

# ***THE REGISTRY OF THE DIOCESE OF LICHFIELD***

## **HANDBOOK**

### **FOR**

## **THE GUIDANCE OF SURROGATES**

### **NEW EDITION 2017**

*The Handbook should be read in conjunction with "Anglican Marriage in England and Wales, a Guide to the Law for Clergy" published by the Faculty Office of the Archbishop of Canterbury*

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*[version without emergency contact details for publication on web site]*

## THE SURROGATES HANDBOOK

### 1. INTRODUCTION

- 1.1. The role of a Surrogate is important. A Marriage may be solemnized by a Church of England minister only after proper Preliminaries. These are either Banns, a Superintendent Registrar's Certificate, an Archbishop's Special Licence or a Common Licence.
- 1.2. A Common Licence for marriage is issued on the authority of the Chancellor of the Diocese in his or her capacity as the Vicar General of the Diocesan Bishop. The system is administered in practice by the Diocesan Registry. The Chancellor appoints Surrogates to assist in the process; these appointments are made on the Bishop's nomination and each Surrogate is authorized to act within a particular deanery. If a Surrogate moves to another deanery the appointment lapses unless the Bishop invites the priest to remain a Surrogate. The Diocesan Registrar and his Deputy Registrar are also appointed as Surrogates, but with authority to act across the whole Diocese.
- 1.3. It is important to note that in this Diocese the Licence is issued by the Registrar and not the individual Surrogate. The delegation to the Surrogate is restricted to the taking of the Affidavit and the assessment of the qualifying connection. Except for cases of utmost urgency occurring out of working hours and where there is no doubt (dealt with below), Surrogates cannot confirm that a licence will be issued. This is because (for example) the Surrogate will not be aware as to whether any caveat has been lodged against the issue of the Licence, and so as to enable additional legal checks to be undertaken to try to ensure that sham marriages are avoided (for example where a person has previously been refused a Licence in another district).
- 1.4. The Surrogate should always remember that the grant of a Common Licence is a privilege, and is not automatic. The Surrogate is required to exercise his or her judgment on each application. The Registry is always ready to give advice and several contact addresses and telephone numbers are given at the end of this document.
- 1.5. The role you perform is as Surrogate for the Chancellor, rather than for the officiating minister. The officiating minister is responsible for preparing the couple for marriage, under Canon B30. S/he should take responsibility for clarifying most of the issues

referred to in this handbook, but you are appointed so as to have expertise to assist in these legal aspects, and the Registrar relies on you to be familiar with Canon law, the Yellow Faculty Office handbook, and the Marriage Measure 2008, and you should familiarize yourself with these items.

**1.6.** Whilst the majority of Anglican marriages are conducted in a church of the place of residence of either the bride or bridegroom (or through being on the electoral roll of the parish concerned), or a church with which they have a qualifying connection under the Church of England Marriage Measure 2008, and after the reading of Banns, a Common Licence may be thought of as the appropriate preliminary to marriage for a number of reasons:

**1.6.1.** If neither of the parties has a permanent residence in the place where the marriage is to be conducted but one of them is able to establish fifteen days of temporary residence within the parish.

**1.6.2.** If, although having permanent residence in the parish, the parties for personal reasons do not wish to publicise the marriage by the reading of Banns.

**1.6.3.** If, although having permanent residence in the parish, the marriage is intended to take place more swiftly than would allow Banns to be called

**1.6.4.** If, although they could have been read, for some reason Banns have not been read and it is now too late to correct the error, or where the certificate cannot be produced to the officiating minister, or, in some situations where there is a perceived irregularity in the manner in which the Banns were called.

**1.6.5.** If the parties live outside England and Wales, Scotland or Northern Ireland or the Republic of Ireland. There is no arrangement for appropriate Banns to be called in countries other than these. *Please note that some other countries (e.g. Australia) have a system of Banns, but it is not sufficient for the purposes of UK law.* UK or EEA citizens may therefore be married by Common Licence even if they are resident outside England and Wales but nonetheless have a qualifying connection to the parish where they wish to be married. There is a list of 'EEA' countries at the end of these notes.

