

Diocese of York

Preliminaries for the solemnisation of marriage

with notes on residence and status,
the marriage of divorced persons
and foreign nationals

A Guide for Clergy of the Diocese of York
by Caroline Mockford, Registrar of the Diocese

Fourth edition May 2015

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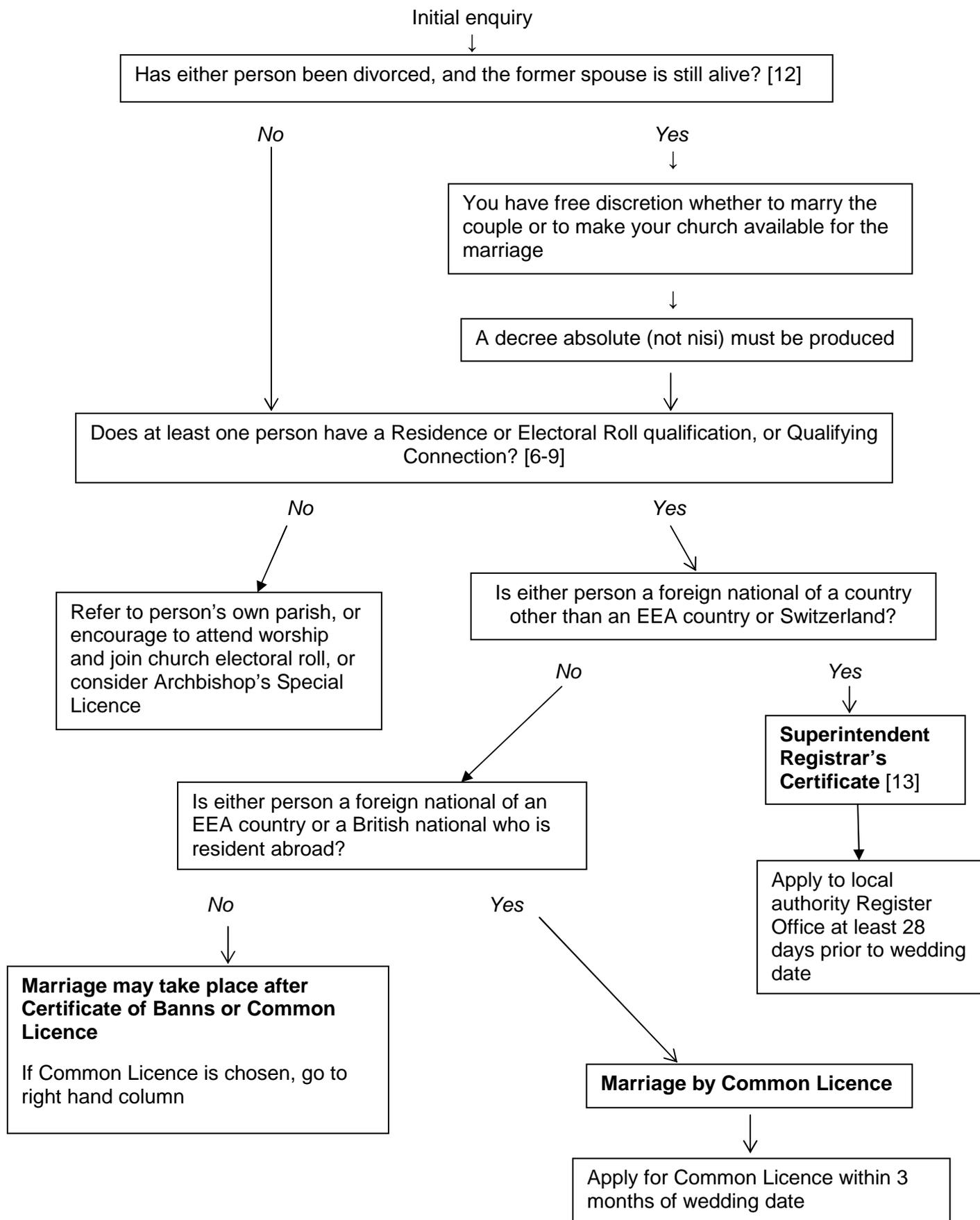
This Guide is intended as a general guide to the law. Clergy of the Diocese of York must take advice from the Registrar before taking or refraining from taking any action on the basis of this Guide. The Registrar can accept no responsibility or liability for any action or omission taken by any person based on the information in this Guide.

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This flow chart deals with the legal requirements. It does not deal with non-legal pastoral aspects of preparing couples for marriage, important as they are. At each stage, the numbers in square brackets refer to the sections following.



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The following material is referred to in these notes:

General Register Office Guidebook for the Clergy:

<https://www.gov.uk/government/publications/guidance-for-the-clergy>

House of Bishops' Guidance on the Marriage Measure:

www.churchofengland.org/media/1286660/cemmguidance.pdf

SECTION 1: INTRODUCTION

1.1 *Marriage is regulated by law*

The Marriage Act 1949 sets out the law of marriage: how it is formed (solemnized), place of marriage, registration and other matters. The law encompasses a number of principles including preliminary public notice, a public ceremony and public registration. The Marriage Act provides separately for the Church of England (being the national or established church) and the State (through local authority Register Offices) to marry couples. As part of the Church of England's right to solemnise marriages in church, there are its own preliminaries to marriage – banns of marriage and licences from the Diocesan Bishop and the Archbishop of Canterbury. Ecclesiastical preliminaries for marriages solemnized in church provide pastoral opportunities which are to be valued: the period between the couple giving notice and the day of the wedding provide a pastoral opportunity to those clergy who wish (or are able to) take advantage of it.

