly and publicly cause his or her dissent from the intended marriage to be declared at the time of the publication of banns (MA s.3(7)). The publication of banns then becomes void; and having satisfied himself or herself of the objector's standing, the incumbent should note the objection in the banns register and proceed no further on the minor's application. (It does not however prevent a fresh application by the minor to have banns called.) Objections to banns should not be permitted to disrupt a service. Whether an objection appears to be well founded or not, the person publishing banns should state that the objection is noted, and that the objector should see him or her after the service to give particulars of the objection, and should then proceed with the service (or with the calling of any other banns).

The dissent of a qualified parent or guardian is the only ground which can render the publication of banns void. However, other allegations of legal impediments (for examples, see 18.2 below) should be investigated before the marriage is due to take place, if they are *prima facie* supported by evidence. Objections that do not amount to legal impediments (e.g. that a brother disapproves of his sister's marriage) cannot be entertained. The clergy should seek advice from the Diocesan Registrar on any objection.

### **7.11 Register book of banns**

For each building in which banns may be published, the Parochial Church Council is required to supply a register book of banns. The book must be made of durable materials and marked in the prescribed manner, and is available from church bookshops. The person publishing banns is to read from the book 'and not from loose papers'. After each publication the person publishing banns is to sign the book, or cause it to be done under his or her direction. (MA s.7(3))

### **7.12 Certificates of publication**

If banns are published in one church for marriage in another, it will be necessary for a certificate to be issued that banns have been published in the former church as required by law. The officiant must see this certificate before the marriage goes ahead. Details for the certificate can be taken from the banns register, and it must be signed by the incumbent or priest-in-charge of the church where the banns were published. (MA s.10)

### **7.13 Functions restricted to the clergy**

It will be noted that the involvement of clergy is essential only for the last stages in the banns procedure: a lay person may sometimes publish banns and sign the entry in the banns register; but a member of the clergy must always sign the certificate of publication (if required).

### **7.14 Duty to publish and certify**

Clergy have discretion in certain cases as to whether to solemnize the marriage of a person with a legal qualification to marry in the parish, or to make the church available for that purpose (see 2.2 above); they have no such discretion about calling the banns of such a person or issuing certificates. A person with a legal qualification to marry in the parish who gives the required notice and details, even if divorced, is entitled to have his or her banns called whatever the view of the incumbent; and failure to call banns on request is neglect of duty.

However, if one of the parties is neither a British citizen nor a national of another European Economic Area (EEA) state, it is recommended that the marriage take place by common licence, rather than after banns (see 9.5 below). In such a case, clergy must be aware of the possibility that the parties may be seeking to avoid immigration control, and even that the marriage may be a sham. If the parties insist on their right to have banns called, the circumstances should be reported to the Diocesan Registrar (see Appendix 1).

In certain cases where the parties are related by affinity, the marriage may not take place after banns, but only by common licence or special licence (see 12.4 below).

### **7.15 Time for validity of banns**

A marriage after banns must be solemnized within three calendar months from the last publication. After three months the publication of banns becomes void, and must be repeated from scratch if the marriage is to go ahead later (MA s.11(2)).

### **7.16 Fees**

The current Parochial Fees Order prescribes fees which are to be charged for the publication of banns and issue of a certificate. The fees should be paid when the parties apply for banns to be published.

## **8 Superintendent Registrar's Certificate (SRC)**

In England and Wales an Anglican marriage may take place by authority of a superintendent registrar's certificate (SRC). There is no equivalent procedure in the Isle of Man.

## **9 Common Licence**

### **9.1 Advantages of a common licence**

Marriage by common licence may take place on the basis of one party's qualifying residence or entry on a church electoral roll without any action being necessary where the other party lives. It is recommended where a party is resident outside the Isle of Man or is a foreign national. The initial procedure for obtaining a licence is given at 9.9 below.

### **9.2 Qualifications for the licence**

The qualifying period of residence is that one party has had his or her usual place of residence (see 6.3 above), for 15 days immediately before applying for the licence, in the parish where the marriage is to take place (MA s.12). Alternatively a party may marry by licence in his or her 'usual place of worship' although not resident in the parish. A church or chapel is a person's 'usual place of worship' if and only if he or she is entered on the church electoral roll of the parish in which it is situated (see 4.2 above).

A party who has qualifying residence in a parish which has no church or only a PCW (see 4.5 above), or where the church is closed for repairs or reconstruction (see 4.7 above) may be authorized by common licence to marry in the church of a neighbouring parish. A common licence may also be issued for marriage in the church of a neighbouring parish where this is covered by the bishop's directions under PM Sch. 3 para.14 (see 4.8 above).

### **9.3 Overseas residents**

Where one of the parties lives outside the Isle of Man and does not fall within any of the cases set out in 7.5 above where banns may be called elsewhere, the marriage cannot take place by banns, because the law requires the banns to be called in the place of residence of each party as well as in any other place where the marriage is to be solemnized. In such a case an application should be made for a common licence.

### **9.4 Foreign nationality or domicile**

Even where both parties are resident in the Isle of Man, there may be circumstances on which they should obtain advice at the outset, eg. where a party —

- has foreign nationality
- has previously been married or divorced abroad, or both, or
- already has children who are foreign nationals or domiciled or resident abroad.

A marriage which takes place in the Isle of Man according to the law as set out in these notes will be held valid, *as to form*, by the courts of the Isle of Man and the United

Kingdom, whatever the parties' nationality. However, there are circumstances which may affect the validity of the marriage in this country *as to matters other than form*, eg. where there is a question whether a party's previous marriage or divorce abroad is recognised here. Care needs to be taken to ensure that all relevant circumstances are considered fully in order to decide whether the marriage should take place.

Moreover, even if the marriage is recognised as fully valid in this country, there may be a risk of a 'limping marriage', ie. one which is not recognised under the law of the foreign country concerned, eg. where one of the parties is domiciled abroad and does not have full legal capacity to marry under the foreign law. In such a case the couple could be in difficulties afterwards, particularly if they move to or return to the country in question<sup>2</sup>. In an extreme case they could be separated and unable to live together in accordance with their marriage promises. The status of any children, the rights, powers and duties of one party in relation to children and a party's rights to financial provision could also be prejudiced by the other party taking advantage of the foreign legal position.

While the degree of risk will vary depending on the facts and the extent to which the foreign law differs from the law in this country, it is very much in the interests of the parties to take appropriate advice about these matters well before the marriage. The Church also recognises a responsibility to protect, if possible, those whose marriages it solemnizes from falling into the kinds of difficulties indicated above.

