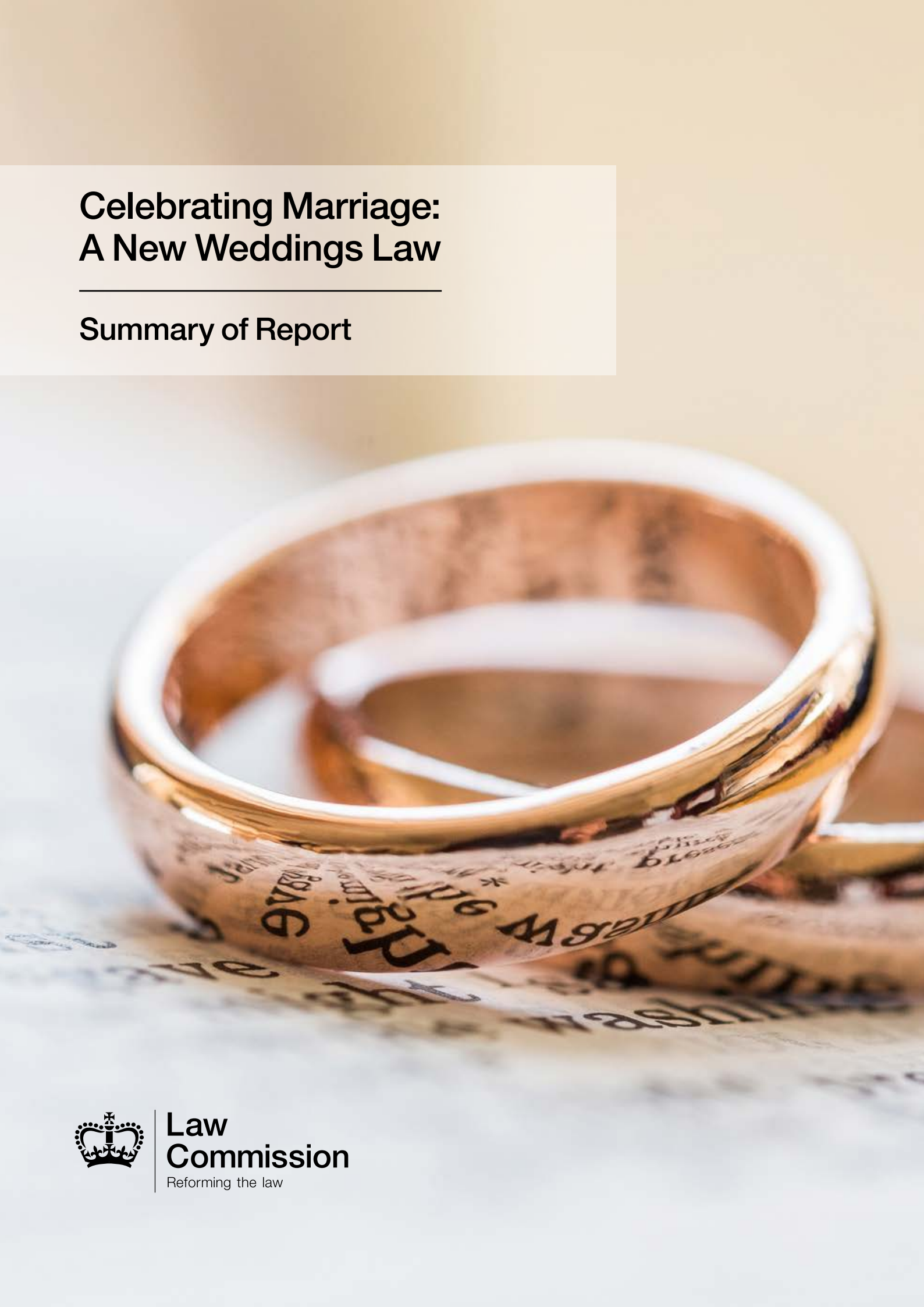
Celebrating Marriage: A New Weddings Law

Summary of Report



Law Commission
Reforming the law

Introduction

Weddings are important to people. They are important to the couples getting married, and to their families, friends, and communities. This importance is reflected in how couples celebrate their weddings: with rites or rituals that honour their traditions or beliefs, and in ways that reflect their lives and relationship together.

Weddings are also important legally. A wedding creates a new legal relationship between the couple, a relationship with significant legal duties and responsibilities. It is therefore important for the couple to have certainty as to whether they are legally married.

And because getting married creates a new legal relationship, weddings are important to the state. The state needs to know whether a couple are eligible to marry (in other words, whether there are any impediments to the marriage) and whether a couple have in fact married. The state also needs to protect against the risk of forced and predatory marriages, and sham marriages.

We have found that weddings law is not working for many couples. The law is failing to facilitate weddings, by imposing unnecessary restrictions. These place barriers in the way of couples marrying in a way that has meaning for them. While many people marry happily according to their wishes, many others cannot. Unnecessary regulation means that each year thousands of couples cannot have a legally recognised wedding in a location that is meaningful to them. Others cannot have a ceremony which contains the vows, rituals and music that best reflects their beliefs and choices.

As a result, weddings law is failing to support marriage. It results in many couples choosing to celebrate in a way that the law does not recognise. Some of these couples will have – and pay for – two ceremonies: one which complies with the law, and one which reflects their beliefs or values. Some may travel to another country which permits a wider range of weddings. But others will just have a ceremony that is not recognised by the law, either not realising that the ceremony they have had is not legally binding, or knowingly sacrificing the protections of legal marriage. That can leave people vulnerable at the end of the relationship, whether on separation or on their partner's death. That vulnerability is experienced, particularly, by women and any children of the relationship.

Even those whose weddings plans are supported by the current law can face delay and unnecessary expense. Restrictions limit couples' choice of venues, and for the majority, who currently have a civil wedding, some licensed venues can be hugely expensive and booked up years in advance. Cheaper "no frills" options are available in theory in register offices, but limited slots can be hard to secure and restrictions (for example, enabling only the couple and their witnesses to attend) can be off-putting and make simpler weddings feel second-rate. On top of this, inefficiencies in the law limit its effectiveness and contribute further to cost. Needless regulation and bureaucracy contribute to some couples having to spend more on the legal aspects of their wedding than other couples must do. Complexity and inconsistency mean that different couples are bound by different rules, leading to confusion and feelings of unfairness.

Some couples, faced by these difficulties and unable to have the wedding that they want or can afford, either delay getting married or decide not to bother at all.

