

Marriage in the Church of England: Guidance for the Diocese of Oxford

General Introduction

The Church's teaching on marriage is summarised in Canon B 30 as follows:

“...according to our Lord's teaching, marriage is in its nature a union permanent and lifelong, for better or worse, till death do us part, of one man with one woman, to the exclusion of all others on either side, for the procreation and nurture of children, for the hallowing and right direction of the natural instincts and affections, and for the natural society, help and comfort which one ought to have of the other, both in prosperity and adversity.”

Wider Background

1. Clergy are recommended to obtain a copy of the booklets *Guidebook for the Clergy* (issued by the General Register Office and found at: <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/ips/general-ips-publications/civil-reg/clergy-guide>) and *Anglican Marriage in England and Wales* (from the Faculty Office, 1 The Sanctuary, Westminster, London SW1P 3JJ. Tel: (020) 7222 5381). These provide detailed answers to numerous questions that are frequently raised. The Diocesan Registry regularly sends new guidance via the diocesan weekly newsletter which is subsequently posted on the Diocesan website in the 'Support Services' section under 'Legal (Registry)'.

Establishing Identity and Entitlement to marry

2.1 When a couple contact you to enquire about holding their wedding in your church, you should establish whether they are resident parishioners, on the church electoral roll or have a qualifying connection with your church or parish and invite them to attend for an initial meeting. (See section 9 below as to qualifying connections.)

2.2 At this meeting, you should ask to see their identity documents to establish their nationality, evidence of their address and evidence to support their qualifying connection with your church or parish. Original documents, not copies, should be required. The member of the clergy concerned should take and retain photocopies of any documents that are produced. You may therefore like to ask them to bring the following documents with them to their appointment:-

- (a) their passports. (NB: if one or both of them are found to be foreign nationals – i.e. without British or Irish nationality or EU Settled or Pre-Settled Status - please see sections 10 and 11 as to which preliminaries are required).
- (b) evidence of their address(es) which 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 bank statements or correspondence from a government department or local authority covering at least a six month period.

- (c) if they are not resident parishioners or on the church electoral roll, evidence to support their qualifying connection: if the couple, or their parents, are known to you and have a worshipping qualifying connection (under the Marriage Measure 2008 – see paragraph 9) this will be sufficient for your records, however, you may need to ask to see Baptism or Confirmation Certificates **or** parents’ and/or grandparents’ Marriage Certificates **or** evidence that they (or their parents, during the applicant’s lifetime) lived in the parish for over six months (by means of bank statements covering six months, for example).
- (d) if there has been a previous marriage:
 - i. a death certificate, if the previous marriage ended due to the death of their spouse, or
 - ii. their Decree(s) Absolute, if their previous marriage(s) ended in divorce

Restrictions on marriage

3.1 Until 27 February 2023, the legal age of marriage is 16, and if a marriage is solemnised between persons either of whom is under that age the marriage is void. If either of the parties is under 18 the consent of parents or guardians should be obtained. If such consent is withheld, or there is no parent living, and no guardian, a minor can apply to the court for leave to marry (only the court may dispense with the necessity of obtaining any consent). The Marriage and Civil Partnership (Minimum Age) Act 2022 received Royal Assent in April 2022. The Government has announced that it is planned to come into effect on **Monday 27 February 2023**. The new Act, once in force, amends the Marriage Act 1949 and other relevant legislation to increase the legal minimum age to 18, and makes it a criminal offence for a person to carry out “any conduct for the purpose of causing a child to enter into marriage before the child’s eighteenth birthday”. It will, therefore, no longer be legal for a clergy person to conduct the marriage of any person under the age of 18, even if preliminaries for that marriage (such as the calling of banns) have been started or completed before the Act comes into force.

3.2 Marriages between persons within the prohibited degrees of kindred and affinity must not be solemnised. Any question as to whether a particular couple are within the prohibited degrees is to be referred to the Chancellor through the Diocesan Registry (see paragraph 5.1(c)).

3.3. A marriage may be solemnised only between the hours of 8am and 6pm under Canon Law (this is despite changes to these hours under civil law).

3.4 Serious consequences may ensue both as a matter of civil law and of clergy discipline if clergy participate in marriages which are entered into for criminal purposes or turn out to be invalid through bigamy, lack of proper consent, or other reasons.

3.5 If you consider that there is some subterfuge being attempted (for example, an attempt to disguise mental incapacity), consult the Diocesan Registry immediately for further guidance.