1.2 *A legal preliminary authorising the marriage is required*

By law a marriage can only be conducted after an appropriate preliminary for marriage. The preliminary is a legal requirement which authorises the particular proposed marriage to take place. Underlying ecclesiastical preliminaries are the **residence** of the two persons wishing to marry and/or whether their names are on the **electoral roll** and/or whether one or both of them have a "**qualifying connection**" within the meaning of the Church of England Marriage Measure 2008. This guide is intended as an introduction for the clergy to the law and procedure relating to the preliminaries for marriage in church according to the rites and ceremonies of the Church of England, and what requirements need to be fulfilled. These notes are not exhaustive: for more guidance see the publications referred to in this Guide.

1.3 *Parishioners have a right to be married in their parish church, with the proviso that a priest may decline to marry a divorced person whose former spouse is still living*

Every resident of a parish has a right to be married in his or her parish church after the publication of banns of marriage and each incumbent or priest in charge is under a concomitant duty to solemnise the marriage of a parishioner. An exception to this duty is where one of the persons is divorced and has a former spouse still living. In such a case the minister must publish the banns if asked to do so even if the person is divorced but he is not obliged to perform the marriage. The marital status of a person whose banns are being published does not need to be announced when publishing the banns.

1.4 *The principle of residence applies in different ways to the three preliminaries for marriage*

The word 'residence' is not defined in the Marriage Act 1949. The principle of residence operates in different ways for the three preliminaries for marriage in a Church of England church. Please note that in each case 'residence' must be genuine (even if temporary). In making a decision on an issue of residence, one wishes to be helpful to couples but at the same time the residence qualification must be honest: so-called 'suitcase addresses' (an address at which someone leaves a suitcase of clothes as a pretence that they live or are staying there) are not acceptable either for banns or for common licences.

1.5 There are four different preliminaries to a marriage to be solemnized in the Church of England: **publication and certificate of banns, common licence, Superintendent Registrar's Certificate** and **special licence**. These are dealt with in turn below. Then

there is some guidance on the meaning of **residence** as it affects each preliminary. This is followed by an explanation of the grounds for eligibility to marry by reason of **qualifying connection**.

SECTION 2: PRELIMINARIES TO MARRIAGE: (a) Publication and Certificate of Banns

- 2.1 A parishioner is entitled to have banns of marriage published in the parish church prior to his or her marriage. Publication is by reading aloud – in the Book of Common Prayer ‘calling the banns’ – the **names of the two persons and their residence or electoral roll or qualifying connection parishes**. The incumbent or priest in charge cannot refuse to publish them. Publication on a Sunday notice sheet is not sufficient.
- 2.2 Where a marriage is to be solemnized in the parish church after the reading of banns, the banns shall be published in the parish church of the parish in which each of the persons to be married resides.
- 2.3 If a marriage is to take place in ‘the usual place of worship’ of one of the parties (i.e. where he or she habitually worships and is on the electoral roll), and not in the parish church of the parish in which they (or one of them) reside, then the banns may also be published in the usual place of worship – it remains necessary for the banns to be published in the parish church where each person resides. In this case the banns might be published in three or even four different churches.
- 2.4 If the marriage is to take place in the church of a parish with which one of the parties has a qualifying connection, then the banns shall be published in the parish church of the parish in which each of the persons to be married resides, and also in the church of the parish where they have a qualifying connection.
- 2.5 Where either of the persons to be married resides in a district specified in a licence granted under section 20 of the Marriage Act then the banns may be published in the licensed church of that district instead of the parish church. However, there is no objection to reading the banns in the parish church as well in these circumstances (even if this is not a strict requirement of the law) and this seems a practice adopted in several such places.
- 2.6 Where the preliminary to marriage is the publication of banns, it is not a requirement that either of the two persons to be married is baptised.
- 2.7 The marriage must be solemnized within 3 months of the date of the certificate of banns (which is supplied after the banns have been duly published).
- 2.8 Publication of banns is permissible as the preliminary to marriage only if both parties are resident in England, Wales, Northern Ireland or the Republic of Ireland. Publication of banns in the Church in Wales is similar to the practice of the Church of England. A party who lives in Northern Ireland or the Republic of Ireland has the banns published according to the law or custom of that place. The ‘proclamation of banns’ under Scottish law is regarded as not satisfying the legal requirement for the publication of banns in England. If one of the parties lives in Scotland the marriage should take place by common licence.

- 2.9 There are also special rules relating to the reading of banns for members of the armed forces serving abroad. It is suggested that if this is encountered in practice then the clergy should consult the publications mentioned in this Guide or the Diocesan Registrar.
- 2.10 On 2nd March 2015 the Immigration Act 2014 introduced new rules relating to the marriage of non-EEA nationals. It now is a legal requirement that all clergy obtain evidence of nationality from all couples who ask to be married in church (see Additional Paper 4 for the form of evidence required). If either person is not a British national but is a national of an EEA country or of Switzerland, then marriage must take place on the authority of a common licence and not by banns (see below, Section 3). If either person is neither a British national nor an EEA or Swiss national, then a Superintendent Registrar's Certificate will be required (see below, Section 13).