A complex and outdated weddings law

Many of the problems with current weddings law can be attributed to its antiquity and complexity. The current law is contained in the Marriage Act 1949, but its fundamental structure dates from the 18th and 19th centuries, when virtually everyone lived, married and died within a single community, and most people shared the same traditions and beliefs. Many of the current rules were devised to reflect a way of life that bears little resemblance to life today. The law restricts how couples are permitted to celebrate their weddings for historical, rather than current policy, reasons. The system has become stuck in time. It does not meet the needs of the diverse society which makes up England and Wales today.

Under the current law, a maze of different rules apply to different groups. Couples must choose between a civil wedding and a religious wedding. Religious weddings are further divided by the law into different types: Anglican (meaning the Church of England and the Church in Wales), Jewish, Quaker, and any other religious group. Each of these categories are subject to different sets of rules. The law has been developed incrementally over time, like a house that has been repeatedly extended, to cater for weddings by different groups and in different locations. The result is a law that is inconsistent and complicated, inefficient, unfair, and needlessly restrictive.

A new scheme

We recommend comprehensive reform from the foundations up: an entirely new scheme to govern weddings law. Our recommendations ensure, as far as possible, that the same legal rules apply to all weddings, whether the wedding consists of a civil ceremony, a religious ceremony or (if permitted by Government) a non-religious belief ceremony, for example, a Humanist ceremony.

Our recommendations transform the law from a system based on regulation of the building in which the ceremony takes place, to one based on regulation of the officiant responsible for the ceremony. Every wedding will be attended by an officiant, who will have specific legal obligations in relation to the wedding. In many instances, the officiant will be a person who already has a legal role in relation to the wedding; for example, a registration officer, a member of the Anglican clergy or an "authorised person" in a place of worship. This fundamental change, and the other ancillary reforms that we recommend, will give couples more freedom to celebrate their weddings in accordance with their own beliefs, whilst upholding the important protective elements of the law.

Two key features

Regulation of the officiant, not the location

Basing regulation on the officiant marks a significant shift in focus from the current law, under which regulation is generally based around the building in which the wedding can take place. The change would remove many of the unnecessary restrictions of the current law, and help to address unfairness in the treatment of different groups.

Universal rules for all weddings

With very few exceptions, the same rules would apply in our scheme to all weddings. Again, that is different to the current law, under which different rules often apply to Anglican weddings, Jewish and Quaker weddings, other religious weddings, and civil weddings.

Key benefits

Under our recommendations, all couples, as well as all religious groups and (if enabled by Government to conduct weddings) non-religious belief groups, will have the freedom to decide where and how their weddings will take place.

The key benefits of our recommendations

Convenience

- Couples will be able to give notice of their intended wedding online, and to choose the registration district where they are then interviewed by a registration officer.

Publicity

- Notice of upcoming weddings will be published online so that the information is accessible to the wider community.

Respecting beliefs

- Couples will be able to have a wedding ceremony that reflects their values and beliefs, by:
  - having a religious ceremony in a venue other than a place of worship and without having to incorporate prescribed words into the ceremony;
  - having a religious ceremony led by an interfaith minister that contains aspects of each of the couple's beliefs;
  - having some religious elements, such as hymns and prayers, incorporated into their civil ceremony, as long as the ceremony remains identifiably civil.
- If permitted by Government to conduct weddings, non-religious belief organisations (such as Humanists) would be able to do so on the same basis as religious organisations.

Choice

- Couples will be able to get married in a much wider variety of locations, including:
  - outside, in a place unconnected with any building, such as in a forest, on a beach, or in a local park;
  - in affordable local venues, such as community centres and village halls, as well as in their own homes;
  - in international waters on cruise ships that are registered in the UK.

New options

- If permitted by Government to conduct weddings, independent officiants (that is, officiants who are not registration officers and are not affiliated to a religious or non-religious belief organisation) will be able to conduct civil weddings.

Certainty

- There will be much greater clarity as to the consequences that follow when a couple has not complied with the required formalities, and fewer weddings conducted according to religious rites will result in a wedding that the law does not recognise at all.

At the same time as giving couples freedom to decide where and how their weddings will take place, our recommendations ensure that the legitimate interests of the state in weddings are protected. In particular, the robust preliminaries process that we recommend strengthens protection against forced and predatory marriages and maintains the existing protections against sham marriages.

Our recommendations will be the most comprehensive overhaul to weddings law since at least the 19th century. But they are neither radical nor untested. They reflect the approach already adopted by a number of other countries, including those close to home – Scotland, Northern Ireland, Ireland, Jersey and Guernsey. Understandably, given the significance of the changes, some who responded to our Consultation Paper expressed a number of concerns as to the possible consequences of our scheme. In assessing these concerns, we have been able to draw on experience in these other countries. That experience has enabled us to have confidence that the recommendations we make will achieve the purposes of our reforms, without giving rise to unintended consequences.

While our reforms will give couples much greater choice about where their weddings can take place and the form and content of their ceremonies, that choice is not unrestrained. For all weddings, our recommendations ensure that the dignity and safety of the ceremony is protected. Beyond that, religious organisations and (if enabled by Government to conduct weddings) non-religious belief organisations will be able to impose their own requirements as to where weddings overseen by their officiants take place, and as to the form and content of their ceremonies. The special provisions which apply to religious organisations and officials will continue to ensure that they are not required to conduct same-sex weddings.

Nothing in our recommendations will prevent a couple from choosing the kind of wedding that is available under the current law and which is celebrated in accordance with long-cherished forms. Nor will our recommendations require any religious group to conduct a wedding in a form or in a location which is contrary to their beliefs or practices. While the changes we recommend to the legal regime are significant, many wedding ceremonies would not appear any different to those that take place today.

Terms we use in this Summary

"Anglican": the Church of England and the Church in Wales.

"Approved premises": under the current law, premises at which civil weddings can take place, following approval by a local authority under the Marriages and Civil Partnerships (Approved Premises) Regulations 2005.

"Banns": a form of Anglican preliminaries for weddings in Anglican churches or chapels, involving an announcement in church of an intended marriage.

"Belief ceremony" or **"belief wedding":** under our recommended scheme, a ceremony officiated at by a belief officiant (a member of the Anglican clergy or nominated officiant). A belief ceremony could either be a religious ceremony or (if enabled by Government) a non-religious belief ceremony.

"Belief officiants": under our recommended scheme, Anglican clergy and nominated officiants.