- 1.7. Common Licences are sometimes also issued where the parties have doubts as to other legal matters in relation to their proposed marriage. In such instances it is better for the couple to be referred directly to the Registrar rather than to attempt to deal with the situation through a Surrogate, however, the Registrar's primary function is to advise the Bishop and Chancellor in relation to the issue of a Common Licence, rather than to give advice to individuals about their capacity to marry – parties expressing doubts of that kind should be referred to their own legal advisers.
- 1.8. An Archbishop's Special Licence is obtained through the Faculty Office, (020 7 222 5381) not the Diocesan Registry. The Faculty office is very helpful particularly in relation to urgent or emergency situations. The procedures are similar to those in the Diocesan Registry. Special Licences can be issued so as to enable the marriage of housebound or detained persons, since the Archbishop may authorize a marriage in any place and at any time. The Archbishop is able to issue a Special Licence to foreign nationals. (A Common Licence only authorizes a marriage in a specified Anglican place of worship, that is to say a parish church or a building otherwise licensed by the Bishop for marriage.)

## 2. RESIDENTIAL QUALIFICATIONS IN RESPECT OF THE COMMON LICENCE

- 2.1. A person who has a **permanent residence** within the parish of the marriage need not be physically present during the fifteen days prior to the making of the affidavit. Although not resident, anyone on the electoral roll of a parish has the same status as a resident. Such persons can be married by Banns.
- 2.2. A person who is claiming **temporary residence** for the purpose of obtaining a Common Licence must be able to show that they resided within the parish, and have made reasonable use of that residence during the fifteen days immediately preceding the application for the Licence (i.e. the point at which the Affidavit is taken by the Surrogate).
- 2.3. The question of residence is essentially one of fact, and the issue is simply where someone's usual place of residence was at a particular time. You are not expected to act as an enquiry agent or detective but you should not continue if you believe the residential arrangement to be a sham. (Of course in any event you should not proceed if

you think that the relationship itself is a sham, since the Licence is a privilege not a right). Being usually resident in more than one place is not on its own evidence of a sham; and nor is not being physically present in the chosen place residence throughout each of the 15 days. A person is entitled to order their affairs so as to bring themselves within the statutory regime.

- 2.4.** The fact that a period of fifteen days is the threshold is itself an indication that a temporary residence is envisaged as being sufficient, but a person may of course also move into a place 'permanently', and acquire the right to marry there after 15 days (the same person would have acquired immediate residence for the purpose of Banns, but would not necessarily be able to have them called in time for their marriage if that was to be quick). The Registrar will always give guidance on particular situations.
- 2.5.** A person who is away from home for purposes of study or work may well still have a residence in that home. Students are a common instance, but many other situations exist: young people sharing houses away from their family home may have very clear ideas about where 'home' is; members of the armed forces or diplomatic services, or company workers may be posted away for long periods. Obviously, this is a potentially grey area and sometimes the answer depends on the length of separation from the familial home and on the 'intentions' of the parties.
- 2.6.** A person may have more than one place of residence. In previous years, one might enquire as to whether the person still had a bedroom in the family home that was recognizably 'theirs', or whether the point has come that they have established a home elsewhere and are now only visitors in the family home. Happily, nowadays the solution is often to rely on a Qualifying Connection under the Marriage Measure 2008.
- 2.7.** More difficult questions arise when someone makes specific arrangements to reside somewhere, solely so as to qualify for a Common Licence. The Registrar's advice should be sought in such situations but first you should question the couple about where they lived, how long they resided there, how much time they spent there, what evidence they have of staying there. The Registrar will want to know about where they slept and ate particularly if the residence period is short. A corroboratory letter from a bed and breakfast owner or licensee of the public house has sometimes assisted in proving residence. There are anecdotal tales of people leaving a suitcase at public

houses and purporting to establish residence through that alone (i.e. without actually sleeping in the pub). The Registrar would not regard that as being satisfactory, but does not wish to be dogmatic about what is or is not sufficient, because the question is always one of fact.

- 2.8. If in doubt about a residential claim, you should ask questions (delicately!) designed to elicit information to answer the question of fact, but should refer the matter to the Registrar.
- 2.9. A Common Licence can now also be issued on the basis of a qualifying connection under the Marriage Measure 2008. As an experienced clergy person, you will be familiar with these qualifying connections. In many situations the result of the Measure has been that marriages can proceed by Banns and a Common Licence is not needed. But there are still situations where a Licence is issued on the basis of the qualifying connection, rather than the current residential position.
- 2.10. When an application is made, you will need to assess the connection and the evidence for it. You should therefore ask the couple to explain the connection to you, and in cases where the evidence is not clear you should communicate directly with the officiating minister who has referred the couple to you, to ensure that by the time the application is before the Registrar, the position and evidence is clear. If you are not sure about the qualifying connection, you should make sure that this is made clear to the Registrar, who will then seek further evidence, but it is important, pastorally, to ensure that between you and the officiating minister, these questions are resolved so that the couple are not repeatedly asked for information.