SECTION 3: PRELIMINARIES TO MARRIAGE: (b) Common licences

- 3.1 A common licence is an authority from the diocesan bishop that the requirement for banns may be dispensed with in the case of a specified proposed marriage. It proceeds on the basis that one of the two persons has a qualifying residence or a "qualifying connection" or their name is on the electoral roll. The qualifying residence is set out in section 16 of the Marriage Act 1949 and is defined as where '**one of the persons to be married** has had his or her usual place of residence in the parish in which the marriage is to be solemnized for fifteen days immediately before the grant of the licence or that the parish church in which the marriage is to be solemnized is the usual place of worship'. The Marriage Measure 2008 extends the qualifications for a common licence to include a "qualifying connection".
- 3.2 The procedure for applying for a common licence is as follows:-
- 3.3 The couple should attend before a surrogate for marriages (see Diocese of York Directory) or the Diocesan Registrar. One of the couple will, in the presence of the surrogate, supply the information about both persons required for the application as set out on the reverse of the affidavit, and then swear the affidavit that the details are true and that no impediment to the marriage is known. If either person is a non-EEA national, marriage cannot take place by common licence. A Superintendent Registrar's Certificate must be obtained from the local authority Register Office (see below, Section 13).
- 3.4 The officiating minister will ask the applicant to produce the sealed licence before solemnising the marriage. The marriage must be solemnized within 3 calendar months of the grant of the common licence.
- 3.5 Where one of the parties to the marriage is a national of the EEA or Switzerland then the marriage must take place on the authority of a common licence and not after banns (see section 13 below). Additionally, where a British national resides abroad (which for this purpose includes Scotland (see section 2.8)), where banns may not be published, the marriage must take place by common licence.
- 3.6 Where the preliminary to marriage is a common licence, it is not now (since 2006) a requirement that either of the two persons to be married is baptised, and divorce is not in

itself a bar to the grant of a common licence. The procedure the officiating priest needs to follow is set out in section 12 below where either or both of the parties to the proposed marriage have been married previously with a former spouse still living.

- 3.7 Advice or assistance on whether a common licence would be available in particular circumstances is available from any of the Surrogates or the Diocesan Registrar.

SECTION 4: PRELIMINARIES TO MARRIAGE: (c) Special licences

- 4.1 These are given at the sole discretion of the Archbishop of Canterbury and are an alternative to the requirement that banns be read. Although the licence is of far wider application than the common licence the discretion is only sparingly exercised. A special licence is applied for most commonly where the parties cannot satisfy the residence requirements needed for either of the other two preliminaries. Even in this case the applicant ought to be able to demonstrate 'a genuine and long-standing connection', with the parish or church in question. Usually the 'connection' is by worshipping in that church. Special licences are also (but less commonly) applied for where the parties wish to marry in a place not normally authorised for Anglican marriage; or when a person is in danger of death and are in hospital, hospice or at home where the person (on medical advice) cannot be moved and does not have sufficient time to apply for a Superintendent Registrar's Certificate. The application procedure is as follows:-

- Applicants should first approach the Anglican minister who is to perform the marriage and the persons who have control of the building in which the ceremony is to take place. The minister who is to officiate must ensure that the clergy of the parishes in which the parties reside are aware of the marriage and have no objection to its being solemnized by the chosen person in the chosen building.
- The parties should then request an application form from the Archbishop of Canterbury's Faculty Office. The form is in two parts: one to be completed by the parties being married and the other by the officiating minister.
- An affidavit must then be sworn confirming the details of the application form and that there is no impediment to the marriage.
- An application for special licence should be made initially by telephone to the Registrar, The Faculty Office, 1 The Sanctuary, Westminster, London, SW1P 3JT (0207 222 5381) between the hours of 10am and 4pm: or visit the website www.facultyoffice.org.uk

- 4.2 There are no residential requirements in respect of special licences.
- 4.3 There is no time limit set by statute for the solemnisation of a marriage on a special licence although in practice a three month time limit is usually imposed. The same policy in respect of divorced and unbaptised applicants applies as for common licences.
- 4.4 Where the preliminary to marriage is a special licence, it is not now a requirement that either of the two persons to be married is baptised, and divorce is not in itself a bar to the grant of a common licence.

SECTION 5: RESIDENTIAL REQUIREMENTS – GENERAL NOTE

- 5.1 The word ‘residence’ is not defined in the Marriage Act 1949. There are different residential qualifications for the three preliminaries for marriage in a Church of England church.
- 5.2 The qualification to marry in a particular place whether after banns or on a common licence and the requirements as to the calling of the banns depend on where a person lives. In many instances this is straightforward, but on occasions this can be difficult to determine. The residential qualification required for the publication of banns is of a different nature or quality to that appertaining to a common licence. The Marriage Act 1949 does not give a single meaning of ‘residence’ applying equally to all preliminaries. The Act came into force at a time when society was less mobile. Some general comments on the legal meaning of the word for the purposes of sections 6 and 8 of the Act (for banns) and section 15 of the Act (for common licences) may be of help. The Marriage Measure 2008 was enacted by General Synod in part to meet the needs of the more mobile society in England. The churches in which a couple may now marry include any church with which one or both of them have a “qualifying connection”.

SECTION 6: RESIDENCE AND THE PUBLICATION OF BANNS OF MARRIAGE

- 6.1 Banns are required to be published in the parish church(es) of the parish(es) where ‘the person(s) to be married reside’ (Marriage Act section 6). Where banns have been published the marriage shall be solemnized in one of the churches ‘in which the banns have been published’ (ditto, section 13).
- 6.2 Publication of banns is concerned with the qualifying residence status of **both persons to be married**: the banns of both persons have to be published. If this is not possible the marriage preliminary of publication of banns cannot be used.
- 6.3 This residence requirement has to be met at one instant in time and not over a period. ‘Resides’ requires a presence which has been described as ‘the usual place of abode or one of the usual places of abode’. It can be acquired over a period of time or instantly as when a person purchases a house and moves into it, so that from the date of purchase the new house becomes the usual place of abode. A person will be regarded as residing in a parish if his permanent home is in that parish even if he has been absent for considerable periods. He must have the intention to return. There must be an absence of any intention to live elsewhere on a more than temporary basis, although a person can quite properly and in good conscience have more than one place of residence (see below). This is a question of fact and degree for clergy to decide in discussion with the person involved.
- 6.4 A person may have more than one place of residence and may therefore be able to meet the residence requirements in more than one parish. Whether a person has two residences is a question of fact. Examples may be given of a person having more than one residence. A student may have a residence both at his university accommodation during term time and also with his parents. A ‘weekly commuter’ may have a flat in London coming back to the family home elsewhere at weekends. But a bed and breakfast arrangement is clearly not a residence for the purposes of publishing banns. Another example is a young teacher or nurse who leaves home to pursue his or her career but returns frequently to stay in the