Marriage after banns for British, Irish or Relevant Nationals Only

4.1 The minister may require to receive notice in writing seven days before the first publication of banns, giving the full names of the persons to be married, their addresses, and the length of time that they have lived there and evidence that both persons British or Irish or ‘relevant nationals’ with EU Settled or Pre-settled Status (see section 11). Where the right to marry is based on a qualifying connection (see section 9) (rather than current residence or enrolment on the church electoral roll) the minister may also require the couple to provide information to demonstrate that at least one of them has a qualifying connection entitling them to be married in the church concerned.

4.2 There is a prescribed form of words that must be used for reading banns. The form set out in the rubric to the Form of Solemnisation of Matrimony in the *Book of Common Prayer* has the force of law. There is now also statutory authority for the modernised version in the rubric to the *Common Worship Marriage Service*.

4.3 Banns are to be published on three Sundays preceding the solemnisation of the marriage, during the principal service which should be the service at which 'the greatest number of persons who habitually attend public worship are likely to attend'. Banns do **not** need to be read on three **consecutive** Sundays.

4.4 In addition, Banns may be read again on the same day if there is a pastoral reason for doing so (for example, if the couple concerned do not attend the 'principal service' but attend an evening service). But if Banns are read twice on the same day, that still only constitutes 'one time of asking', and they will still need to be read on two other Sundays.

4.5 Banns of marriage may be published at morning prayer or evening prayer by a lay person where no member of the clergy officiates at the service at which it is usual to publish banns. Where this happens the lay person signs the banns book as the officiating minister, but the duty of entering the banns and of issuing certificates of publication remains with the incumbent.

4.6 If a marriage is to take place after banns in the church of a parish in which neither, or only one, of the parties resides or has a church electoral roll qualification or a qualifying connection under the Marriage Measure 2008 (see section 9), then the banns must be called both in the church in which the marriage is to take place and in the churches of each of the parishes in which the parties actually reside. For couples who are having difficulty locating their parish church, please direct them to the website 'A Church Near You' (www.achurchnearyou.com) where they can enter their postcode to locate their parish church.

Please note that we receive a high level of emergency Common Licence applications because Banns have not been read in one or more parishes. To avoid this unnecessary and expensive intervention, we suggest that you check with the couple at the beginning of the three month period before the wedding, whether they have arranged the reading of their banns in their home parish(es) (and whether they are planning to move home in the intervening period) and reiterate that they cannot be legally married unless their Banns have been read and you receive a Banns Certificate. You may also like to let them know the fee for a Common Licence, which may be an added incentive.

Marriage after Common Licence for British, Irish or Relevant Nationals Only

5.1 Application for a Common Licence must be made to the Chancellor or a surrogate. Applications are normally made to a surrogate except where the application falls within any of the following cases which are reserved to the Chancellor:

- (a) either party cannot produce a valid passport showing that party to be a British, Irish or relevant national (including supporting papers proving settled or pre-settled status)
- (b) a person to be married is under 18
- (c) the marriage is between persons who are within any of the degrees of affinity specified in Part 2 of Schedule 1 to the Marriage Act 1949*
- (d) a caveat has been entered against the grant of a common licence

* Child of former civil partner
Child of former spouse
Former civil partner of grandparent
Former civil partner of parent
Former spouse of grandparent
Former spouse of parent
Grandchild of former civil partner
Grandchild of former spouse

- (e) a party has been married and divorced more than once
- (f) where one or both of the parties is not baptized and one or both is unwilling to sign a declaration that he or she does not reject the Christian faith
- (g) any case where a question arises as to whether a Common Licence may lawfully be issued.

A list of surrogates can be found on the diocesan website. Diocesan Surrogates may see couples who qualify to marry in any part of the Diocese of Oxford, however, Archdeaconry Surrogates can only see couples who wish to marry in their particular Archdeaconry. The Surrogate cannot issue the Common Licence, but can take the affidavit sworn by applicants. The Licences enabling the marriage are issued by the Diocesan Registrar after consultation, if necessary, with the Chancellor or Archdeacons.

5.2 A Common Licence can only be granted if one of the parties has resided in the parish in which the marriage is to take place for at least the *fifteen days before the Licence is issued* **or** is on the Church Electoral Roll of that parish, **or** can substantiate some other qualifying connection under the Marriage Measure 2008 (see section 9).