There may be practical issues which need to be addressed. For example, a foreign legal document may need to be professionally translated in order to ensure that the English version is legally accurate. Failing to attend to this at the outset may result in unnecessary difficulties and delay nearer the date for the marriage.

Accordingly, it is strongly recommended, in the parties' own interests, that even where marriage after banns is legally possible, an Anglican marriage should be by common licence in any of the circumstances described above. The Diocesan Registrar recommends that the application should be made to him rather than to a clergy surrogate, so that he can consider the position and help to guide the parties on seeking appropriate advice. To assist in the process, the Diocesan Registrar also recommends that where one of the parties is a national of or domiciled in a foreign country, the applicant should approach the relevant embassy or consulate for a letter confirming that an Anglican church marriage in the Isle of Man of such a person will be recognised in the country concerned, and should submit the letter or report on the result of such approach to the Registrar when making the application for the common licence.

## **9.5 Marriages of foreign nationals subject to immigration control**

Although there are no legal controls applying to Anglican marriages to prevent 'sham' marriages, corresponding to those applying to civil and non-conformist marriages, clergy must be aware of the possibility that, where one of the parties is neither a British citizen nor a national of another European Economic Area (EEA) state, a couple applying for a

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<sup>2</sup> There is usually no difficulty where the foreign country concerned is a member of the European Union, one of the old Commonwealth countries (Canada, Australia, New Zealand and South Africa) or the United States.

common licence may be seeking to avoid immigration control. In such a case an application for a common licence should be made to the Diocesan Registrar rather than to a clergy surrogate.

See Appendix 1 for guidance issued by the Bishop in such cases.

## **9.6 Divorced and unbaptised applicants**

The grant of a common licence to a divorced person with a former spouse still living is at the discretion of the Bishop. Further to the decision of the General Synod and the Advice of the House of Bishops to the clergy (see 13.6 below) the House of Bishops has decided that common licences may be issued where it is clear that the Advice has been followed. The surrogate should inspect both the provisional and final divorce orders, and satisfy himself or herself that the criteria set out in Appendix 2 are met.

Where neither party is baptised, the practice in the past has been that applications for a licence should be referred to the Bishop. The House of Bishops now supports the view that the lack of baptism of either or both parties should not in itself be a bar to the granting of a licence to enable a wedding to take place in church, and accordingly there is no longer a need to refer an application to the Bishop when neither party is baptised.

## **9.7 Minors**

The age of the parties must be stated when applying for a common licence. If a party is under 18 (unless a widow or widower), written consent to his or her marriage is required, usually of the parent(s) or guardian (see 7.10 above). The consent should be produced when the application is made, and the declaration in support must state that it has been given (MA s.13(2)).

There are a limited number of circumstances in which the Bishop, Vicar General or surrogate may waive the requirement for consent (MA s.3).

## **9.8 Surrogates**

Common licences are essentially an exercise of the episcopal power of dispensation — the Bishop dispenses with the requirement of banns. The power may be exercised on the Bishop's behalf by the Vicar General, and the Bishop may delegate the consideration of licence applications to surrogates. Application may therefore be made to local clergy (usually rural deans) who have been appointed 'surrogates for marriages'. The Diocesan Registrar is also appointed a surrogate so that applications may be made to him if convenient (and, for example, in the circumstances mentioned in 9.4 and 9.5 above and 12.5 below).

Surrogates are appointed by instrument under the Bishop's hand and seal. They cease to hold office on a vacancy in the See, and the Lieutenant Governor makes temporary appointments during the vacancy.

## **9.9 Application for licence**

One of the couple seeking to marry by common licence should appear (by appointment) before the surrogate, bringing any documentation required as in 9.3, 9.4, 9.5, or 9.6. (Note that the residence or church electoral roll requirement must be satisfied before

the application is made, but the party who satisfies it need not be the one who makes the application.) It is often helpful if the officiating minister is in contact with the surrogate before the application for a licence is made.

There is no official application form for a common licence, but the applicant is required to make a solemn declaration, on a form in a book supplied by the General Registry, that there is no impediment, that the requirements as to residence or entry on the church electoral roll are fulfilled and, where appropriate, that any consents to the marriage of a minor have been given or dispensed with (MA s.13(2)). It is to be stressed that all the requirements of the common licence should have been completed before the oath is sworn. If satisfied, the surrogate grants the licence. The officiating minister must insist upon seeing the signed licence before solemnizing the marriage.

### **9.10 Caveats**

It is possible for a person alleging some impediment to an intended marriage to hold up the grant of a common licence in the Isle of Man by entering a caveat in the Diocesan Registry. The caveat need not be in a prescribed form, but must be in writing, signed by or on behalf of the caveator and must give the caveator's address and the grounds of objection to the marriage. If not withdrawn, the caveat will prevent the issue of a licence unless and until the Bishop, Vicar General or surrogate is satisfied that it ought not to obstruct the grant of a licence or the caveat is withdrawn (MA s.13(3)). A clergy surrogate should seek the advice of the Diocesan Registrar before issuing a licence in such a case.

A caveat entered in another diocesan registry, the provincial registry or the Faculty Office does not prevent the grant of a licence in the Isle of Man.

### **9.11 Validity period**

A marriage by common licence must be solemnized within three calendar months from the date when the licence is granted (MA s.13(4)). After three months a fresh licence application must be made if the marriage is to go ahead later.

### **9.12 Provincial and Faculty Office common licences**

The Archbishops of Canterbury and York have no power to grant common licences in the Isle of Man.

### **9.13 Fees**

The current Parochial Fees Order prescribes fees which are to be charged on applications for common licences.

## **10 Special Licence**

### **10.1 Grounds**

The Bishop of Sodor and Man has the unique right to grant a special licence for marriage at any convenient time or place in the Isle of Man. This jurisdiction (expressly preserved by MA s.58(5)) is sparingly exercised, and good cause must always be shown

why a more normal preliminary to Anglican marriage cannot be used. The Archbishop of Canterbury has no power to grant a special licence for marriage in the Isle of Man.

The most common need for a special licence is the parties' desire to marry in a building not normally authorised for Anglican marriage (as to which see 3.1 above), or in a parish where they cannot satisfy the residence requirement. The Bishop's policy on the grant of special licences is set out in Appendix 3. Advice on grounds which may be considered sufficient for the grant of a special licence may always be sought from the Diocesan Registrar by letter or telephone.