parents' home where there is a bedroom, clothes and possessions. Contrariwise a person who has lived away from home for several years, is purchasing his own house or flat and no longer has any real connection with his parents' house, which he visits only from time to time, probably no longer has a residence in the parental home (but may have a sufficient residence to apply for a common licence if there is a period at home of not less than fifteen days). The line will probably have been crossed when any individual has bought his or her own house, and a couple will almost certainly have ceased to have a residence with their respective parents if they have bought their own home and are living together in it. This could be a point of significance for a particular couple, but should not be now as they will be able to rely on a qualifying connection if one or other of them has lived in the parish for a continuous period of 6 months.

- 6.5 The question of 'second homes' and 'weekend cottages' also arises. Again this is a question of degree. If the use of the second home in the parish is frequent and for substantial periods of time the person may be treated as a resident for the reading of banns. If the second home in the parish is used only for the occasional weekend or holiday and is otherwise empty or let then the residential requirements will not have been met. 'Residence' for the publication of banns denotes a degree of permanence, but a person may have more than one place of residence.

SECTION 7: RESIDENCE AND COMMON LICENCES

- 7.1 A common licence may be granted if one of the persons to be married has had his or her usual place of residence in the parish in which the marriage is to be solemnized for fifteen days immediately before the grant of the licence or that the parish church in which the marriage is to be solemnized is the usual place of worship of those persons or of one of them' (Marriage Act section 16).
- 7.2 It will be seen that the marriage preliminary of common licence is concerned with the qualifying residence status of **only one of the persons** to be married and not both of them.
- 7.3 The Affidavit which the applicant for the Licence is required to swear in support of the application includes the statement that the applicant (or other person to be married): 'I have had my usual place of abode within the said Parish of for the space of fifteen days last past.' Alternatively the Affidavit must include the statement that the applicant (or other person to be married) has his/her name on the electoral roll of the parish in which the church they wish to marry is situate.
- 7.4 Therefore a period of fifteen days **immediately before the date on which the Affidavit is sworn** will suffice if for that period there is 'residence'.
- 7.5 The applicant for the licence or other person to be married should be asked by the Surrogate 'What is your place of residence at the present time?'. If he or she is able to reply truly 'I am residing (with my parents/friend/grandparent until I am married) in the parish and I have been there for the past fifteen days (or more), and then after marriage I am going to live in (Australia)' then the residential requirement for a common licence is fulfilled. The alternative requirement relating to 'the usual place of worship of those persons or one of them' means

that if either or both persons' names are on the electoral roll of the Parish then this fact constitutes the residential qualification and actual residence within the Parish is not required.

- 7.6 As long as one of the persons to be married can satisfy this 15 day requirement immediately before the grant of the licence a generous approach may be taken to temporary or even near permanent absences outside that 15 day period: e.g. a person who lives abroad but wants to marry in their parents' parish church and returns to their parents' home for a few weeks to arrange the wedding would satisfy the 15 day usual place of residence requirement. Also a person who is staying in a hotel in the parish for a continuous period of 15 days would qualify if it was his usual place of residence during the period immediately before the grant of the licence. Here it is not permanence which is the issue but the actuality of the residence (see 'suitcase addresses' at para 1.4). Also, it is immaterial where the persons are to reside after the marriage (even if they are going to live abroad). The test is where the usual place of residence was for the 15 days immediately before the grant of the licence: i.e. where would that person be found if (for example) it was necessary to have documents served on him or her during the fifteen day period.
- 7.7 I am advised that the word 'usual' in the context of fifteen days in section 15 means that one or two nights away during the period of fifteen days would not prevent the address in the Parish being the 'usual' residence during the fifteen day period.

SECTION 8: RESIDENCE AND SPECIAL LICENCES

- 8.1 There are no residential requirements in respect of special licences.

SECTION 9: QUALIFYING CONNECTION AND MARRIAGE FOLLOWING BANNS OF MARRIAGE OR COMMON LICENCE

- 9.1 The Church of England Marriage Measure 2008 reforms and extends the right of couples to marry after the publication of banns or by common licence in a parish with which one or both of them can demonstrate a "Qualifying Connection" as defined and specified in the new legislation. The Measure came into force on 1 October 2008.
- 9.2 A person has a Qualifying Connection with a parish if:-
that person:
- was baptised in the parish. (This does not apply where the baptism formed part of a combined service of baptism or confirmation); or
 - had his or her confirmation entered in a church register book of a church or chapel in the parish; or
 - has at any time had his or her usual place of residence in the parish for at least 6 months; or
 - has at any time habitually attended public worship in the parish for at least 6 months;
- or**
a parent of that person has at any time during that person's lifetime:

- had his or her usual place of residence in the parish for at least 6 months; or
- habitually attended public worship in the parish for at least 6 months;

or

a parent or grandparent of that person:

- was married in the parish.

9.3 In all cases involving church services – i.e. coming to / going to / attending normal church services, baptism, confirmation or marriage – this applies only to Church of England services.

9.4 Guidance about the detailed provisions of the Measure and detailed advice about how a person demonstrates or shows a Qualifying Connection may be found on the Church of England website:

- Guidance from the House of Bishops published June 2008 www.churchofengland.org/media/1286660/cemmguidance.pdf
- Form for completion by a person with a Qualifying Connection who wishes to marry www.churchofengland.org/media/45653/marriagewelc.doc

The minister of the parish is under a legal duty “to have regard to the House of Bishop’s Guidance”: The Guidance advises how ministers are to discharge their statutory responsibility. In particular **the Guidance requires the minister** to be satisfied that the qualifying connection has been satisfied either by the Applicant producing written information or documents, or otherwise e.g. minister’s own knowledge. The minister may require a “statutory declaration” from the Applicant.