"Civil ceremony" or **"civil wedding":** under the current law, those weddings conducted in a register office or on approved premises. Under our recommended scheme, weddings officiated at by a registration officer, a maritime officiant, or (if enabled by Government) an independent officiant.

"Civil officiants": under our recommended scheme, registration officers, maritime officiants and (if enabled by Government) independent officiants.

"Common licence": a document issued by the Church of England or Church in Wales, as part of one of the three types of Anglican preliminaries. A common licence authorises a wedding in an Anglican church or chapel with no waiting period.

"Forced marriage": a marriage which one or both of the parties entered into without free and full consent due to violence, threats or any other form of coercion, or without the mental capacity necessary to consent to the marriage (or, once the Marriage and Civil Partnership (Minimum Age) Act 2022 is in force, before their 18th birthday), as under section 121 of the Anti-social Behaviour, Crime and Policing Act 2014.

"General Register Office": the offices and staff of the Registrar General which oversees the civil registration in England and Wales of births, deaths and marriages.

"Marriage document": the document issued after Anglican preliminaries and returned for registration after the ceremony, introduced under the schedule system under the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019.

"Non-qualifying ceremony": a ceremony that results in a marriage that it is neither a valid nor a void marriage because the wedding ceremony did not comply with the required formalities under the law.

"Predatory marriage": a term used to describe weddings in circumstances where one person marries another, often a person who is elderly or lacks capacity, as a form of financial abuse. If the person lacks the mental capacity to marry, a predatory marriage may also be a forced marriage.

"Preliminaries": the steps that must be taken before a couple is authorised to have a legally binding wedding. Preliminaries ensure that there are no impediments to a couple marrying each other, and help to detect sham marriage and guard against forced marriage. Civil preliminaries are conducted by superintendent registrars and the Registrar General; Anglican preliminaries are conducted by the Church of England and Church in Wales.

"Relevant national": a British citizen, an Irish citizen, a person with settled or pre-settled status under the EU Settlement Scheme, or a person who has a decision pending on an EU settlement scheme application that was submitted on or before 30 June 2021. See section 62(1) of the Immigration Act 2014.

"Schedule": a document issued by the registration service as part of civil preliminaries, which authorises the couple's wedding after the parties have given notice and a waiting period has elapsed, and is used to register their marriage. Under the current law, a schedule is the only type of document (apart from the Registrar General's licence) that provides legal authority for civil weddings, Jewish and Quaker weddings, and other religious weddings in registered buildings. It can also be used instead of Anglican preliminaries to authorise an Anglican wedding in a church or chapel.

"Special licence": a document issued by the Archbishop of Canterbury under the Ecclesiastical Licences Act 1533, as part of one of the three types of Anglican preliminaries. A special licence can authorise an Anglican wedding to take place at any location named in the licence, with no waiting period.

"Universal civil preliminaries": a system in which all couples would be required to undergo civil preliminaries before getting married.

"Void marriage" or "invalid marriage": a void marriage is invalid or a nullity, meaning the marriage is treated as never having come into existence. The parties to a void marriage are entitled to apply for financial relief, as if they were divorcing; this is not the case for parties to a non-qualifying ceremony.

"Voidable": a marriage is voidable if certain criteria, for example, non-consummation of the marriage, can be established. Unlike a void marriage, a voidable marriage is a valid marriage until it has been annulled by a decree of nullity.

About our project

In 2015, the Law Commission conducted a scoping review of weddings law, to identify the issues that would need to be addressed in order to develop proposals for reform. We published our conclusions from this preliminary work in *Getting Married: A Scoping Paper*.

Our full review of weddings law began in July 2019. The Terms of Reference for our review (set out in Appendix 1 to our full Report) were informed by our scoping project and set out five principles that should underpin our recommendations 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.

The objective of our project has been to identify reforms to weddings law that will allow for greater choice within a simple, fair and consistent legal structure. Weddings law comprises all of the formalities which a couple is required to go through in order to have a legally recognised marriage. As a result, the project has considered all of these formalities:

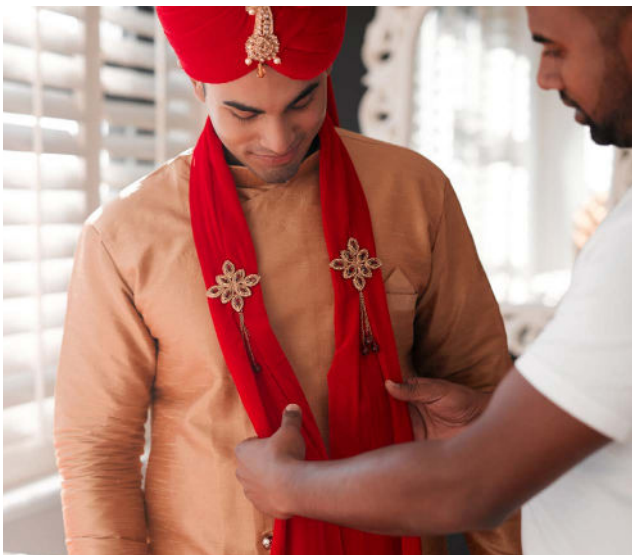
- The legal preliminaries that should be required prior to a wedding.
- Where weddings should be able to take place, considering, for example, weddings outdoors, at sea, and on military sites.
- How a new scheme could include weddings conducted by non-religious belief organisations and independent celebrants (if Government decides to enable either or both these groups to conduct legally binding weddings).
- Whether specific vows should be required during the ceremony.
- How marriages should be registered.
- What the consequences should be for couples who do not comply with any of the requirements.

The following matters are not governed by weddings law and so are outside the scope of the project:

- Who is eligible to marry (for example, based on age or mental capacity).
- The rights and responsibilities of marriage.
- The law of divorce.
- The recognition of foreign weddings.
- Ancillary wedding services (for example, flowers, catering, insurance).
- The formation of civil partnerships.

Finally, there are some policy matters that are excluded by our Terms of Reference:

- The introduction of universal civil marriage.
- The duty of the Church of England and the Church in Wales to conduct marriage ceremonies of eligible couples.
- Whether the groups who can solemnize marriages should be expanded to include non-religious belief organisations or independent celebrants.
- Whether or not religious groups should be obliged to solemnize marriages of same-sex couples, which was decided by Parliament following wide public debate.