5.3 The granting of a Common Licence is discretionary and not a matter of right. In the case of applications where neither of the parties has been baptised, or where one only has been baptised, any unbaptised party is required to sign a declaration that he or she does not reject the Christian faith.

5.4 The Bishop permits Common Licences to be granted when either of the parties has been divorced and has a former partner still living provided that the House of Bishops' guidance to clergy is followed (see para 12.2). But where a party has been married and divorced more than once, the application is reserved to the Chancellor and, in the light of what is said in the House of Bishops' guidance, a Common Licence will not normally be issued in such cases. Surrogates are required to take great care to satisfy themselves that the statements made by applicants for a Common Licence are true before the licence is issued. The applicants must produce to the Surrogate a completed questionnaire, countersigned by the clergy concerned (see para. 12.2), together with a copy of the Decree Absolute for production to the Diocesan Registrar.

5.5 Details of the current licence fees can be obtained from a surrogate or from the Diocesan Registry (contact the Registry Clerk, Miss Sara Leader on 01865 297211).

5.6 If you require an emergency Common Licence please contact Sara Leader on 01865 297211 for assistance.

5.7 Banns of marriage and Common Licences are valid for three months and so the marriage must take place within that period. A marriage solemnised after that period without further authority is void.

Marriage after Special Licence

6. For a marriage by Special Licence applications should be made to the Faculty Office, 1 The Sanctuary, Westminster, London SW1P 3JT. Tel: 0207 222 5381 (ext. 162). A Special Licence is issued only in unusual circumstances, and it enables the parties to be married at any time or place in England without previous residence in the district. Weddings in any of the Oxford College Chapels or School Chapels within the Diocese are always by Special Licence. Fees on application.

Marriage after Marriage Schedule

7.1 Since 1 July 2021, all foreign nationals who do not have EU settled or pre-settled status in the UK should be married by Superintendent Registrar's Marriage Schedule (previously Superintendent Registrar's Certificate) (see section 10). These couples can rely on

qualifying connections (as well as residence and enrolment on the church electoral roll) to apply for a Marriage Schedule under the Immigration Act 2014.

7.2 In certain circumstances, it may be desirable for marriages of British, Irish or relevant nationals to be solemnised on the authority of a Marriage Schedule (usually in circumstances where otherwise a Common Licence would be applicable, but is unavailable). The Diocesan Registrar will indicate when such applications should be made.

7.3 Please note, British, Irish and relevant nationals couples who are using a qualifying connection to get married in a particular parish cannot use a Marriage Schedule to marry. Only those British, Irish and relevant nationals couples who live within the parish or are on the Electoral Roll of the church can use this preliminary.

Residence

8.1 The Marriage Act 1949 provides that marriage must normally be solemnised in the church or chapel of the parish in which one of the parties resides. It is not possible to define exhaustively what is meant by 'residence', and it is a question of fact to be decided in the circumstances of each case whether or not a person genuinely resides within a parish. It can be said, however, that renting a room and leaving luggage there without occupation is *not* a residential qualification within the meaning of the Marriage Act. The circumstances which have prompted such devices in the past, however, will largely be covered now by the new qualifying provisions under the Marriage Measure 2008 (see section 9).

8.2 An exception to the above rules is that a person who is on the Church Electoral Roll of a parish in which they do not reside may be married in the church of that parish. The Synodical Government Measure 1969 provides that a person who is not resident in a parish should habitually attend public worship there for a period of six months before their name is added to the Church Electoral Roll. It is improper to add a person's name to the Church Electoral Roll of a parish unless he or she has complied with this requirement of the Synodical Government Measure.

Marriage Measure 2008 Qualifying Connections

9.1 The Marriage Measure 2008 came into effect on 1 October 2008. It has made a substantial difference to the existing arrangements. The concept of 'residence' has been supplemented by a new range of qualifying connections (it does not *replace* the residence test, merely expands the range of qualifying connections with the parish or church in question).

9.2 So in addition to residence in the parish or inclusion on the church electoral roll, any couple may now be married in any parish church provided that

9.2.1 One of the persons concerned:

- was baptised in the parish; or
- has been confirmed and the confirmation has been entered in a church register book belonging to the parish (this would have been done on the basis that the person concerned was prepared for confirmation in the parish); or
- has at any time had his or her usual place of residence in the parish for at least 6 months; or
- has at any time habitually attended public worship in the parish for at least 6 months (see paragraph 8.2);

or

- 9.2.2 That person's parent has at any time during the person's lifetime:
- had his or her usual place of residence in the parish for at least 6 months (see paragraph 8.1); or
 - habitually attended public worship in the parish for at least 6 months (see paragraph 8.2);

or

- 9.2.3 That person's parent or grandparent was married in the parish.