Clergy are advised to download and peruse thoroughly the House of Bishops Guidance. Additionally, copies of the Form for couples wishing to rely on a Qualifying Connection to complete need to be downloaded and supplied to enquirers.

9.5 There are two significant matters pertinent to the changes introduced by the 2008 Measure. They are:-

- The 2008 Measure does not in any way affect or alter the law or arrangements for marriage in church of a person who is divorced and whose former spouse is still living;
- The 2008 Measure does not in any way affect the requirement that persons from outside the EEA or Switzerland must obtain a Superintendent Registrar’s Certificate. (In that regard the House of Bishops Guidance has been superseded.)

9.6 Banns of persons relying on a qualifying connection should be read as follows:
‘I publish the banns of marriage between AB of the parish of X who has a qualifying connection with this parish ...’

The nature of the connection should not be read out.

Qualifying Connection and Common Licences

9.7 Where a marriage cannot be authorised by the publication of banns, then a common licence may be issued relying on a “qualifying connection” (see para 8.2 above).

In such a case the Applicant must produce sufficient information, written or otherwise, to satisfy the Surrogate that he or she has a qualifying connection with the parish.

In this regard the Surrogate will not normally have the same local knowledge or knowledge of the family etc as the parish priest. If the applicant is relying on knowledge of this kind, he/she needs to produce a signed written statement by the person who can support the claim to a qualifying connection. Similarly if the applicant relies on an entry in a parish register, he/she must produce a certified copy of the entry or other written confirmation from the person with custody of the register.

The applicant will make an affidavit on oath (rather than a statutory declaration) as is usual for common licence applications, and the affidavit must state, among other things, the nature of the particular qualifying connection.

SECTION 10: IDENTITY

- 10.1 It is common in various contexts for people to be required to prove their identity. Since 2nd March 2015, **it is unlawful for the marriage of a national of a foreign country that is not an EEA country or Switzerland to be solemnized after the publication of banns or on the authority of a common licence.** This means that clergy must obtain identification evidence from the two persons wishing to marry. Identification evidence must be obtained in **all cases**; clergy should not rely on the appearance of the couple or on what the couple themselves say about their nationality. Proof of nationality must always be obtained. Additional Paper 4 below sets out the identification evidence required by the Immigration Act 2014. In each case, the people concerned must produce original documents. Photocopies alone, unsupported by originals, are not acceptable. It would be prudent to keep copies of identification evidence obtained in case there is a later query as to whether the couple were lawfully married.
- 10.2 In the case of an application for a common licence, the Chancellor *requires* both parties to prove evidence of their address(es) to the satisfaction of the Surrogate in addition to the evidence of nationality referred to above. The document needs to set out the name and full postal address which bears a date no more than 3 months old. This document can be (for instance) a bank statement, credit card statement, utility bill, mobile telephone contract, council tax demand, rent book, or tenancy agreement. Note a mere letter about any of these matters is not regarded as sufficient. The Surrogate will ensure that the details of identity on the affidavit are the same as those in the supporting documentation. If difficulties arise on a particular application, then the Surrogate should consult the Registry for assistance.
- 10.3 If matters of difficulty arise, the priest or Surrogate should consult the Registrar. For example:
- 10.3.1 where the identity documents required cannot be produced
 - 10.3.2 where there is doubt as to the authenticity or validity of the documents produced
 - 10.3.3 where one of the couple cannot attend in person.

SECTION 11: STATUS

Change in terminology consequent upon the Civil Partnership Act 2004:

- 11.1 The Civil Partnership Act changed the Matrimonial Causes Act 1973 (s.11(b)) which now provides that one of the grounds on which a marriage is void is that 'at the time of the marriage either party was already lawfully married (or a civil partner)'. This of course means that clergy and surrogates for marriage will routinely have to enquire of couples not only whether they have been married previously but also whether either of them has entered into a civil partnership and which has not been ended either by the death of one partner or by its dissolution. Just as being married is a lawful impediment to entering into a civil partnership so, conversely, a person in a civil partnership is not free to marry.
- 11.2 As a consequence (with effect from 5 December 2005) the descriptions 'bachelor' and 'spinster' may not now be used on the Marriage Certificate or in the Register of Marriages (Registration of Births, Deaths and Marriages (Amendment) Regulations 2005) or on the certificate of banns.
- 11.3 Clergy are under a statutory duty to use the prescribed words and so the term 'single' should be used where a party has never entered into a marriage or civil partnership. The range of terms which now are available to be used are as follows:-
- Single
 - Widower
 - Widow
 - Previous marriage dissolved (or annulled)*
 - Surviving civil partner
 - Previous civil partnership dissolved / annulled
- *This description should be used even if the former spouse has died (This reflects current advice from the Registrar General and the Church of England legal office)
- 11.4 A civil partnership may be dissolved through a court process. The name of the order used to bring a civil partnership to an end is a Dissolution order (corresponding to a certificate of Decree Absolute in divorce cases).
- 11.5 These revisions relate purely to the registration of the marriage and it is important that clergy ensure that the correct terminology is used on the Marriage Certificates they issue and the entries they make in their Register of Marriages.
- 11.6 The terms 'bachelor' and 'spinster' should no longer be used. You will recall that it is not necessary to recite the parties' marital status when calling banns, and it is indeed not correct to do so. I am aware however that many of the clergy do so all the time! This may, therefore, be an opportunity for the clergy to do what the law requires and no more!
- 11.7 Finally, the terms 'bachelor' and 'spinster' will no longer be used in the procedures for a common licence.

