



CLAS Meeting

with

the Law Commission

19 September 2019



**Law
Commission**
Reforming the law

The Law Commission's 13th programme and the weddings project

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About the Law Commission

- Governed by the Law Commissions Act 1965
 - Section 3 outlines our duty “to take and keep under review all the law ... with a view to its systematic development and reform...”.
- Protocol with the Lord Chancellor and the Welsh Ministers governs the responsibilities of the relevant department in relation to our work.
- We can make recommendations but only Parliament can change the law.



13th programme projects

- Registered land and chancel repair liability
 - Obligation on landowners to pay for certain repairs to the local church
 - LRA 2002 was intended ensure that the liability didn't bind purchasers of land unless it was registered
 - Project to address uncertainty as to its legal status
- A modern framework for disposing of the dead
 - New methods of disposal are unregulated
 - Law is outdated, piecemeal and complex
 - Project to create a future-proof legal framework

Background to the weddings project

- In 2015, we conducted a scoping review of the law governing how and where people can marry in England and Wales.
 - We published our conclusions in December 2015 in a scoping paper.
 - We concluded that the law was in need of wholesale reform.
- 2018 Budget announcement that Government was asking us to conduct a full review of the law
- The project began on 1 July 2019.

Terms of Reference

- Allowing for greater choice within a simple, fair, and consistent legal structure.
- The review will be guided by five principles for reform:
 - Certainty and simplicity,
 - Fairness and equality,
 - Protecting the state’s interest,
 - Respecting individuals’ wishes and beliefs, and
 - Removing any unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples.

Terms of Reference

- What preliminaries should be required?
- Where should a wedding be able to take place?
- Who should be able to solemnize a civil or religious wedding, and how *could* the law allow for weddings by non-religious belief organisations and independent celebrants?
- Should specific vows be required during the ceremony?
- How should marriages be registered?
- What should be the consequences of non-compliance?

Terms of Reference

- Presumptions
 - Religious groups should be able to marry people
 - The definition of “religion” should remain as decided by the Supreme Court in 2013
 - Provisions to protect against sham and forced marriages should not be undermined by changes to the law

Terms of Reference

- Exclusions
 - Who is eligible to marry (eg age, mental capacity)
 - The ability of religious groups to not solemnize same-sex weddings
 - The duty of the Church of England and Church in Wales to marry parishioners
 - The rights and responsibilities of marriage
 - The law of divorce
 - The recognition of foreign weddings
 - Ancillary wedding services (eg flowers, catering)

Government's separate work

- Interim work on approved premises
 - The Government is taking forward separate work to explore what can be done to deliver interim reform within the existing buildings-based system for certain civil ceremonies.
 - The Government will explore the extent to which regulations governing approved premises could be reformed to allow outdoor locations for civil weddings and civil partnership ceremonies, whilst maintaining the requirement that venues be seemly and dignified.
- The Law Commission's review is not limited to approved premises, but will comprehensively look at venues for all weddings.

Government's separate work

- The Sharia Review
 - The Government has committed as part of the integrated communities strategy to exploring the legal and practical challenges of limited reform relating to the law on marriage and religious weddings, based on the recommendations of the Independent Sharia Review. The Government is taking forward this work separately from the Law Commission's wider review of the law on marriage ceremonies.
 - Government will ensure that it considers the work and recommendations of the Law Commission as it takes forward its separate work on the recommendation of the Independent Sharia Review.

Timetable for the project

- We began the project in July 2019.
- We plan to publish our consultation paper in spring 2020, after which will be a broad public consultation.
- The project will last two years. We will make our recommendations for reform to Government in summer 2021.

Problems with the current law and our aim

- The current law dates from 1836 and it is not meeting the needs of many modern couples.

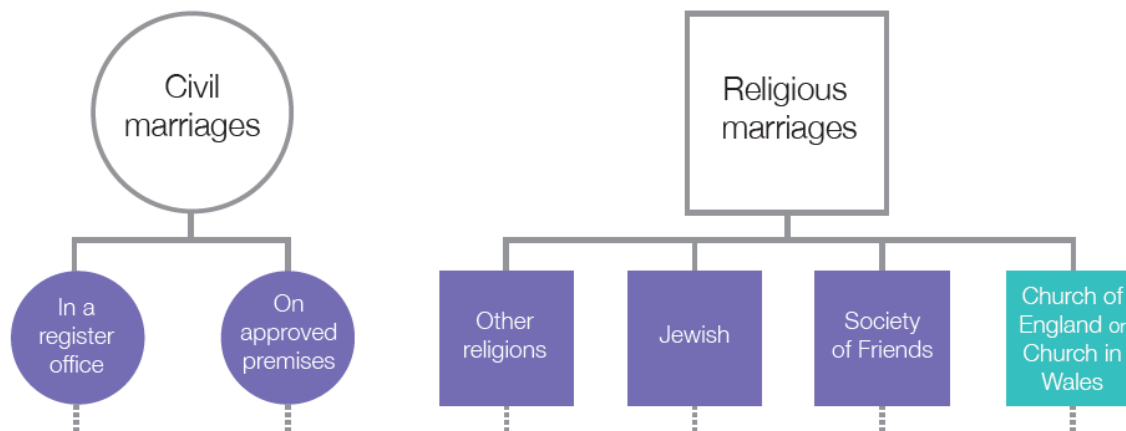


- We will be looking at a reformed law that allow couples greater choice within a simple, fair and consistent legal structure, so that people can have a wedding that is meaningful to them

Problems with the current law

- Unduly complex
 - Different rules depending on the type of ceremony:
Anglican, Jewish, Quaker, other religious group, or civil.