(In this list references to being baptised, confirmed or married, or attending public worship, all refer to Church of England services.)

- 9.3 Common licences may be issued on the same basis.

For further advice and guidance, please refer to the Church of England website, (see <https://www.churchofengland.org/prayer-and-worship/worship-texts-and-resources/common-worship/marriage> and <https://www.churchofengland.org/life-events/weddings>)

Foreign Nationals without EU Settled or Pre-Settled Status

10.1 Since 1 July 2021, where either of the parties is a foreign national without EU settled or pre-settled status in the UK, the couple must be married on the authority of a Superintendent Registrar's Marriage Schedule (previously Superintendent Registrar's Certificate). ***It is no longer lawful to marry couples involving a foreign national without EU settled or pre-settled status after Banns or by Common Licence .***

10.2 All nationals without EU settled or pre-settled status in the UK should be married by Marriage Schedule (even if the other person is a British or Irish or relevant national with EU settled or pre-settled status).

10.3 Once you have seen the couple's identity and address documents, evidence of their qualifying connection, agreed a date and other arrangements, and, in principle, you are happy to marry them, you should direct them to contact the relevant Register Office to serve notice for their Marriage Schedule.

10.4 A Government website enables couples to put their postcode into a search engine to find their nearest office: <http://maps.direct.gov.uk/LDGRedirect/MapAction.do?ref=grolight>.

10.5 The Superintendent Registrar will advise the couple what documentation they need to provide to serve notice and apply for a Marriage Schedule. In addition to that documentation, the Minister conducting the marriage service should provide a letter of support, confirming that the couple do qualify to marry in your church and you are content to accept a Marriage Schedule granted for twelve months. (Please see the pro-forma letter on the Diocese of Oxford website: <https://www.oxford.anglican.org/parish-support/advice/diocesan-registry/diocesan-registry.php>.)

10.6 Once they make their application, there is a **28 day** notice period. If the Superintendent Registrar refers their application to the Home Office, this will be extended to **70 days**. The couple will be notified in writing if their application is referred.

10.7 The Marriage Schedule will state the date by which the marriage must be solemnised.

10.8 The fee for serving notice for a Marriage Schedule is currently **£47** per applicant, i.e. **£94 per couple**. This may, of course, be amended from time to time so the couple will need to confirm this with the Civil Registrar.

Foreign Nationals with EU Settled or Pre-Settled Status

11.1 From 1 July 2021, only marriages involving British, Irish or relevant nationals with EU Settled Status or Pre-Settled Status can be married by Banns or Common Licence. All other couples will need to be married by Superintendent Registrar's Marriage Schedule. **It will no longer be lawful to marry couples involving foreign nationals without Settled or Pre-Settled Status after Banns or by Common Licence.**

11.2 Once you have seen the couple's identity and address documents, evidence of their qualifying connection, agreed a date and other arrangements, and, in principle, you are happy to marry them, if they are not Irish nationals or do not have Settled or Pre-Settled Status you should direct them to contact the relevant Register Office to serve notice for their Marriage Schedule. The application procedure is as described in section 10.

11.3 If they are Irish nationals, you can marry them by Banns or Common Licence, as appropriate.

11.4 If they are relevant nationals who indicate they have EU Settled Status (they have lived in the UK for five years or more) or Pre-Settled Status (they have lived in the UK for less than five years), they will need to prove their status to you. They will have to provide you with a 'share code' (which they can obtain from the first weblink below) so you can log onto a Government website (see the second link below) to access their details. Only once you have seen proof of their EU Settled or Pre-Settled Status can you read their Banns or arrange for them to obtain a Common Licence.

<https://www.gov.uk/view-prove-immigration-status>

<https://www.gov.uk/check-immigration-status>

11.5 Clergy will need to see confirmation of a relevant national's Settled or Pre-Settled Status before you read either home or away Banns. It is, therefore, vital to see this evidence as early as possible when couples contact you.