SECTION 12: MARRIAGE OF DIVORCED PERSONS

12.1 In 2002, General Synod passed a resolution in the following terms:

“That this Synod

- a. affirm, in accordance with the doctrine of the Church of England as set out in Canon B30, that marriage should always be undertaken as a “solemn, public and life-long covenant between a man and a woman”;
- b. recognise (i) that some marriages regrettably do fail and that the Church’s care for couples in that situation should be of paramount importance; and (ii) that there are exceptional circumstances in which a divorced person may be married in church during the lifetime of a former spouse;
- c. recognise that the decision as to whether or not to solemnise such a marriage in church after divorce rests with the minister (or officiating cleric if the minister is prepared to allow his/her church or chapel to be used for this marriage); and
- d. invite the House of Bishops to issue the advice contained in Annex 1 of GS 1449.”

General issues concerning the re-marriage of divorced persons are covered in the Faculty Office’s booklet *Anglican Marriage in England and Wales* (see section 14 below) and in the House of Bishops *Advice to Clergy* referred to in the Synod motion and available at www.churchofengland.org/media/1162432/leafletforenquirers.pdf

The House of Bishops guidelines includes questions which a priest preparing a couple, of whom one or both have been divorced, may appropriately address. These questions are reproduced in Additional Paper 2. Whichever preliminary to marriage is being used, the House of Bishops Advice to Clergy should be followed.

12.2 From a legal point of view, there are several matters which should be noted:

- A priest may decline to officiate at the marriage of a divorced person (see Introduction paragraph 1.3): there is no obligation on a cleric to officiate at the marriage of a divorced person whose former spouse is alive.
- The former marriage is only dissolved when the Court has issued a decree absolute of divorce. The officiating priest must require production of the decree absolute (the original or a copy certified by an independent person as being a copy of the original); the decree nisi is not sufficient.
- Where either person has been previously married, the officiating priest needs to ascertain whether the marriage has been terminated by the death of the spouse or by divorce. It is suggested that the better enquiry is ‘Have you been married before?’ or ‘Have you been through a marriage ceremony before?’ rather than ‘Are you divorced?’.
- The officiating priest should discreetly establish that there is no other former marriage which either of the persons wishing to marry has not disclosed.

12.3 The preliminary for the marriage of a divorced person may be certificate of banns, or a common licence, or a special licence. If a person's banns cannot be published, the preliminary must be common licence, or if either party is a national of a non-EEA country or of Switzerland, a Superintendent Registrar's Certificate. On rare occasions, an Archbishop's special licence may be issued by the Faculty Office.

12.4 **Marriage of divorced persons by Common Licence**

- i If the marriage is to take place by common licence, the Chancellor *requires* the officiating priest to have completed a form (Additional Paper 3) certifying that the questions in the House of Bishops Advice have been dealt with.
- ii If the marriage is to take place by common licence, the application to the Surrogate for the Common Licence needs to be accompanied by the **Additional Questions** (see Additional Papers 1-3) completed and signed by the priest who is proposing to officiate at the marriage, together with the original or a certified copy of the decree absolute of divorce, (note: decree nisi is not sufficient). The House of Bishops leaflet referred to in the Additional Questions is available from SPCK and on the Church of England website (see Additional Paper 1 for more information).
- iii The priest who is to officiate at the marriage will need to have completed the Additional Questions before the couple meet the Surrogate, and should send them direct to the Surrogate. So the officiating priest needs to liaise with the couple to ensure they identify the Surrogate whom it is convenient for them to visit to make the application for the Common Licence. Enquiries ought to be made that the Surrogate will be available at the appropriate time, e.g. not on holiday, away from the parish, etc. It is recommended that the officiating priest should send the documents (decree absolute or certified copy, and Additional Paper 3) to the Surrogate direct because if the couple fail to bring the documents on their appointment with the Surrogate, there will be delays and inconvenience. The Common Licence cannot be issued until those documents have been produced to the Surrogate.
- iv If all is in order at the appointment, then the Surrogate may issue the licence in the usual way. The Surrogate will staple the completed Additional Paper 3 (including Decree Absolute) to the Affidavit and Form A and forward them to the Diocesan Registry.

SECTION 13: THE MARRIAGE OF PERSONS FROM OUTSIDE THE EUROPEAN ECONOMIC AREA (EEA) OR SWITZERLAND

13.1 The church encourages people of all nationalities who wish to enter into 'the honourable estate of holy matrimony', and who are legally eligible, to do so. A 'genuine marriage' is marked by the couple's intention to form a permanent, life-long union, to the exclusion of all others, for better for worse, till death do them part (Canon B30).

13.2 However, marriage is sometimes misused with the aim of circumventing immigration law. Some people attempt to enter into, or arrange, so-called 'sham marriages' for this purpose.

Special procedures therefore apply if one or both of the persons intending to marry does not have the right of abode in the UK, or whose immigration status is unclear. On 2nd March 2015, new procedures are introduced by section 57 of the Immigration Act 2014 where one or both parties to the intended marriage is a non-EEA national.

13.3 The new rules will not apply to:

13.3.1 An EEA national. The countries of the EEA are Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, the Republic of Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

13.3.2 Swiss nationals.

13.4 The special procedures in this section of the Guidance do not apply to persons in the above categories, but note that they do apply to nationals of Commonwealth countries and the USA.

13.4 Banns may not be called and a common licence may not issue unless evidence is produced to show that the two parties are British or are nationals of the EEA countries set out in paragraph 13.2.2 above or of Switzerland. The evidence of nationality that is acceptable is laid down in Schedule 3 of the Registration of Marriage Regulations 2015. No other evidence may lawfully be accepted. A summary of the evidence permitted by the Regulations is set out in Additional Paper 4 below.