## **10.2 Procedure**

Persons wishing to marry by special licence should first approach the member of the clergy whom they wish to officiate at the marriage, and the persons who have control of the chosen building (the incumbent in the case of a parish church, the governing body in the case of a school or college chapel, etc.) It is the responsibility of the officiating member of the clergy to ensure that the clergy of the parishes where the parties live (or worship) are aware of the intended marriage, and to ascertain whether they have any objection to the marriage being solemnized by the chosen officiant in the chosen location. The parties should also seek the goodwill of close relatives towards the marriage, even though there may be no minors involved.

The parties should then request an application form from the Diocesan Registrar, or download it from the Diocesan Registry website<sup>3</sup>. The application form for a special licence is in three parts: one part is to be completed by the parties, the second by the officiating member of the clergy; the third part is to be completed if either party is resident outside the Isle of Man. Supporting letters may be required for some parts of the form. The completed application form, any supporting documents and the statutory fee should be sent to the Diocesan Registry.

After checking the application, the Diocesan Registrar submits it to the Bishop. If the Bishop indicates that he is willing to grant the licence, the Registrar informs the applicants and requests one of them to swear an oath verifying the details given and the absence of any impediment. This can be done before a commissioner for oaths (in the Isle of Man, an advocate, or an official at the General Registry, or in an emergency the Diocesan Registrar). On receipt of the oath, the licence will be granted.

In view of the discretionary nature of special licences, sufficient time should be allowed for consideration of an application and the grant of a special licence. Consequently an application should be made as soon as a date for the marriage has been agreed with the officiating minister, and not left until the last moment. For this reason applications will be accepted by the Diocesan Registrar at any time up to eighteen months before the date of the marriage.

## **10.3 Foreign nationals, minors, divorced and unbaptised persons**

The Diocesan Registrar adopts the same practice over the marriage of foreign nationals and minors as that described at 9.4, 9.5 and 9.7 above.

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<sup>3</sup> <http://www.gumbley.net/registry.htm>

Further to the decision of the General Synod and the Advice of the House of Bishops to the clergy (see 13.6 below), the Bishop will consider granting a special licence for the marriage of a divorced person with a former spouse still living where it is clear that the criteria set out in Appendix 2 are fulfilled. It should not be assumed that a special licence will necessarily issue. The form to be completed by the officiating minister includes a statement that he or she has seen both the provisions and final divorce orders and that he or she is satisfied that the above criteria are met.

There is no requirement that either party be baptised.

#### **10.4 Emergency applications**

Special arrangements may be made in a genuine emergency. In such cases the clergy or the couple concerned should first contact the Diocesan Registrar.

#### **10.5 Validity period**

There is no statutory time limit for the solemnization of a marriage by special licence.

#### **10.6 Fees**

The current Parochial Fees Order prescribes fees which are to be charged on applications for common licences. The fee may be waived in a genuine emergency.

### **11 Deemster's licence**

In order to give a complete picture of the range of marriage preliminaries, it may be helpful to know that a Deemster can issue a licence for marriage in emergency which has some of the characteristics of a Bishop's special licence. However a Deemster's licence cannot be issued for Anglican marriages. (MA s.36)

### **12 Kindred and Affinity**

#### **12.1 The legal basis for the prohibited degrees**

The table of degrees of relationship within which marriage of relatives by blood (kindred) or marriage (affinity) is prohibited was, for many years, based on the Canons of 1603. The 1603 table is printed in older editions of the Book of Common Prayer. However, those editions are no longer a reliable guide since the Canons have been replaced (see Canon B31), and the 'prohibited degrees' are now laid down by statute (MA s.1, Sch.1).

The Church of England, following secular law, now permits certain marriages even though there may be a relationship of affinity between the parties.

#### **12.2 Prohibited degrees — kindred**

Marriage between a person and any of the following relatives is prohibited (MA s.1(1), Sch.1 Part 1):

- child (including adoptive child or former adoptive child)

- parent (including adoptive parent or former adoptive parent)
- grandparent
- grandchild
- brother, sister, half-brother or half-sister
- brother, sister, half-brother or half-sister of parent
- child of brother, sister, half-brother or half-sister

### **12.3 ...**

*[Omitted]*

### **12.4 Prohibited degrees — affinity — conditions**

Unless the conditions set out below are satisfied, a marriage between a person and any of the following is prohibited (MA s.1(2), Sch.1 Part 2)<sup>4</sup> —

- child of former spouse or civil partner
- parent of former spouse
- grandchild of former spouse or civil partner
- former spouse of child
- former spouse or civil partner of parent
- former spouse or civil partner of grandparent

In this list 'child', in relation to any person, includes a child who has been treated by that person as a child of that person's family.

The conditions are as follows (MA s.1(2), Sch.1 Part 3):

- (a) Both parties must be over 21.
- (b) The marriage must not take place in circumstances where the younger party has at any time before attaining the age of 18 lived in the same household as the older party and been treated by that older party as a child of his or her family.

Both parties should normally be able to make a declaration in writing to this effect, and there is a procedure for investigation by the Vicar General if a couple does not know their own early family background and cannot make such a declaration with certainty. If a caveat is entered on the ground that condition (a) or (b) is not satisfied, a common licence may not be granted until the Vicar General has examined the objection and is satisfied that it ought not to obstruct the grant.

- (c) The marriage cannot take place after banns. The normal preliminary will be a common licence (or sometimes a special licence).

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<sup>4</sup> This is the combined effect of the Marriage and Civil Registration (Amendment) Act 2011 and the Civil Partnership Act 2011. The parent of a former civil partner and the former civil partner of a child are not within the prohibited degrees.

A minister is not obliged to solemnize a marriage falling within this section, nor is he or she obliged to permit the marriage to be solemnized in the church or chapel where he or she is the minister (MA s.5A).

### **12.5 Prohibited degrees — affinity — procedure**

When such a marriage is proposed to take place by common licence or special licence, advice should be sought from the Diocesan Registrar. In all cases involving affinity an application for a common licence is to be dealt with by the Registrar, and a clergy surrogate should simply refer applicants to the Registrar.

### **12.6 Surrogate parents**

Part 9 of the Children and Young Persons Act 2001 makes provision about which persons are to be treated in law as the parents of a child where the child has been born following IVF treatment. In such cases the advice of the Diocesan Registrar should be sought to establish whether the surrogacy can raise an impediment to marriage.

### **12.7 Fees**

The current Parochial Fees Order prescribes fees which are to be charged on applications for common licences and special licences.