The Consultation Paper

We published our Consultation Paper in September 2020 and held a four-month public consultation. Due to the Covid-19 pandemic, we held our consultation online. We held a number of live Q&A sessions open to members of the public, as well as roundtables and meetings with those with a particular interest in weddings law. We had a huge response to our consultation, with more than 1,600 consultation responses. Consultees represented a wide range of groups and individuals. While most consultees were individual members of the public, we also heard from individuals and groups who have a professional involvement in weddings.

Perhaps unsurprisingly, given its complexity, there is widespread misunderstanding of the law. During our consultation we have encountered various myths about what the current rules are, why they were created and how they work in practice. For example, last minute shouted objections before the vows take place are commonplace in films. But they are extraordinarily rare in reality. Indeed, they might not happen at all: during our work, not a single concrete example has emerged. There is a widespread misconception among consultees that the law requires 'open doors' to enable this type of intervention. In fact, only some religious weddings (those other than Anglican, Jewish and Quaker ones) and civil weddings are required to be open to the public, and that rule was a legacy from 17th century restrictions on Protestant Dissenters meeting for worship.

Government's separate work and developments during the project

During the course of the project, there have been a range of developments relevant to our review, including separate work by Government.

Introduction of the schedule system

In May 2021, Government introduced a schedule system for marriages in England and Wales under the Registration of Marriages Regulations 2021. We welcome these reforms, and throughout our project have ensured that our recommendations would be compatible with them.

Evidence about religious-only weddings

In 2018, the Independent Review into the Application of Sharia Law in England and Wales recommended amendments to the Marriage Act 1949 so that celebrants of marriages would face penalties should they fail to ensure that the marriage is also civilly registered. Following this review, Government committed in its integrated communities strategy to explore the legal and practical challenges of limited reform relating to the law on marriage and religious weddings.

In 2021 and 2022, an independent research project funded by the Nuffield Foundation published its findings about why couples marry in non-legally binding ceremonies. Entitled *When is a wedding not a marriage? Exploring non-legally binding ceremonies*, the study involved focus groups and

interviews with individuals who had gone through a non-legally binding ceremony and individuals who conduct such ceremonies.

We understand that Government will ensure that it considers the work and recommendations of the report of the Independent Sharia Review, the Nuffield project report, and our Report when considering the case for comprehensive and enduring reform.

Humanist weddings

Prior to, and throughout our project, there has been an active campaign to permit non-religious belief organisations, such as Humanists, to conduct legally binding wedding ceremonies.

The Marriage (Same Sex Couples) Act 2013 gave Government the power to make provision for marriage by organisations whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics. Following its own consultation, Government decided not to exercise the power to permit marriage by non-religious belief organisations, and instead asked the Law Commission to conduct its scoping project.

In May 2018, the All-Party Parliamentary Humanist Group published a report about its inquiry into the legal recognition of Humanist weddings. It recommended the legal recognition of Humanist weddings, to be achieved by Government using its power under the 2013 legislation, arguing that the case for such reform is overwhelming.

More recently, six couples challenged the current law's lack of recognition of Humanist weddings on human rights grounds. In its 2020 judgment, the High Court determined that weddings law treats Humanist couples differently to those who hold religious beliefs; however, it determined that the difference in treatment was justified because of the wider review of weddings law that was taking place. The court agreed that Government had demonstrated that there was a legitimate aim in seeking to address differences in treatment as part of a wholesale reform of weddings law.

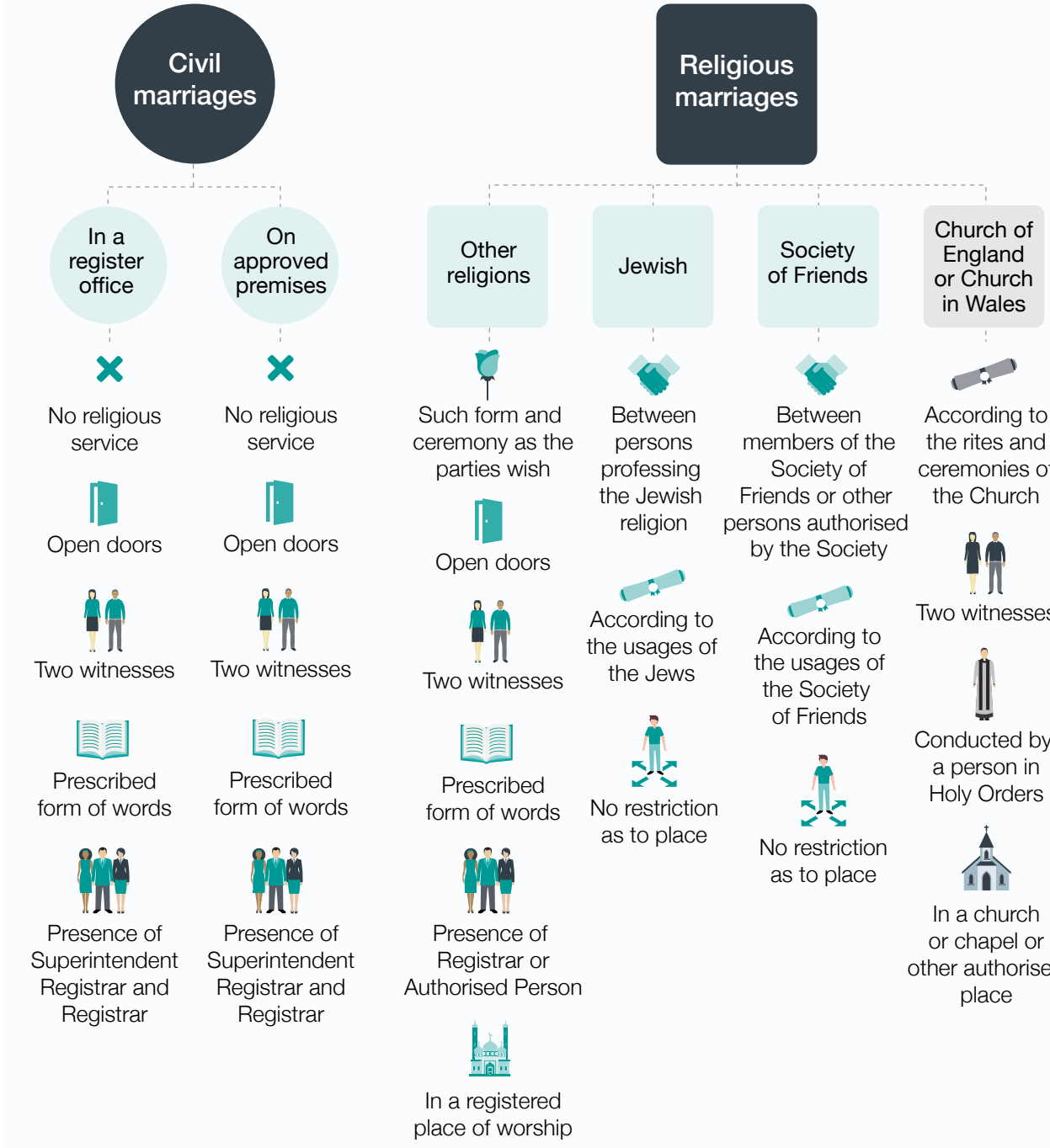
The High Court decision has not affected our review. As specified in our Terms of Reference, this project has not considered the question of whether non-religious belief organisations, including Humanists, should be able to conduct legally binding weddings. In accordance with the Terms of Reference we make recommendations which would allow weddings conducted by non-religious belief organisations to be legally recognised in our new scheme, should Government decide to enable them to do so.