13.5 If banns are called without the required evidence of nationality having been obtained or where one of the parties to the marriage is a non-EEA national, the banns will not have been duly published. Any priest who conducts a marriage in the knowledge that banns have not been duly published commits an offence and is liable on conviction to imprisonment for a term of up to fourteen years. Before conducting a marriage, clergy are therefore required to see both the banns certificate and the evidence of nationality produced by the couple and the marriage must not proceed without both.

13.6 Any queries about evidence should be referred to the Diocesan Registry or to the Superintendent Registrar at the local authority Register Office.

SECTION 14: FOR FURTHER INFORMATION AND GUIDANCE

14.1 This brief Guide is concerned with Preliminaries to marriage only. There are other aspects of marriage which are regulated by law. They include the marriage service itself and registration.

14.2 The marriage service must be an authorized rite of the Church of England. The officiant must be an ordained minister of the Church of England. The minister of another Christian church may assist in the service subject to the requirements of the law. **The Church of England minister must say and perform the core elements of the marriage and sign**

the register. Specific information is given for the Common Worship rite in the notes on p.134 of *Pastoral Services*.

- 14.3 The marriage must be registered during or immediately after the service and the registers signed by the couple, two or more witnesses, and the officiating Church of England minister.
- 14.4 Clergy should obtain and consult the guide entitled *Anglican Marriage in England and Wales: A Guide to the Law for Clergy* which has been prepared by The Faculty Office of the Archbishop of Canterbury, 1 The Sanctuary, Westminster, London, SW1P 3JD and clergy should also have a copy of the booklet *Guidebook for The Clergy* issued by the Registrar General, Smedley Hydro, Trafalgar Road, Birkdale, Southport, PR8 2HH. If further assistance is required then the Diocesan Registry should be contacted.

Caroline Mockford

Registrar of the Diocese of York

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MARRIAGE BY COMMON LICENCE OF DIVORCED PERSONS Procedure

Following the decisions in 2002 to rescind the Regulations of the Convocations of Canterbury and York and the issuing of the House of Bishops Advice to Clergy on this matter, the Archbishop of York (in consultation with the Suffragan Bishops and Archdeacons of the Diocese) reviewed the policy on the issue of Common Licences where either or both of the parties to the proposed marriage have been married previously with a former spouse still living.

In certain circumstances, it is now possible for a Common Licence to be issued for a marriage where one or both of the two persons are divorced.

The priest who will officiate at the proposed wedding must consult and follow the House of Bishops *Advice to the Clergy* for the marriage of divorcees and complete the various questions published by the House of Bishops.

There is enclosed a copy of the four Additional Questions (Additional Paper 3) which the officiating priest is asked to use in respect of these applications. The questions pre-suppose the use of both the House of Bishops Advice and also the standard form and explanatory statement 'Marriage in Church after Divorce'.

These pamphlets are available from SPCK and the material can be found on the website at: www.churchofengland.org/media/1162432/leafletforenquirers.pdf

The officiating priest should interview the couple and address the questions from the House of Bishop's Advice reproduced on Additional Paper 2. If the priest is satisfied it is right to proceed with the marriage in the light of the House of Bishops' Advice, then the Additional Questions on Additional Paper 3 should be completed.

If the priest is satisfied that the couple have made an appropriate response to the points in Additional Paper 2, then it is sufficient to answer Questions 2 and 3 on Additional Paper 3 with a simple 'yes'. Pastorally sensitive details are not required to be divulged to the Surrogate.

You will see that Question 4 asks whether the views of the Suffragan Bishop have been sought and whether he has expressed any views. The Archbishop of York has indicated that provided the questions raised in the *Advice to Clergy* have been satisfactorily addressed, there is no specific need to seek the Suffragan Bishop's views in relation to the granting of Common Licences. However, the Suffragan Bishops wish to assure clergy that they are very happy to be consulted as a point of reference about a particular application if required or this would assist.

When this has been done, the couple need to make an appointment with the Surrogate to obtain the Common Licence. **The Surrogate will need to see the Additional Questions that the officiating priest has completed and the decree absolute of divorce or a certified copy – it is recommended that the officiating priest sends these documents to the Surrogate, (rather than ask the couple to take them with them to their appointment).**

If the officiating priest or Surrogate is in doubt about the new arrangements, they may contact the Registry for assistance and advice.

MARRIAGE BY COMMON LICENCE OF DIVORCED PERSONS**Questions reproduced from the House of Bishops Advice to Clergy leaflet**

- (a) Do the applicants have a clear understanding of the meaning and purpose of marriage?
- *Do the couple understand that divorce is a breach of God's will for marriage?*
 - *Have they a determination for the new marriage to be a life-long faithful partnership?*
- (b) Do the applicants have a mature view of the circumstances of the breakdown of the previous marriage and are they ready to enter wholeheartedly and responsibly into a new relationship?
- *Does the divorced person appear to be relatively free of self-deception and self justification about the past?*
 - *Did the divorced person take the first marriage seriously and has he/she learnt from mistakes?*
 - *Is the other party aware of the possible cause(s) of the breakdown of their future partner's previous marriage?*
 - *Is there an attitude of repentance, forgiveness and generosity of spirit so that the applicants are free to build a new relationship?*
- (c) Has there been sufficient healing of the personal and social wounds of marriage breakdown?
- *Has there been enough time and distance for the parties concerned to recover emotional stability and good judgment?*
 - *Are there any extant court proceedings relating to the former marriage?*
 - *Are responsibilities to the children of any previous marriage being recognised and honoured?*
- (d) Would the effects of the proposed marriage on individuals, the wider community and the Church be such as to undermine the credibility of the Church's witness to marriage?
- *Would the new marriage be likely to be a cause of hostile public comment or scandal?*
- (e) Would permitting the new marriage be tantamount to consecrating an old infidelity?
- *While it would be unreasonable to expect that the couple should not even have known each other during the former marriage(s), was the relationship between the applicants – so far as you can tell from the information made available to you – a direct cause of the breakdown of the former marriage?*
- (f) Has either of the parties been divorced more than once?
- *In the case of multiple divorces, the sheer complexity of relationships that may have developed will inevitably make any assessment by you more difficult. However, the Church witnesses to lifelong marriage, and should not find itself being a party to 'serial monogamy', hence neither of the parties should normally have been married and divorced more than once.*
- (g) Do the applicants display a readiness to explore the significance of the Christian faith for their lives so that their further marriage is not an isolated contact with the Church?
- *Given that the provision of careful marriage preparation should be the norm for all couples seeking marriage in church, do the applicants possess an understanding of the need of God's grace in relationships and show a willingness to be open to Christian teaching?*