## **13 Divorce and annulment**

### **13.1 Dissolution of marriage**

The Church of England follows the law of the land as regards capacity to marry. The fact that the clergy are legally free from any obligation to solemnize in church the marriage of a person whose marriage has been dissolved by a court in the Isle of Man or the United Kingdom does not alter the fact that such a person is, in law, free to marry. However, clergy have the discretion to refuse to marry a couple where one or both is divorced with a former spouse still living, and may also refuse to make the church available for a marriage (MA s.5A). However, they have no discretion to refuse to read the banns (see 7.14 above).

### **13.2 Divorce orders**

Clergy should bear in mind that a marriage is only dissolved in the Isle of Man by a final divorce order (formerly known as a decree absolute of divorce, the term still used in the United Kingdom). They should always ask to see the final order, bearing the court seal, and ensure that it is not merely a provisional order (formerly a decree nisi).

### **13.3 Annulment orders**

The Church will also recognize an annulment order made by a court in the Isle of Man (or a decree of nullity of marriage in the United Kingdom), that is, a declaration that there is no valid marriage in existence. A parish priest has the same obligation to marry a person with a qualification to marry in his or her church whose marriage has been

annulled as would exist if that person had never gone through a form of marriage. Again, the final annulment order must be inspected.

### **13.4 Overseas divorces and annulments**

In addition the Church of England will recognize the divorce and annulment orders (decrees) of overseas courts if those orders would be recognised by Manx courts. Divorces and annulments granted by the courts of the United Kingdom and Channel Islands are all recognised in the Isle of Man. In other cases, recognition may depend upon the parties' domicile or habitual residence, connections with the place where the decree was pronounced, and of the laws of the country where the parties were domiciled at the time. If any question arises as to recognition of a foreign divorce or annulment, the advice of the Diocesan Registrar should always be sought.

### **13.5 Roman Catholic marriage tribunals**

The Church of England, and the Manx courts, do not recognize annulments granted by Roman Catholic marriage tribunals. A marriage which such a tribunal has purported to annul remains a valid legal marriage, and a bar to any further marriage, until it is annulled or dissolved by the appropriate civil court in the jurisdiction concerned.

### **13.6 Marriage in church after divorce**

In 2002 the General Synod of the Church of England affirmed the church's teaching that marriage should always be undertaken as a 'solemn public and lifelong covenant between a man and a woman' (Canon B30). It recognised the importance of caring for those whose marriages do regrettably fail, but that there may be exceptional circumstances in which a divorced person may be married in church during the lifetime of a former spouse. The Synod made clear that the decision whether to solemnize such marriages rests with the incumbent (or officiating minister provided the incumbent is prepared for his or her church to be used for the marriage) and invited the House of Bishops to issue guidelines in this area. The House of Bishops subsequently issued their advice to the clergy, which were published as GS 1449 and are annexed to the Canons of the Church of England; they are summarised in Appendix 2.

Subsequent to the decision of General Synod, the English House of Bishops resolved that common licences should be available to the divorced, provided that the advice referred to above has been complied with. The officiating minister should write to the bishop explaining his or her reasons for supporting the proposed remarriage. See 9.6 and 10.3 above for the common and special licence procedures for the marriage of divorced persons with a former spouse still living.

## **14 Civil partnerships**

The Civil Partnership Act 2011 allows two single persons of the same sex to form a civil partnership pursuant to that Act. A civil partnership may only be ended by death, dissolution or annulment. The existence of a civil partnership is an impediment to marriage.

A minister may refuse to marry a man and a woman, or to allow his or her church to be used for the marriage, on the ground that a party's civil partnership has been dissolved

but the former civil partner is still living (MA s.5A). However he or she may not refuse to publish banns or certify the publication of banns (see 7.14 above), and the House of Bishops' Advice to the clergy on the remarriage of divorcees does not apply.

## **15 Persons of acquired gender**

Under the Gender Recognition Act 2004 (of Parliament) a person who is at least 18 years of age may make an application to have his or her 'acquired gender' recognised on the basis of either having lived in the other gender for at least two years, or having changed gender under the law of a country outside the United Kingdom. The application is determined by a gender recognition panel which, if it grants the application, will issue a 'gender recognition certificate'. The Gender Recognition Act 2009 (of Tynwald) provides for such a certificate to have effect in the Isle of Man. Surgery affecting a person's biological gender does not convey any status in law unless such a certificate has been issued.

The holder of a gender recognition certificate is eligible to seek marriage in his or her acquired gender. A minister may refuse to marry a person, or to allow his or her church to be used for the marriage of a person, if he or she reasonably believes that person has changed gender under the Act (MA s.5A). However he or she may not refuse to publish banns or certify the publication of banns (see 7.14 above).

Clergy do not have a right in law to ask a person about a changed gender, even if it is suspected. There are strict rules governing issues of confidentiality in this area. The Diocesan Registrar should always be consulted in any such case.

## **16 The marriage service**

### **16.1 Time**

An Anglican marriage must take place between 8 a.m. and 6 p.m. (Canon B35 (3)) unless some other time is permitted by a special licence. (Such permission is normally only given in cases involving extreme medical necessity.)

### **16.2 Rite**

Anglican marriage must follow the authorised rites of the Church of England. As there is a choice between authorised services, the officiant and the couple must agree on the service to be used, and if they cannot agree the Bishop's ruling must be followed (Canon B3 (4)). The options are: the Book of Common Prayer (1662), the Manx translation of the BCP (1765), the Series 1 rite (also known as '1928'), and Common Worship. The Alternative Service Book is no longer authorised. Where a couple come from different Christian churches, the Bishop may authorise such variations to the marriage service as are set out in 'An Order for the Marriage of Christians from Different Churches'. Guidance on interfaith marriages is available on the Church of England website.

The choice of alternatives within the selected service (except where rubrics specifically state otherwise), and also the choice of hymns and music, etc., are in the last resort for the officiating minister — though he/she would naturally give great weight to the

parties' wishes. The vows must be those contained in an authorised rite and may not be altered to suit an individual's tastes.

### **16.3 Language**

In the Isle of Man divine service is required to be celebrated in English or in 'the vernacular' (ie. in Manx) (Canon B42). The marriage service follows the same rules, and is therefore usually required to be in English (or Manx) whatever the parties' nationality.

However, it is also required that the parties should understand the vows tendered to them, and it follows that where a party does not understand English the vows should be repeated in that party's language.

### **16.4 Marriage of deaf persons**

Occasionally a minister may be approached to conduct a wedding where either or both parties are deaf. There is no statutory guidance as to the conduct of such a wedding, but the minister needs to be satisfied that the parties understand the importance of the marriage ceremony and the promises they are making. Ministers who find themselves in such situations should get in touch with the Manx Deaf Society, who can offer support and advice as to the specific needs of deaf people.