Reform to allow weddings to take place outdoors

When this project was announced, Government also announced that it would take forward separate work, alongside our project, to explore the extent to which regulations governing approved premises could be reformed to allow outdoor locations for civil weddings and civil partnership ceremonies. This commitment, and the significant impact that the Covid-19 pandemic has had on couples and the weddings industry, led Government to introduce reforms permitting civil weddings to take place outdoors on the grounds of approved premises. Government also intends to make similar provision for weddings to take place on the grounds of registered places of worship and Anglican churches and licensed chapels. These reforms supplement the special rules for Jews and Quakers in allowing weddings to take place outside buildings, but in a much more restricted way than under our recommended scheme.

The current law

Solemnization of marriages under the Marriage Act 1949



◆ Under Part III of the Marriage Act 1949: Marriages under Superintendent Registrar's Certificate

◆ Under Part II of the Marriage Act 1949: Marriage according to the rites of the Church of England

The case for reform

The law is ancient and has developed incrementally over time to cater for weddings by different groups. Like a house that has been repeatedly extended, a scheme originally designed for a particular type of wedding has expanded over the last 250 years to cover a variety of other situations, resulting in an array of mismatched rules. The result is a law that is inconsistent and complicated, inefficient, unfair, and needlessly restrictive.

Examples of problems with the current law

Inconsistency and complexity

The rules that apply to weddings are inconsistent, with different rules applying to different types of wedding. For example, there are no standard rules governing where a wedding can take place.

- Jewish and Quaker weddings can take place in any location.
- Anglican weddings must generally take place in a church or public chapel, but exceptionally can take place anywhere on the authority of the Archbishop of Canterbury's special licence.
- All other religious weddings must take place in a registered place of worship.
- Civil weddings must take place in a register office or on approved premises or their grounds.

Inefficiency

The current law requires that a person giving notice by way of civil preliminaries must do so in person in the registration district where they have resided for the past seven days. This residency requirement is not serving any clear purpose.

Notice of the intended marriage is then publicised by posting it at the local register office. In today's largely urban and mobile society, posting the notice in the local register office is not an effective way of discovering legal impediments to a marriage (such as a prior existing marriage).

Unnecessary and costly regulation

The current law has many detailed regulations about the premises that can be approved for civil weddings. These rules and the application process often impose significant costs on venues wanting to host civil weddings. The costs of approval and compliance may prove too expensive for some small businesses or community venues, who therefore are not able to offer these services to the public.

The purpose of these regulations is not clear. They do not appear necessary from a safety or regulatory perspective. But the result seems to limit competition among businesses and to reduce choice and increase costs for couples getting married.

Unfair and restrictive

The law requires couples to have either a religious wedding or a civil wedding.

- There is no option to have a wedding according to beliefs that are non-religious.
- The law does not accommodate couples who have different beliefs. Couples wanting an interfaith wedding will generally have to choose between a ceremony that reflects the faith or beliefs of one and a ceremony that reflects the faith or beliefs of neither.
- The law does not allow couples to include elements in a civil wedding that reflect religious beliefs.
- The rules governing where various weddings can take place only accommodate couples whose beliefs dictate that they marry in particular types of venue. The rules restrict couples' choice as to where to get married without good reason.
- Some religious groups do not see their place of worship as the best or most meaningful place to get married. Some religious groups do not have a place of worship (or have premises that are too small or too far away for some members to use) or do not worship indoors.
- Couples having a civil wedding are also limited. Many would prefer to marry in locations that are meaningful to them, where a legally recognised wedding cannot currently take place.