MARRIAGE BY COMMON LICENCE OF DIVORCED PERSONS
Additional questions to be answered by the officiating priest

Name of divorced person:

If both persons are divorced and both have a former spouse still living, please complete a form for each.

Proposed Date of Wedding:

Proposed Place of Marriage: (Name of Church)

Additional Questions to be completed by the priest intending to officiate at the marriage

1. Has a Decree Absolute been issued in respect of the first marriage (note: decree nisi is not sufficient)? If so, please attach the original, or a copy certified by yourself or another independent person as being a copy of the original.

.....

2. Have you followed the procedure set out in the House of Bishops leaflet on Marriage in Church after Divorce? [Please answer yes or no.] If the answer is no, or if there are any matters you wish to bring to the Surrogate’s attention, please add an explanatory note here.

.....

.....

3. Having interviewed the couple, are you satisfied that it is appropriate for them to be married in Church? [The questions and notes that the House of Bishops leaflet suggests may be helpful to officiating clergy are reproduced on Additional Paper 2.]

.....

4. Have you sought the advice of the Suffragan Bishop in this case and has he expressed any views? [There is no specific need for this if the answers to questions 2 and 3 are both ‘yes’.]

.....

Officiating priest please print your name and address below

I
of

have interviewed the two persons wishing to marry and I am willing to officiate at their marriage if a common licence is issued.

Signature: Date:

Name of Surrogate to whom Application is made:

Further copies may be downloaded from www.yorkdiocesanregistry.com

EVIDENCE OF NATIONALITY TO BE PRODUCED BY COUPLES WISHING TO MARRY

Extract from General Register Office Guidebook for the Clergy February 2015

2.8 One of the following original documents (or groups of documents) must be provided by each of the parties to the proposed marriage to the member of the clergy, or (as the case may be) the person with authority to grant a common licence, as evidence that the party is a relevant national—

- (a) a valid British, EEA or Swiss passport;*
- (b) a valid national identity card issued by an EEA state or Switzerland;*
- (c) certificate of registration as a British citizen granted by the Secretary of State together with another document referred to in paragraph 2.9 below to establish current use of the name and surname referred to on the certificate of registration (or, if the person has changed their name, evidence of the change of name);*
- (d) certificate of naturalisation as a British citizen granted by the Secretary of State, together with another document referred to in paragraph 2.9 below, to establish current use of the name and surname referred to on the certificate of naturalisation (or, if the person has changed their name, evidence of the change of name);*
- (e) where the party was born in the United Kingdom—*
 - (i) before 1st January 1983—*
 - a United Kingdom birth certificate; and*
 - one of the documents referred to in paragraph 2.9 below to establish current use of the name and surname referred to on the birth certificate provided (or, if the person has changed their name, evidence of the change of name);*
 - (ii) on or after 1st January 1983—*
 - a full United Kingdom birth certificate showing their parents' (or, as the case may be, parent's), details;*
 - one of the documents referred to in paragraph 2.9 below to establish current use of the name and surname referred to on the birth certificate provided (or, if the person has changed their name, evidence of the change of name);*

evidence of either of their parents' British citizenship or settled status at the time of the birth (e.g. a passport describing the relevant parent as a British citizen, or indicating that he or she then had indefinite leave to enter or remain); and

their parents' marriage certificate (if British citizenship is claimed through their father);

If none of the documents listed above are available, such other document as the Registrar General determines it is reasonable to accept in the particular circumstances of the case.

Evidence of current use of name

- 2.9 (a) *utility bill dated no more than three months before the date on which notice of marriage is given;*
- (b) *bank or building society statement or passbook dated no more than one month before the date on which notice of marriage is given;*
- (c) *council tax bill dated no more than 12 months before the date on which notice of marriage is given;*
- (d) *mortgage statement dated no more than 12 months before the date on which notice of marriage is given;*
- (e) *current residential tenancy agreement;*
- (f) *valid driving licence in the name of the person giving notice of marriage.*

If you have any queries about the documentary evidence supplied by the couple, please contact your local register office or the General Register Office for advice.

The General Register Office Guidebook for the Clergy can be found at:
<https://www.gov.uk/government/publications/guidance-for-the-clergy>

CHECKLIST OF DOCUMENTS

to be produced to the Surrogate when applying for a Common Licence

All applicants must take to the Surrogate:

- Original documents (for each person, evidence of identity (see Additional Paper 4) and evidence of address)
- The fee in cash

The Surrogate can inform the couple of the amount of the fee when arranging the appointment

Persons who have been divorced and whose former spouse is still alive:

The officiating priest sends to the Surrogate

- Additional Questions (Additional Paper 3) completed in respect of each divorced person, with, attached to it:
- Decree absolute (not nisi) of divorce (original or certified copy)

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