The Diocesan Registrar makes the following suggestions:

- (i) At the ceremony itself, whenever possible the deaf party or parties to the marriage should be encouraged to speak their vows, even if initially they have to be communicated to them by sign language. Where a deaf person is unable to communicate verbally and makes the vows by signing them back to the interpreter, the interpreter should be encouraged to translate them directly so that the congregation, witnesses and minister hear the words being spoken.
- (ii) The interpreter to such a marriage should always be one of the witnesses to it. If there is any question in the future as to whether the marriage is defective by virtue of one of the parties being deaf and not understanding, such a person can be produced to testify as to the circumstances in which the marriage was conducted. If it is felt appropriate, the interpreter might be asked to complete a statement indicating that the translation has been given truthfully and in his/her opinion the parties were aware of the undertakings they were giving. This could then be filed with the marriage registers. However, there is no statutory requirement for this to happen.

Care must be taken not to discriminate or act in an oppressive manner towards the deaf, and ministers should feel able to seek advice and support from the Archdeacon or the Manx Deaf Society when faced with situations such as these. As noted in 2.7 above, care must be taken not to impose on those seeking marriage additional requirements which frustrate their fundamental human right to be married in the context of national law. Above all, a minister should not arbitrarily impose different requirements on the deaf or any other disabled person; the law does not impose different requirements, and neither should a minister.

There is no legal requirement in the case of a marriage involving a deaf person that a sign language interpreter be present; all the minister has to be sure of is that the parties

freely consent and understand the declarations they are making. It may be, of course, that this will not be able to be communicated to the minister without the help of an interpreter. The Bishop may give permission for the use of a service in British Sign Language in certain circumstances (Canon B42); if it is desired to conduct a wedding in this way, the Bishop's permission should of course be obtained before the wedding takes place, and the officiating minister must have the requisite skill to conduct the marriage in British Sign Language (and have any necessary permissions to do so: see 17.4 below).

## **16.5 Witnesses**

All marriages require at least two witnesses other than the officiating cleric. There is no statutory minimum age for witnesses to a marriage. Instead a view should be taken as to the maturity of the individual witness. He or she should understand that the ceremony is a marriage and be capable of testifying in court to that effect. There is also no requirement for a witness to be a British national. The witnesses must sign the marriage registers (see 19.3 below).

## **17 Ministers officiating at marriages**

### **17.1 The requirement of a clerk in holy orders**

In the Isle of Man Anglican marriage must be solemnized by a clerk in Holy Orders of the Church of England, Church in Wales, Church of Ireland or Scottish Episcopal Church (MA s.55). In addition, a member of the clergy ordained overseas who has permission from the Archbishop to officiate in the province of York has the same rights and privileges as a clerk in Holy Orders of the Church of England<sup>5</sup>.

However, as a matter of ecclesiastical discipline, other questions (set out below) also have to be considered before such a member of the clergy is invited or agrees to officiate.

### **17.2 Marriage in military chapels**

*[Omitted]*

### **17.3 Deacons**

The Archbishops of Canterbury and York issued guidelines in 1992 on the solemnization of marriage by deacons. They are appended to the current edition of the Canons. The officiant at Anglican marriages should normally be a bishop or priest, and a deacon may only officiate with the consent of the incumbent or minister. The rite, on such occasions, should be used without variation. A deacon should rarely, if ever, solemnize a marriage in the first year following ordination.

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<sup>5</sup> (Overseas and Other Clergy (Ministry and Ordination) Measure 1967 s.1(2).

#### **17.4 Visiting ministers**

Where a marriage is proposed to be solemnized by a person from outside the regular clergy of the parish in question, the usual requirements for the exercise of ministry by visitors should be observed. Thus —

- (i) the incumbent, priest-in-charge or, during a vacancy, the rural dean and churchwardens must consent;
- (ii) if the minister chosen to officiate is in good standing and has not already officiated in the parish within the previous seven days, nor at any other time in the last three months, no special permission from the Bishop is required; otherwise the Bishop's consent is necessary (Canon C8 para. 2(a));
- (iii) if the minister was ordained by a bishop outside the British Isles, the Archbishop of York must give permission for the exercise of ministry in his province (Canon C8, para. 5).

Also, if a special licence is being sought, the officiating minister must ensure that the parties' parish clergy have no objection (see 10.2 above).

#### **17.5 Clergy licensed under the Extra-Parochial Ministry Measure 1967**

Clergy licensed to an institution such as a school, college or hospital under the Extra-Parochial Ministry Measure 1967 may not solemnize marriages on the premises to which their licence relates except by special licence and with the consent of the incumbent of the parish in which the place is situate.

#### **17.6 Participation of ministers of other denominations**

It is by no means unusual for a couple to wish to involve a minister, or lay member, of another denomination in their Anglican marriage service. This is permissible to a certain extent under Canon B43 but only the Anglican minister may solemnize the marriage.

A minister (or lay member in good standing) of another denomination may assist at the solemnisation of a marriage in the Isle of Man (Canon B43(1)(e)), but the invitation to do so may only be given by the incumbent at the request of the couple (B43(1), (2)(b)). It would thus be incorrect for a couple to arrange for a minister, or lay member, of another denomination to assist in the marriage service without first consulting the incumbent, because the couple are not entitled to issue the invitation. To avoid any misunderstanding it is desirable that the need to request, and procedure for requesting, the incumbent's invitation and the circumstances in which it might be given be set out in guidance in the parish, so that it is readily available to couples when an inquiry about marrying in the church is first received.

.The distinction between those matters, which must be dealt with by the Anglican minister solemnizing the marriage, and those in respect of which a minister of another denomination or lay member in good standing may be invited to assist, is set out in note 13 to the Common Worship marriage service. There it is made clear that it is the Church of England minister who must at least —

- (i) establish the absence of impediment;
- (ii) direct the exchange of vows;

- (iii) declare the existence of the marriage (i.e. pronounce them man and wife);
- (iv) say the final blessing; and
- (v) sign the registers.

There are various matters with which a minister of another denomination or lay person in good standing may be invited to assist, and the extent of participation is likely to vary from case to case. He or she may, of course, read a lesson or lead all or part of the prayers. Involvement might extend to such a minister saying all or part of the opening preface, but the Bishop's direction ought to be sought in relation to leading the declarations of intent, or supervising the exchange of rings. An additional blessing could be pronounced by the other minister, provided that it is within the liturgical discretion given by Canon B5.