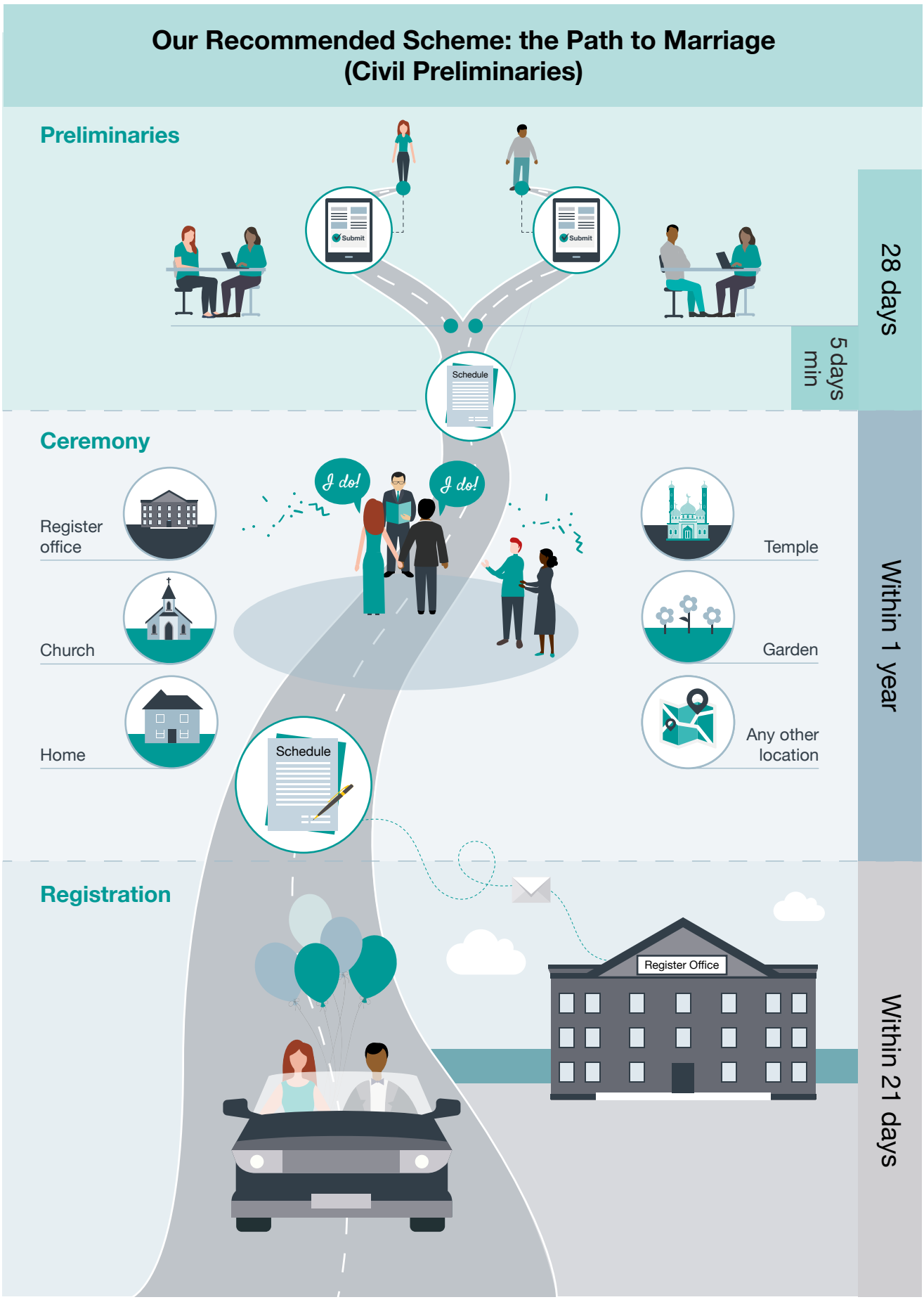
Our report and this summary

In our Report, we make recommendations for reform covering the three key stages to the legal process of getting married:

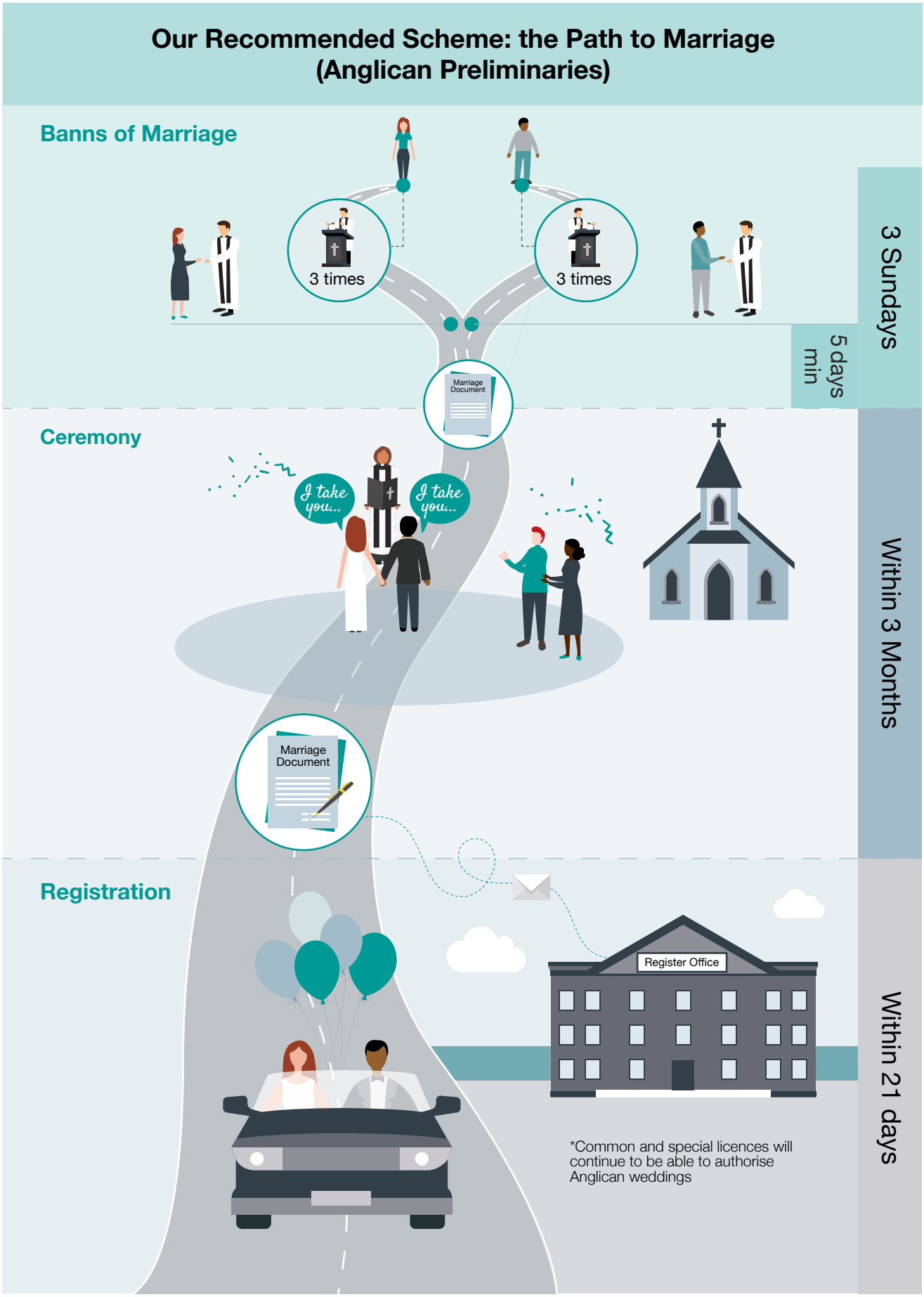
1. the preliminaries, through which legal authorisation for a wedding to take place is obtained;
2. the ceremony, including where a wedding can be held and the legal requirements as to the content of the ceremony; and
3. registration of the marriage.