Divorcees, and Persons of Acquired Gender

12.1 Under the Matrimonial Causes Act 1965 no member of the clergy of the Church of England can be compelled to solemnise the marriage of any person whose former marriage has been dissolved and whose former spouse is still living, or to permit the marriage to be solemnised in the church of which she/he is the minister.

12.2. The Church's current position on the re-marriage of divorced persons is set out in the House of Bishops Guidelines issued in 2003 (see <https://churchsupporthub.org/wp-content/uploads/2015/07/Guidelines-for-Clergy-Marriage-After-Divorce.pdf>). This guidance sets out a number of issues and questions clergy may wish to address with couples intending to be married in these circumstances. There is an application form which is recommended for use in all cases (see <https://www.churchofengland.org/sites/default/files/2017-11/MarriageAFTERdivorceFORM.pdf>).

12.3 Whilst the decision whether to solemnize the marriage of divorcees must in every case be a matter for the individual clergy concerned, clergy may wish to refer cases to the bishop for advice. If so, they should send the completed application to the bishop with their own assessment of the situation (which, in accordance with the Data Protection Act, the couple would be entitled to see).

12.4 As you may be aware, divorce decrees are issued in two stages. The *Decree Nisi* is the first stage, and does not effect the dissolution of the marriage. It merely indicates that a divorce Decree Absolute will be issued unless significant objections are received. **It is the Decree Absolute that clergy must insist on seeing before they indicate their agreement to marry any couple in these circumstances.**

12.5 If the divorce was before 22 April 2014, then you must see an original hard copy of the Decree Absolute bearing a red seal. If the divorce was after this date then it will have become standard practice for the court to issue an electronic version of the Decree Absolute with a black electronic seal on it as acceptable evidence of divorce

12.6 Essentially the same conscientious objection provisions apply in the case of persons of acquired gender, save that clergy may not refuse the use of the church over which they have control for such a wedding. Guidance should be sought from the Diocesan Registry in any such case, as the law is not straightforward.

12.7 Clergy are reminded that (whatever control they may have over the solemnising of marriage in these cases) they are not at liberty to refuse to call banns and issue banns certificates for such weddings. These are mostly administrative acts, and their duty is to report any objection and in due course to certify the calling of the banns.

12.8 It is essential that whatever approach clergy adopt on the issue generally, they apply their own policy consistently. In case of doubt, do not hesitate to consult the Diocesan Registrar.

Civil Marriage

13.1 The Marriage Act of 1994 allows for civil weddings to take place on 'approved premises', such as hotels and country houses. The Act provides that a marriage on approved premises is to be solemnised in the presence of two witnesses and the Superintendent Registrar and a Registrar of the Registration District in which the premises are situated. It also provides quite specifically that 'no religious service shall be used at a marriage on approved premises.'

13.2 The reason for this prohibition is that in such a context it would be very easy for the proper spiritual dimension of Christian marriage to be downgraded or misunderstood. However, the House of Bishops do recognise that such a request should be handled very carefully, because of the pastoral opportunities it presents.

Civil Partnerships

14.1 The Civil Partnership Act 2004 provides for two people of the same sex to register as civil partners in a register office or on approved premises. This Act provided that civil partnerships could not be registered on 'religious premises'. In July 2005, the House of Bishops advised that 'clergy of the Church of England should not provide services of blessing for those who register a civil partnership'.

14.2 The Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2011 contained new arrangements relating to religious premises. However, the approval of church buildings for use in connection with civil partnerships may take place only after 'obtaining the necessary consent from the governing body of the denomination' - in this case the General Synod. No such consent has been given. As a result, no church or chapel of the Church of England can be approved for the registration of civil partnerships.

Marriage (Same Sex Couples) Act 2013

15.1 The Marriage (Same Sex Couples) Act 2013 makes it lawful for two persons of the same sex to marry. However, the Church of England is expressly excluded from this legislation and the clergy are not able legally to solemnise a valid marriage in these circumstances. Any purported marriage according to the rites of the Church of England of two persons of the same sex is void as a matter of law.

15.2 If ministers have further questions or anxieties on this issue then they should consult their area bishop or the Diocesan Registry.

Further Advice

16. Do by all means telephone, e-mail, or write to the Registry if you need further guidance or advice. Our contact details are:-

Diocesan Registry
2 Chawley Park
Cumnor Hill
Oxford OX2 9GG

Tel. 01865 297211

Registrar:

Registry Manager:

Darren Oliver
doliver@wslaw.co.uk

Sara Leader
sleader@wslaw.co.uk