The final decision as to which elements of the service may be performed by the minister or member of another denomination rests with the incumbent. Care should be taken to ensure that no confusion arises to who is 'solemnizing' the marriage and who is merely 'assisting'. Note 13 also points out that where the couple come from different Christian communions the bishop may authorise such variations to the marriage service as are set out in an *Order for the Marriage of Christians from Different Churches* which is published separately.

The participation of Anglican clergy in marriage services in non-Anglican churches is outside the scope of these notes: guidance is available from the Diocesan Registrar.

### **17.7 Captains of ships or aircraft**

The Marriage Act 1984 gives no authority for the captains of ships or aircraft to solemnize Anglican marriage.

## **18 Objections at the marriage service**

### **18.1 Parental dissent**

Objections to banns are covered at 7.10 above. The dissent of a qualified person may render the publication of banns void and the proposed marriage unlawful. Although the marriage service itself contains a rather similar invitation to the congregation to declare impediments, the effect of any objection that may be voiced is quite different.

See also the effect of a caveat against the issue of a common licence at 9.10 above.

An objection at the marriage service cannot render ineffective a previously valid publication of banns (or a common licence or special licence). A parent who has failed to object to the banns for a minor child's proposed marriage cannot, by dissenting at the marriage service itself, make the marriage unlawful or take away the child's right to marry. Such dissent should therefore be handled with great care. It will normally be pastorally justifiable to adjourn into the vestry for the matter to be investigated and discussed between clergy, parents and couple; but if the couple finally decide to proceed the minister should follow their wishes.

## **18.2 Other alleged impediments**

As well as parental dissent, other legal impediments may be alleged eg. —

- that a party will be under 16 at the date of the marriage,
- that the parties are within the 'prohibited degrees' (see section 12),
- that a party is mentally incapable of giving consent to marriage,
- that the marriage will be bigamous.

A clear prima facie case should be made if the minister is to delay the service, and where such a case is made (or if in any doubt) the minister should seek advice from the Diocesan Registrar as soon as possible.

Under the Prayer Book rubric, the objector is obliged to give security for the costs that the parties may sustain (both in dealing with his or her allegation and on account of the delay in the marriage). He or she can either deposit the required sum forthwith, or undertake to pay it if his or her allegations are held to be unfounded or show no valid impediment. In the latter event, sureties of known financial standing may be required to guarantee the undertaking. Obviously it is extremely difficult for the clergy to assess such costs, and undesirable for a lengthy financial discussion to take place in the service. The objector's willingness in principle to bear costs, coupled with a prima facie case, should be enough to warrant a reference to the Diocesan Registrar.

## **18.3 Persistent objectors**

Objections not covered by the above should not be allowed to delay the service. The minister should indicate politely that the objection is noted, but that he or she intends to proceed. Afterwards the facts may be reported to the registrar or the bishop if it seems appropriate. If the minister has indicated that he or she intends to proceed but the objector seems set to prevent him or her doing so, the objector should be dealt with in the same way as any other disturber of public worship.

## **19 Registration**

### **19.1 The duty to register; provision of register books**

Following an Anglican marriage, it is the duty of the officiating minister to register the marriage immediately in duplicate books supplied for the purpose. The Chief Registrar is responsible for supplying register books to the minister in charge of every church or chapel authorised for marriages (see 3.1 above). (MA ss.40-42)

### **19.2 Which books to use**

Where a marriage takes place in a building which has its own register books, the books of that building are to be used.

Where a marriage takes place in a building which has no register books (which may well be the case if the marriage is by special licence), the Act does not prescribe which books are to be used. The Chief Registrar recommends that the books of the parish church of the parish in which the building is situated be made available by prior arrangement with

the incumbent of the parish; but there is no obligation for the incumbent to make the books available when required, and correspondingly no obligation for the officiating minister to use those books. Any register books which can be obtained may lawfully be used.

### **19.3 Entries in registers**

Entries in marriage register books must contain all the details required by the printed form; the couple are required to provide these details on request. An entry must be signed by the couple, the officiating minister and two witnesses (MA s.42). The words used as to the method of marriage should be 'after banns', 'by common licence' or 'by special licence', as the case may be; not merely 'by licence' or 'by ecclesiastical licence'.

### **19.4 Corrections in registers**

An entry is not complete until signed by the minister; any error discovered before the minister signs may be corrected forthwith, so that the error and the correction are both legible.

Corrections to entries after the minister has signed may be made (by a note in the margin of the register, without altering the original entry) within one month after the error is discovered. The minister who has custody of the registers (who need not be the minister who made the entry) must make, sign and date the correction (in both register books). The correction is to be made in the presence of the married couple, who must also sign the correction; if the couple cannot both attend when the correction is made, the correction is to be made in the presence of the Chief Registrar and two witnesses, who must sign the correction. (MA s.46)

### **19.5 Custody of registers; quarterly returns; completed books**

The minister in charge of each church or chapel with its own register books is required to keep the books in safe custody (MA s.44). He must also deliver a quarterly return of entries to the Chief Registrar (MA s.43). Whenever a book is full, one of the duplicate copies is to be delivered to the Chief Registrar and the other kept in the church (unless or until it is required to be deposited in the diocesan record office under the Church Records Measure (Isle of Man) 2000) (MA s.45).

### **19.6 Searches, certificates and fees**

So long as a minister has custody of a register book (original or duplicate), he is required to permit searches in the book at reasonable times, and to give a signed certificate of any entry (MA s.48). Fees for searches are prescribed by the current Parochial Fees Order; fees for certificates are prescribed by the Treasury of the Isle of Man (MA s.51(5)).

### **19.7 ...**

*[Omitted]*

## **20 Fees for Marriage**

### **20.1 Statutory fees**

Where Anglican marriage takes place in a parish church, PCW or licensed building, fees are payable in accordance with the current Parochial Fees Order made by the Sodor and Man Diocesan Board of Finance. These fees are divided, according to a table set out in the Order, between the incumbent (or the sequestrators during a vacancy) and the parochial church council. These are the statutory fees payable. They do not include any charges for optional extras such as music (e.g. provision of an organist or choir), bells, flowers and special heating, which are fixed by the PCC and are matters for agreement between the incumbent and the couple and should be itemised separately.

### **20.2 Customary fees**

Where Anglican marriage takes place by special licence in some place other than a parish church, PCW or licensed building, fees are only payable if the custom of that place so dictates; and custom is followed as to the person to receive the fee. If an incumbent is making register books available for such a marriage, courtesy normally requires that any fees charged are made over to him or her and the parochial church council.