### **3. SPECIAL CONSIDERATIONS**

- 3.1. A person claiming to be a widow or widower must present the death certificate of the previous spouse. **A copy of the death certificate must be sent to the registry along with the affidavit.**
- 3.2. A person claiming that a previous marriage has been ended by divorce or has been annulled must provide evidence to that effect by way of a Decree from the County Court or High Court of Justice. (Note : If the annulment has been through an ecclesiastical court of the Roman Catholic Church, a civil divorce must also have been obtained (the

procedures of the RC church in this respect are not recognised as having legal effect in this country). You should always insist on seeing the original decree, which will have an original seal on it, rather than a copy. **A copy of the decree absolute must be sent to the registry along with the affidavit.** You should ensure that the officiating minister has considered the House of Bishops' guidance on the remarriage of divorced persons within the church, and is comfortable with the proposed remarriage.

- 3.3. A member of the Armed Forces may qualify to have Banns read and to marry in the chapel of the establishment where he or she is based, provided the place is registered for marriage. The rule here is that one party to the marriage must have the status qualification of being a member, or former member, of the forces based at the establishment (but a reservist called up for service will qualify, and so will a child or step child of the qualifying person); and that a party has the residence qualification of living in the parish in which the chapel lies.
- 3.4. Both parties wishing to be married **MUST** produce evidence that they are either British Citizens or citizens of a country within the European Economic Area. If they do not have passports (or other identification documents from the EEA), then they should produce their birth certificates, and if born after 1st January 1983, the birth certificate of a parent showing that the parent was born in Britain, and the advice of the Registrar should be sought; (the Registrar may be able to form a view on their status, but may need to require them to secure an Opinion from a qualified immigration specialist).
- 3.5. **If either of the parties is not a British or EEA citizen, they should be sent to the Superintendent Registrar:** they cannot marry by Banns or Common Licence any longer (although in some situations, a Special Licence may still be possible, for example, and especially, for the housebound).
- 3.6. Citizens from counties within the European Economic Area may be married by Banns, as long as they are marrying another EEA or UK citizen **and** are resident in England or Wales, Scotland, Northern Ireland or the Republic of Ireland. It is often simpler for the marriage to be by Common Licence, but it is not essential, and if an officiating minister is satisfied that the couple are both resident in a place where Banns can be called then s/he may proceed by Banns. A list of EEA countries is appended below; Switzerland is included in the list as its citizen's have the same rights as EEA citizens.

- 3.7.** *The Registry no longer requires evidence of 'single status' – the party declares this on oath and that suffices.*
- 3.8.** *The Registry also notes that contrary to previous practice, it is perfectly proper for a licence to issue for the marriage of persons who have been previously married so long as the minister preparing them for marriage has completed the appropriate form contained in the House of Bishops leaflet entitled "Marriage in Church after Divorce".*
- 3.9.** *There is no bar to the issue of a common licence for the marriage of a person who is not baptized, so long as the person concerned makes the declaration referred to below.*
- 3.10.** Both parties to the marriage must be over 18 years of age. (A licence can only be issued to a minor after additional steps are taken, and is a very rare matter indeed: the Registry should be consulted at the earliest stage, but, as well as all other information, the Surrogate should enquire as to the identity of any person having parental responsibility for the minor.)
- 3.11.** Any documents written in a foreign language must have been translated into English by a qualified translator. This is especially important in the case of any document purporting to be a court declaration of divorce (or nullity).
- 3.12.** If one of the parties to the marriage has a foreign domicile it is important that he or she complies with any requirements of the country of domicile in respect of the registration of the marriage. Most countries will recognise marriages conducted according to the law in this country but there may be a requirement to register the fact of the marriage in the country of origin. If parties are resident abroad, they should be advised to check with the appropriate Consulate or Embassy as to what steps should be taken to ensure the recognition of the marriage.

#### **4. THE AFFIDAVIT**

- 4.1.** The Registry no longer supply affidavit forms: the form is provided electronically.
- 4.2.** The Registry keeps a register of marriage licence applications and affidavits.
- 4.3.** You should remember that a licence is only valid for three months: arrangements for swearing the affidavit should be made so that the period before the marriage is less

than three months after the date of the affidavit. In cases of people who are coming from abroad for the marriage, it is often better to arrange for them to communicate directly with the Registry as to the Affidavit so as to avoid last minute glitches

#### 4.4. Points to consider:

4.4.1. Either party may swear the affidavit; it is not normally necessary for the other party to be present. However, you may want both parties to be present so as to be assured that this is a proper case for the grant of a licence in relation to the genuineness of the relationship.