In the remainder of this summary, we set out the main features of our scheme in each of these three key stages. We then explain our recommendations in relation to the validity of marriages where the legal formalities for a wedding have not been complied with (including the consequence for religious-only weddings). Finally, we outline our recommendations for emergency measures to allow weddings law to better accommodate any future national emergency, based on the experience of Covid-19. We do not in this summary discuss our recommended reforms to certain important, but unusual, types of wedding: weddings for the housebound, terminally ill and those in prison. Nor do we discuss the changes that could be made to the process for converting an existing civil partnership into a marriage. All of these issues are covered in depth in the full Report.

Our Recommended Scheme: the Path to Marriage (Civil Preliminaries)



Our Recommended Scheme: the Path to Marriage (Anglican Preliminaries)



Overview of our officiant-based scheme

The preliminaries

The preliminaries – the steps that a couple must take before the legal authority is issued for their wedding to go ahead – play a crucial role in the process of getting married. Their role is to ascertain, so far as possible, that the couple is free to marry each other, and to identify and prevent forced and sham marriages, including predatory marriages where the victim lacks the capacity to consent to a marriage.

Under our scheme, before getting married, couples will continue to be required to give notice of their intention to marry. Most couples will give notice to the registration service through the system of civil preliminaries. That is the case whether they are having a civil wedding or a belief wedding. However, for couples having an Anglican wedding, it will remain possible to give notice to ecclesiastical authorities through Anglican preliminaries, usually by having banns called.

In the summary that follows we assume that both of the couple are relevant nationals or are exempt from immigration control. The additional requirements that apply to those who are not exempt from immigration control are discussed in our Report.

Civil preliminaries

Under the system of civil preliminaries, each of the couple will need to give notice to a registration officer. They will be able to give notice in any registration district. People will no longer be confined to giving notice in their district of residence, so could choose to give notice in a district that is more convenient for them; for example, the district in which they work, are visiting, or in which they intend to get married.

It will also be possible for people to give their initial notice online, rather than in person.

The ability to give initial notice online will be particularly convenient for some couples. It will enable people living overseas but planning to get married in England and Wales to begin the preliminaries process from home. A couple who live overseas will then be able to get married in England and Wales in a single, short trip, although they will need to be in England and Wales for a minimum of five days before their wedding. Making it easier for couples who live overseas to marry in England and Wales will assist British couples who live overseas and want to celebrate their weddings with friends and family at home. It will also make it possible for other couples to come to England and Wales for their wedding, just as they are already able to do in Scotland, to the benefit of the economy.

As part of the preliminaries process, the couple will be required to be interviewed by a registration officer in person, and separately from each other. This in-person interview plays an important role in helping to identify where one of the couple is being forced or coerced into marriage, including situations where one of the couple lacks capacity to marry.

Where a couple gives notice in person, the interviews with the couple will be able to take place at the same time. Where a couple gives notice online, the in-person interviews will need to take place a minimum of five days before the schedule authorising the wedding is issued.

Once both of the couple have given notice, a 28-day waiting period must be completed before they can be granted authority to marry (the period provided under the current law).

During that period, notice of the wedding will be publicised online and will be available to access at registration offices so that impediments to the marriage taking place can be identified and raised. The publication of notices online will make it much easier for those who know of an impediment to discover an intended wedding. It also serves to emphasise that marriage is a public matter and the fact a couple intend to marry is something that is regulated by law. There will be those, however, for whom publication of their wedding would pose risks; for example, the risk of an attack by a violent ex-partner or a potential perpetrator of "honour"-based abuse. Therefore, a couple will be able to apply for exemption from their wedding being publicised online where online publication would put the couple, or a member of their household or family, at risk of harm.

Where someone (typically a family member, or friend, or someone acting in a professional capacity) has legitimate grounds for concern that another person may be at risk of being coerced into marriage, it will be possible for them to ask for a caveat to be recorded on the system before any notice of marriage has been given. Provision to do so will provide additional protection against the risks of forced and predatory marriages.

Once preliminaries have been completed, and the 28-day waiting period has passed, the couple will be issued with their schedule. As the focus of regulation under our scheme is the officiant, the schedule will identify the individual officiant or type of officiant who will be responsible for officiating at the wedding. There will be a process for amending the schedule in the case of changes to the

individual officiant or type of officiant, and the possibility of last-minute substitutions that may be necessary where the officiant is unexpectedly unable to attend the wedding. The schedule will be valid for 12 months from the date of issue.

It will continue to be possible for the 28-day waiting period to be reduced, including to allow a wedding to take place with no waiting period. Provision to do so is necessary, for example, to facilitate weddings in cases where one of the couple is terminally ill.

Anglican preliminaries

Under our scheme, banns, common licences and special licences will continue to be legal preliminaries to Anglican weddings, that is to say, weddings that are officiated by Anglican clergy.

In particular, we make recommendations for reform of banns and common licences, to make these preliminaries more robust in providing protection against forced and predatory marriages. We do not make any recommendations in relation to special licences, the grant of which is, and will remain, at the discretion of the Archbishop of Canterbury.

Under our recommendations, couples using Anglican preliminaries will have the same obligation to provide documentary evidence as couples using civil preliminaries. The provision of documentary evidence is important as a means of ensuring that each of the couple is eligible to marry.

A couple applying for a common licence will each be required to make a separate declaration that they are free to marry, and those marrying after banns will each be required to have a separate meeting with the incumbent in their parish (or parishes, if they do not live in the same parish) of residence. These safeguards against forced and predatory marriages are particularly important where the marriage is by common licence, given that such licences involve no prior publicity and so do not allow any scope for objections to be made. However, we also think that such safeguards should be in place where the marriage is by banns. While banns are intended to publicise the intended wedding and enable objections to be made, their efficacy will largely depend on whether the couple is known to those attending the church or churches in which banns are published. The meeting need not take place before the banns are called, but must take place at least five days before the marriage document is issued.

Where banns are used, they will be required to be called only in the couple's parish(es) of residence. That means that if the couple live in different parishes the banns will need to be called in both, but if they live in the same parish the banns will only need to be called there. There will no longer be a legal requirement for the banns also to be called in the parish where the wedding is to take place. It will be a matter for the Anglican church to decide whether banns should also be called in the parish where the wedding is to take place for ecclesiastical purposes. Where it is not possible for the banns to be called in the couple's parish or parishes of residence, then the couple will need to obtain a common licence to complete Anglican preliminaries, or use civil preliminaries.

Once banns have been completed, or a common or special licence obtained, a marriage document is issued. The marriage document performs a similar function to the schedule that is issued on completion of civil preliminaries.