## APPENDIX 1

### **MARRIAGE OF PERSONS FROM OUTSIDE THE EUROPEAN ECONOMIC AREA**

*Guidance on the marriage of persons from outside the EEA has been issued by the House of Bishops. The guidance is in terms applicable only to England, and the Bishop of Sodor and Man has issued the following guidance to clergy in the diocese of Sodor and Man in terms closely based on that issued by the House of Bishops, but so modified as to apply to the Isle of Man.*

The Church of England, as the established church in the Isle of Man, has the privilege and the responsibility of solemnizing the marriages of all those who wish to marry according to the rites of the Church of England, provided that they are eligible to marry.<sup>6</sup> Unlike other denominations and religious bodies in England who conduct marriages, the Church of England, in addition to conducting its own marriages, also conducts its own marriage preliminaries in the form of banns and common and special licences.

The House of Bishops affirms the right of those who wish to do so to enter into the honourable estate of holy matrimony, intending a permanent and lifelong union, for better for worse, till death do them part.<sup>7</sup> As a convenient shorthand, this paper refers to such a marriage as a 'genuine marriage'.

Recent experience has demonstrated that there are those who seek to abuse both the system of ecclesiastical marriage preliminaries and the office of Holy Matrimony by contracting marriages solely for the purpose of obtaining an immigration advantage. The parties to these marriages have had no intention of living together as husband and wife and the marriages in question have often been arranged by organised, criminal gangs. As a convenient shorthand, this paper refers to such a marriage as a 'sham marriage'.

In this paper, the term 'non-EEA national' is used to mean anyone who is not a national of a country that belongs to the European Economic Area (EEA)<sup>8</sup> or a British citizen. Non-EEA nationals might well wish to enter into genuine marriages. It is perfectly lawful for them to do so and they have the same rights to marry in the Church of England as British citizens. The Church of England does not wish to stand in the way of any couple who wish to enter into a genuine marriage and will support them and encourage them in their wish to do so.

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<sup>6</sup> This is subject to provisions which allow individual clergy to decline to solemnize marriages where a party has a living former spouse, is of the acquired gender under the Gender Recognition Act 2009 or where the parties are within certain degrees of kindred and affinity.

<sup>7</sup> See Canon B 30, paragraph 1

<sup>8</sup> In addition to the United Kingdom, the following countries are members of the EEA: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland.

## *Anglican Marriage in the Isle of Man*

The House of Bishops is, however, clear that the office of Holy Matrimony must not be misused by those who have no intention of contracting a genuine marriage but merely a sham marriage.

The purpose of this paper is, therefore, to provide guidance and direction from the Bishops to the clergy and to those responsible for the grant of common licences – the Vicar General, the Diocesan Registrar and surrogates – to prevent the contracting of sham marriages in the Church of England.

### **Guidance for the clergy**

In the case of any intended marriage where a party is a non-EEA national, the clergy should not offer to publish banns; instead the couple should be directed to apply to the Diocesan Registrar (not to a surrogate) for a common licence in accordance with the arrangements outlined at 9.5 above.

The active involvement of the parochial clergy is of central importance in the making of an application for a common licence. This is because it is they who will usually be in the best position to form a view about the genuineness or otherwise of an intended marriage. Before a common licence can be issued for the marriage of a non-EEA national, the Diocesan Registrar will require a letter from the minister who it is intended should conduct the marriage, stating that he or she has met both parties (preferably on a number of occasions and at least once in their own home<sup>9</sup>) and, having discussed the marriage with them, is satisfied that the intended marriage is genuine and that he or she is content to conduct the marriage. If a cleric is not satisfied that the marriage is genuine he or she must make that clear to the Diocesan Registrar.

Should a couple resist applying for a common licence and say that they insist on their banns being published the clergy should proceed as follows —

The matter should be reported without delay to the Diocesan Registrar.

The cleric concerned should – in addition to the usual application for banns form – require verifiable evidence of the right of the couple in question to have their banns published in the parish.

Where the right asserted to have banns published is a right based on residence in the parish the couple should be required to produce documentary evidence clearly demonstrating the residence in the parish of the party or parties who it is said reside there. This should normally take the form of a driving licence showing the person as resident at the address in question and official correspondence to the person at that address in the form of utility bills, bank statements or correspondence from the Isle of Man Government or a local authority. Original documents, not copies, should be required. The cleric concerned should take and retain photocopies of any documents that are produced. If he or she is concerned about the authenticity of any documents, the Diocesan Registrar should be consulted.

Clergy should apply their own local knowledge. If an unknown address is given, clergy should discover whether the address exists and whether it is a residential address. Clergy should arrange to visit the couple at the address in question. (If clergy have

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<sup>9</sup> See what is said below about clergy visits and concerns about safety.

concerns about their safety in making such visits, they should consider going accompanied.)

Banns should not be published unless the cleric concerned is satisfied that the right of the couple to have their banns published in the parish has been established. The advice of the Diocesan Registrar should be obtained if there is any doubt as to this.

Clergy are reminded of their duty under Canon B30 'to explain to the two persons who desire to be married the Church's doctrine of marriage ... and the need for God's grace in order that they may discharge aright their obligations as married persons.'

Clergy must see both parties to the intended marriage before the day of the wedding in order to carry out this duty. If the intended marriage is not a genuine marriage but only a sham marriage this may become apparent during meetings with the couple. If a couple decline to attend meetings for the purpose of giving the instruction required by the Canon the cleric concerned will be prevented from carrying out his or her canonical duty. In those circumstances he or she should inform the couple that the marriage may not proceed until such time as the duty has been carried out.

Clergy should be aware that they are not obliged to agree to conduct a marriage at any date of the couple's choosing. The date of a wedding is a matter for agreement between the couple and the cleric concerned. The clergy should not normally agree to conduct marriages at short notice. Adequate time for the marriage preparation referred to above needs to be allowed for. A request that a marriage take place without proper preparation and at short notice should be treated with considerable caution and may be a cause for suspecting that the marriage is a sham marriage.

While incumbents are under a legal duty to conduct the marriages of their parishioners, that duty does not extend to conducting the marriages of persons who assert that they are parishioners but are in fact not; nor does it extend to marrying persons in pursuance of a criminal enterprise. The view of the House of Bishops is that a cleric who delays or declines to publish banns or to conduct a marriage as a result of complying with the above guidance would not, for that reason alone, be guilty of misconduct under the Clergy Discipline Measure 2003 nor likely to be held to be in breach of the common law, or statutory, rights of others.