4.4.2. Is at least one of the parties baptised? If one is not baptised that person should sign a statement on the back of the affidavit that *I ..., being an unbaptised person state that I do not reject the Christian faith and that I desire to be married in the Church* “. You should then countersign the statement. **However, un-baptised status, even of both parties, is no longer a bar to obtaining a licence but both parties should sign the statement.**

4.4.3. Age. A person of sixteen years may marry with the consent of both parents or guardian or having obtained the court’s permission despite lack of consent. Persons of eighteen years or more are not required to indicate more than the fact that they are of “full age”. If you have reason to believe someone is claiming an incorrect age, ask to see a birth certificate. In practice, the marriage of minors is rare and you must consult the Registry in the event of being asked to take the affidavit of someone of less than “full age”.

4.5. The Affidavit is in two parts. The reverse side sets out the legal basis on which the marriage is to take place. There may be more than one qualifying connection or course, so please complete it fully. Please complete the document either by typing in the details or by writing **in capitals**. With the best will in the world, handwriting tends to be imprecise at certain points, thereby making life difficult for the Registrar when completing the licence document! The front of the Affidavit should then be completed by you, with the details of the person swearing as to its truth.

4.6. When the wording of the Affidavit and the Schedule are complete, you should ask the person swearing it to read it through carefully and warn them that the oath they are

about to take is a serious matter, and that swearing an oath that is false, or doing so without checking the facts to be true, is a serious matter amounting to perjury for which the penalty may be imprisonment. They should then sign the Affidavit in your presence. Hand them a bible, to be held in their right hand and ask them to repeat after you: *“I swear by Almighty God that this is my name / and this is my signature / and that the contents of this my affidavit including its schedule are true”*. You should point to their name and their signature when going through this Oath.

- 4.7. If a person is blind or illiterate the complete affidavit should be read aloud by you to them and a note appended to the document: *“Sworn at ..... on (date) before me, I having first read the contents to the deponent, he being (blind) (illiterate), who appeared to fully understand the same and made his (signature) (mark) in my presence “*.
- 4.8. If any document is mentioned in the affidavit, the person swearing should point to the document and add *“And this is the document referred to “*.
- 4.9. You should then sign the affidavit yourself.

## **5. OTHER MATTERS**

- 5.1. You will be advised on a yearly basis as to the amount of the fee for the licence. The applicant should give you a cheque for the entire amount and you should then write a cheque payable to “FBC Manby Bowdler LLP” for the amount which will accompany the affidavit.
- 5.2. The original affidavit and supporting documents and the Registrar’s element of the fee should be sent to: The Registry Assistant, FBC Manby Bowdler LLP, 6 – 10 George Street, Snow Hill, Wolverhampton WV2 4DN; Tel DIRECT DIAL 01902 578005.
- 5.3. Outside office hours and in **really urgent cases**, the **Registrar** may be contacted on [numbers which are available to Surrogates]. ***These numbers are confidential and must not be given to other persons. In an emergency the Registrar will issue the licence on the basis of scanned copies of the Affidavit once you have taken them. In some cases of real urgency, licences have been ‘turned round’ within less than an hour. The objective of the Registry is to facilitate marriages wherever possible whatever the cause of the ‘urgency’. This is especially worth noting in cases of***

*forgotten Banns certificates, and the Registrar has issued a licence on more than one occasion where the officiating minister has a full church and a very worried couple! In such situations, if you are contacted in a real emergency and you are unable to contact the Registrar or Deputy Registrar out of hours then provided the party has sworn the Affidavit in front of you, and you are completely happy with all legal issues, then, exceptionally, you may confirm that the licence will be issued on the next working day, but dated on the date of the Affidavit, so as to facilitate the marriage that will by then have taken place.*

5.4. The licence will be prepared by the Registry, signed and sealed, and then sent either to you, to the officiating priest or to the person swearing the affidavit, whichever is desired. Please indicate, when sending affidavits to the Registry, to which address the licence should be sent. The Licence will have to be produced to the officiating minister, but the minister may give the original to the couple at the end of the ceremony, to keep.

5.5. The Licence, once issued, will be valid for three months only.

**Niall Blackie  
Diocesan Registrar**

### **Appendix**

Foreign nationals may marry by Banns or common licence if they have a passport which shows that they are a citizen of these countries:

<b>Austria Belgium Bulgaria Croatia Cyprus Czech Republic Denmark Estonia Finland France Germany</b>	<b>Greece Hungary Iceland Italy Latvia Liechtenstein Lithuania Luxemburg Malta Netherlands</b>	<b>Norway Poland Portugal Republic of Ireland Romania Slovakia Slovenia Spain Sweden Switzerland</b>
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