Solemnization of marriages under the Marriage Act 1949



Problems with the current law

- Unduly complex
 - Five different types of legal preliminary, divided between Anglican and civil forms of notice.



We will be looking at

- Universal civil preliminaries – that is, whether everyone should have to give notice in a register office
- Rationalizing civil preliminaries – whether is it necessary to have a separate, Registrar General license
- Aligning the rules governing different types of marriage, including in relation to where the wedding can take place and what is required in the ceremony
 - Should religious weddings be required to take place in registered places of worship?
 - Should a registrar be required to attend weddings in the place of worship for the first year?

Problems with the current law

- Lack of certainty
 - It is not clear at what point a couple is married. The basic requirements necessary for a valid marriage are unstated.
 - Unclear when a marriage will be valid, void, or a “non-marriage”.
 - Whether a marriage is void depends on the subjective state of mind of the parties.
 - The Act doesn’t contemplate the status of a wedding when none of the formalities were complied with.

We will be looking at

- What elements should be necessary for a valid marriage, and at what point should a couple be validly married
- What elements, if they were not complied with, should make a marriage void, and whether the state of mind of the parties should continue to be relevant as a factor.
- Should the law should continue to deem any ceremony (particularly a ceremony conducted according to religious rites) a non-marriage.

Problems with the current law

- Perceived unfairness
 - There is no option for a wedding that is not either religious or civil, that is a non-religious belief wedding.
 - The sharp distinction between civil and religious wedding ceremonies does not accommodate couples with different beliefs.
 - There are different levels of regulation and different consequences for non-compliance with the law depending on the type of ceremony.
 - Most couples cannot marry outdoors or in their own homes.

We will be looking at

- How a scheme could be designed to allow non-religious belief organizations to solemnize weddings (although we will not consider whether they should be able to solemnize weddings)
- How the law could better facilitate interfaith weddings
- Whether there should continue to be a prohibition on religious content in a civil wedding ceremony.
- Rationalization of offences in relation to different types of weddings
- How the law can allow weddings to take place in a wider range of venues, including outdoors

Problems with the current law

- Inefficiencies
 - Publication of marriage by display on a notice board at the register office, or by banns being called in parish of residence.
 - The requirement that all civil weddings be attended by both a superintendent registrar and registrar.
 - The payment of a £2 to every official for the registration of every religious wedding, amounting to thousands of cheques being written and cashed every year.

We will be looking at

- How upcoming weddings should be publicized, and how impediments can best be discovered
- Whether the presence of both a superintendent registrar and registrar is required at all or some civil weddings
- How registration can be reformed to be efficient and cost effective, including who should be responsible for keeping a record of the marriage and whether electronic registration is possible

Particular issues

- How can the system for notice be improved?
 - Should there be universal civil preliminaries?
 - What is the best way to discover legal impediments to a marriage?
 - Should there continue to be residency requirements to give notice?
- Where should weddings, particularly religious weddings, be permitted by law to take place?

Particular issues

- If religious groups are not required to have a registered place of worship, what other criteria should a religious body have to meet?
 - Identified rites, usages or customs relating to marriage?
 - Certain number of worshippers?
 - Independence from other religious groups?
 - In existence for a certain period of time?
- Should all religions be subject to the same criteria or scheme for recognising officiants of the religion? Should there continue to be exceptions, or prescribed bodies?

Particular issues

- Can the role of the officiant be rationalised so that it applies to all weddings?
 - ensuring the parties freely consent to marry each other?
 - ensuring any requirement as to the content of the ceremony are satisfied?
 - ensuring that the marriage is registered?
- How can registration be improved?
 - Who should be responsible for keeping records?
 - How could technology be used to improve the process?

What's next

- We will publish our consultation paper in spring 2020





Update on current policy matters

19 September 2019

Spending Review 2019



- £13.8bn of departmental spending announced for 2020-21, mostly to increase the budgets of public services.
- A full multi-year spending review will be conducted in 2020 for capital and resource budgets beyond 2020-21.
- Departmental allocations include:
 - **Charity Commission:** annual budget to increase to £27.3m in 2020-21.
 - **International Aid:** the international aid budget has been protected as 0.7% of GNP.
 - **DCMS:** 4.1% increase in budget.
- Queen's Speech due on 14 October 2019.
- Budget date TBC.

Other updates

- Exception from registration
- The *Harpur Trust* case on part-year workers
- VAT updates
 - Cathedrals
 - Making Tax Digital
- NCVO's Charity Tax Commission
- Listed Places of Worship Grant Scheme