Any cleric who thinks that he or she has been subjected to threats or any other improper pressure in connection with an intended marriage should immediately report the matter to the police, the Archdeacon and the Diocesan Registrar.

For background and more detailed information on sham marriages, including factors that may indicate that intended marriage is a sham marriage, the clergy should refer to *Guidance for Clergy: Foreign Nationals seeking to marry in the Isle of Man* issued by the Isle of Man Passport and Immigration Office, a copy of which is being issued with this paper.

✠ *Robert Sodor as Mannin*

April 2011

## APPENDIX 2

### **MARRIAGE IN CHURCH AFTER DIVORCE WHEN A FORMER SPOUSE IS STILL LIVING**

All marriage is holy. The Church recognises all marriages as "holy matrimony", whether celebrated in Church or a civil ceremony. However, there is something very special about marriage in Church because vows are made in the sight of God and his blessing is given to the marriage.

Our Lord Jesus Christ taught that all marriages should last for life and the Church clearly upholds his teaching on this: so a wedding in Church is based clearly on the couple's intention that marriage should last until the death of one partner. On the other hand, many parts of the Church recognise that marriages can 'die' and divorce is sometimes a sad reality.

The Church of England acknowledges that 'there are circumstances in which a divorcee may be married in church during the lifetime of a former spouse'. The assumption behind any marriage in these circumstances is that:

- neither party had been involved in the break-up of the previous marriage of either party;
- all children are being properly cared for;
- the divorced party/parties have learned from their experience of the previous marriage/marriages and its ending, so that the new marriage will benefit from the sad experience; and
- the couple understand the Christian gospel of forgiveness and hope for the future in our Lord Jesus Christ.

You will find further helpful material, including useful questions for the minister and couple, in the Advice to Clergy at pages 13-23 of the 2002 Report of the House of Bishops on Marriage in Church after Divorce (GS 1449)<sup>10</sup>.

The parish priest will spend time discussing these issues with the couple before making a decision as to whether they may be married in Church. Clergy must see and read carefully the originals of the provisional and final divorce orders (decrees nisi and absolute). In the unlikely event of a difference of opinion the couple and/or the minister may contact the Bishop and ask for a discussion with him.

In certain cases it may be more appropriate for couples to ask for a service of Prayer and Dedication after a Civil Marriage – and this does not have to take place immediately after the marriage.

It must be understood that a marriage in Church involving a divorcee during the lifetime of a former spouse is an exception and not the norm.

The Church of Jesus Christ is a body of people who know that they are forgiven sinners and that no-one is beyond the love of God.

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<sup>10</sup> <http://www.churchofengland.org/media/1273420/gs1449.pdf>

## APPENDIX 3

### **GUIDELINES FOR THE GRANTING OF SPECIAL LICENCES**

#### *General*

1. Special licences will not be used ...
  - to facilitate illegal or undesirable marriages, or
  - to secure privacy or secrecy for a marriage, or
  - to relax or modify generally the statutory restrictions on marriage after banns or by common licence.
2. Special licences may be used to facilitate a marriage in church which might otherwise be difficult or impossible.
3. Clergy must ensure that couples who are married by special licence should be prepared for marriage, and assured of the support of the Church in their family life thereafter.
4. Due regard will be had to the extra burden which special licences impose on the parochial clergy. No application will be considered unless the cleric who is to officiate is identified.

#### *Sickness*

5. Special consideration will be given to the granting of a special licence for the marriage of a party who is chronically sick or dying.

#### *Unconsecrated places*

6. Special licences will not be granted for marriages ...
  - at 'approved premises', or
  - at any other unconsecrated place, except in the case of a party who is chronically sick or dying, or in exceptional circumstances.

#### *Consecrated buildings*

7. Marriage in a consecrated building which is not the parish church or usual place of worship of either party will not be permitted without reasonable justification, which should normally be a genuine personal or family connection, determined in accordance with paragraphs A to D below.
8. Wedding tourism is discouraged. The fact that a church or chapel is an attractive location cannot be regarded as a sufficient justification.

#### *Parish churches and licensed chapels*

9. Marriage at a parish church or licensed chapel which is not the parish church or usual place of worship of either party will not be permitted unless —
  - the parish can be regarded as the 'home' of either party or of either party's family in accordance with paragraph A or B below, or
  - the church or chapel can be regarded as the party's church or their family's church in accordance with paragraph C or D below, or

## *Anglican Marriage in the Isle of Man*

- the parties wish to be married by the incumbent or priest-in-charge because of a strong family or other personal connection with him or her as an individual.
- A. For a parish to be regarded as a party's home, he or she must have resided there for a considerable time —
  - at least six months in all cases, and
  - if the period of residence was ten years or more ago, the residence should have been for at least twelve months.

Alternatively, he or she must be an active member of the parish community by reason of his or her working in the parish.

- B. For a parish to be regarded as the home of a party's family, at least one parent must normally —
  - be residing there, or
  - have resided there for a substantial period in the past (applying the same criteria as in A above).

Exceptionally, a known connection with a parish over at least two generations may be sufficient.

- C. For a church or chapel to be regarded as a party's church —
  - he or she must have habitually attended it for at least six months, or
  - if the period of attendance was ten years or more ago, he or she should have habitually attended the church for a period of at least twelve months, or
  - he or she was prepared and presented for confirmation there.
- D. For a church or chapel to be regarded as the church of a party's family —
  - at least one parent must have habitually attended it for at least six months to the date of the application, or
  - if the period of attendance was ten years or more ago, at least one parent should have habitually attended the church for a period of at least twelve months.

Exceptionally, a known connection with the church over at least two generations may be sufficient.

### *Unlicensed churches and chapels*

10. A person who is an habitual worshipper at an unlicensed former parish church or chapel of ease should normally be permitted to marry there. Otherwise, the same criteria should be applied as for parish churches and licensed chapels.

### *King William's College Chapel*

11. A special licence may be granted for a marriage in King William's College Chapel of a former pupil or a present or former member of staff of the College, provided that the incumbent of Castletown is consulted and counter-signs Form SL2, and that care is taken to ensure that preparation and pastoral support is provided.

*A Guide to the Law for Clergy*

*Note to the Clergy*

When a marriage by Special Licence has been solemnised, the minister may give the licence to the couple providing that he/she endorses it in permanent ink, as follows:

*Marriage solemnized on [date] at [place] by me,*

*[Signature.]*

The minister must return the copy of the licence, similarly endorsed, to the Diocesan Registrar.