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HOUSE OF BISHOPS

MARRIAGE OF PERSONS

FROM OUTSIDE THE EUROPEAN ECONOMIC AREA

The Church of England, as the established church in England, 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.¹ 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.² 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)³ 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.

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 – diocesan chancellors in their capacity as vicars general, diocesan registrars and surrogates – to prevent the contracting of sham marriages in the Church of England.

¹ 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 2004 or where the parties are within certain degrees of kindred and affinity. The clergy also have a discretion to decline to conduct a marriage on the authority of a superintendent registrar’s certificate.

² See Canon B 30, paragraph 1.

³ 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.

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 for a **common licence** in accordance with the arrangements that have been put in place for dealing with these cases by the chancellor of the diocese.

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 person responsible for granting the licence 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 home⁴) 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 member of the clergy is not satisfied that the marriage is genuine he or she must make that clear to the person responsible for granting the licence.

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 registry.
- The member of the clergy 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 a government department or local authority. Original documents, not copies, should be required. The member of the clergy 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 registry 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 concerns about their safety in making such visits, they should consider going accompanied.)
- Banns should not be published unless the member of clergy 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 B 30 “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 prior to 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

⁴ See what is said below about clergy visits and concerns about safety.

by the Canon the member of the clergy 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 member of the clergy 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 member of the clergy 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 member of the clergy 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 registry.

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* issued by the UK Border Agency which is being sent to all beneficed and licensed clergy and to chancellors and diocesan registrars.

The clergy should also refer to guidance issued by the Archbishop of Canterbury's Faculty Office which is available here: <http://www.facultyoffice.org.uk/FacultyOfficeGuide.pdf>. This is updated from time to time.

Bishops' directions to chancellors and diocesan registrars

The House of Bishops has decided that the normal practice in respect of applications for the grant of a common licence where a party to the intended marriage is a non-EEA national should require applications to be made via the diocesan registry rather than direct to a clergy surrogate.

When an application is made, the registry should open a file for that application and all material relating to the application should be retained in the relevant file. Should enquiries subsequently ensue, the registry must be in a position readily to retrieve the relevant file containing all the material relating to the application in question.

The diocesan registry should require those applying to complete an application form (which will be separate from the affidavit that needs to be sworn before a licence may be issued). The purpose of the application form should be to elicit material information from applicants before an application is considered and to ensure that the registry itself processes applications in an efficient and effective manner. The application form should clearly state that any information and/or documents provided in connection with the application may be passed to the UK Border Agency or other Government agency or department for verification. UKBA are putting arrangements in place so that each diocesan registry has a dedicated contact officer within the Agency. Where criminal activity is suspected the registry should also contact the police.

The applicants should, in addition to passports, be required to produce evidence of their entitlement to the grant of a common licence. Where the entitlement asserted is that of residence in a parish, the registry should, as a minimum, require production of documents relevant to establishing residence that are referred to above in the guidance directed to the clergy. Where there is any doubt about the authenticity of documents, enquiries should be made of UKBA via the relevant contact officer.

As part of the application process, both of the parties to the intended marriage should be required to attend for interview at the registry or other place directed by the chancellor or registrar (even though only one of the parties need swear the affidavit). This rule should be departed from only where the person responsible for deciding whether to grant the licence is satisfied that there is a good and sufficient reason why one of the parties cannot attend.

The House of Bishops recognises that practical considerations will mean that the normal practice will need to be adapted in the case of some dioceses – for example, where the number of applications for common licences means that the registry does not have the capacity to deal with all the aspects of the application process and it is therefore necessary to involve clergy surrogates. Where the normal practice is adapted for such practical reasons the chancellor of the diocese should satisfy himself, in consultation with the diocesan registrar, that the provisions in place in the diocese are no less robust than those that would be in place under the normal practice described above. Where it is necessary to involve clergy surrogates in dealing with applications involving non-EEA nationals they should be given suitable training and provided with adequate legal and administrative support. In cases of doubt the diocesan registry should always be consulted.

Those who have authority to issue a common licence have a discretion not to do so in certain circumstances. A common licence should **not be granted unless** the person responsible for deciding whether to grant it is satisfied —

- (a) that the basis for the application (i.e. residence, electoral roll membership or 'qualifying connection') has been established; and
- (b) that the marriage is genuine (as that expression is used in this paper).

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. An application should not be considered for the grant of a common licence unless and until the person responsible for granting the licence has received 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 home⁵) 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 the minister states that he or she is not satisfied that the intended marriage is genuine a licence should not be issued.

The chancellor, in his or her capacity as vicar general of the diocese, has overall responsibility for the grant of common licences, under the authority of the diocesan bishop. The chancellor may either decide common licence applications him- or herself or alternatively delegate such decisions to surrogates. As stated above, the normal practice should be for applications involving non-EEA nationals to be decided by the chancellor or by the registrar in his or her capacity as a surrogate (if so appointed). Where the chancellor him- or herself does not decide an application and a decision is made to refuse to grant a common licence, an appeal lies from that decision to the chancellor as vicar general. Irrespective of what arrangements they make for deciding applications for common licences in non-EEA national cases, all chancellors must keep themselves informed of the way in which the registry is operating the system. Chancellors should give general directions as to the system to be operated in the diocese and keep them under review.

On behalf of the House of Bishops

+John Ripon & Leeds
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⁵ See what is said above about clergy visits and concerns about safety.