Predatory marriage

During our project, significant concerns have been raised with us, and in Parliament, around predatory marriage. Concerns have centred around circumstances where elderly people, including those with dementia, have married without the knowledge of their family. The effect of the marriage is to revoke the person's will, with the result that their spouse benefits on the elderly person's death under intestacy rules, in priority to that person's children and other family members. We have heard of cases where there are concerns that weddings have taken place when a person did not have capacity to marry.

Under the current law, causing a person who lacks capacity to marry to enter into a marriage is a criminal offence of forced marriage. That offence is not affected by our recommendations. But it is, of course, better to prevent such weddings from taking place. Our recommendations will bolster the opportunities to prevent predatory marriages.

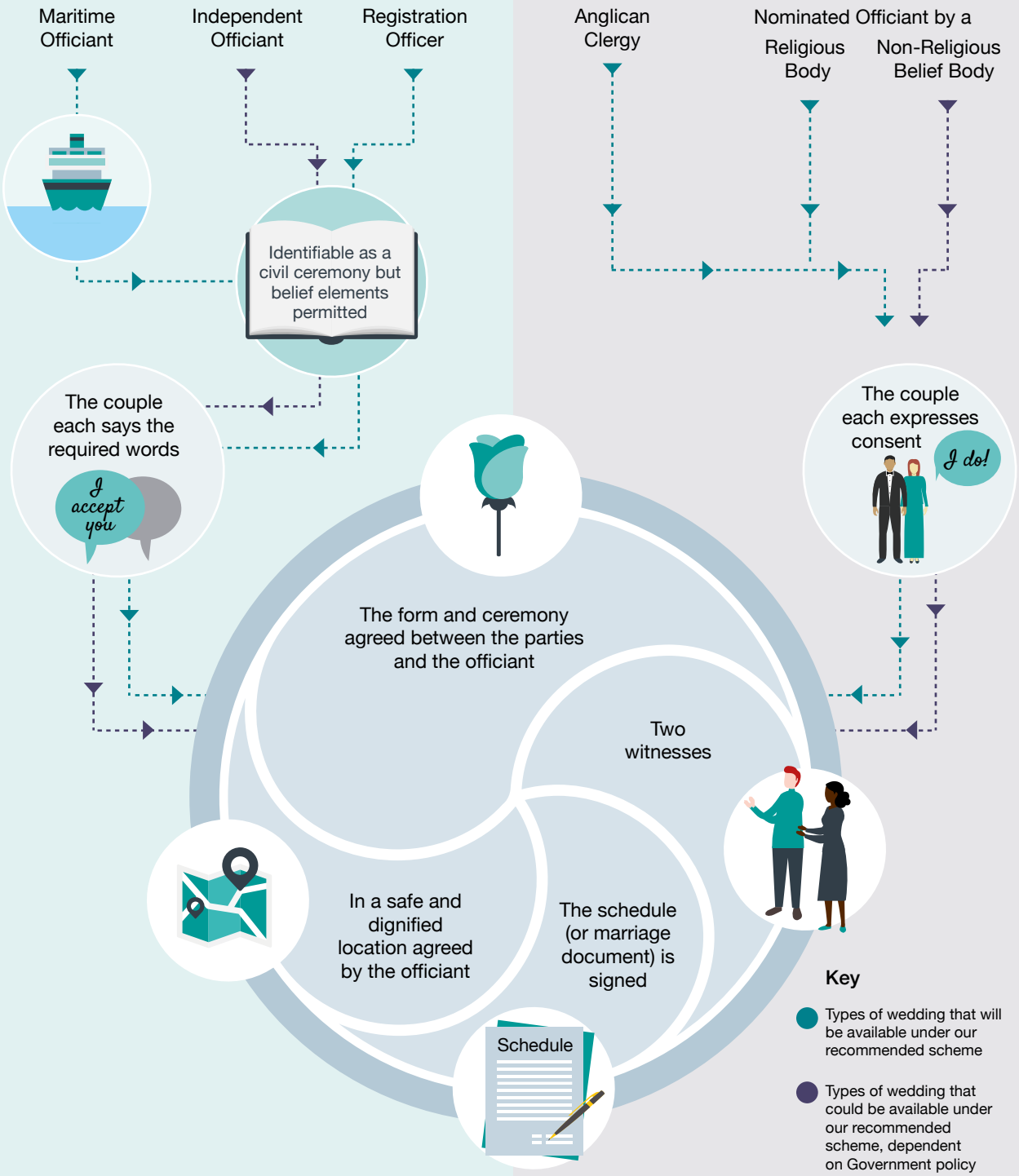
- Our recommendations make the preliminaries more robust, for example by ensuring that each of the couple is interviewed separately (whether the couple is using civil or Anglican preliminaries). This requirement increases the opportunities for the registration officer, or the person responsible for Anglican preliminaries, to be satisfied that both of the couple have capacity to marry.
- It will be possible for someone who is concerned that a person may be vulnerable to a predatory marriage to enter a caveat against that person getting married before notice of a wedding is given.
- Officiants will have a specific duty to ensure that the couple freely express consent to marry during the ceremony. This duty necessarily includes ensuring that both parties have capacity to marry.

It is outside of the scope of this project on weddings law to consider the effect of a marriage on a person's will. However, that issue is being considered by the Law Commission in our project on Making a Will. In our Consultation Paper on that project we have asked whether a marriage should continue to revoke a will. In the event that it does continue to do so, we have provisionally proposed that an exception should be made where, at the time of the marriage, a person had lost capacity to make a will. Those changes, if they become recommendations and are enacted, would solve one of the most significant financial consequences of a predatory marriage. By doing so, they would also remove an important financial incentive for those who embark on a predatory marriage.

Our Recommended Scheme: Types of Wedding

Civil Weddings

Religious or Non-Religious Belief Weddings



Officiants

Central to our recommendations is the concept of an officiant. Every wedding will need to be attended in person by an officiant, who will have the same legal duties in relation to the wedding, regardless of whether it is a civil or belief ceremony. The officiant, rather than the building, is the focus of regulation under our scheme.

Although we recommend that there should be a single concept of an officiant, we also recognise that different types of officiant will be appropriate for different types of wedding. Under our scheme there will be civil officiants and belief officiants.

While a move to an officiant-based scheme from the current buildings-based model would be a fundamental change in the way that the law of England and Wales regulates weddings, it would not be a unique or untested change of approach. Among neighbouring jurisdictions, Scotland, Northern Ireland, Ireland, Jersey and Guernsey all now operate systems that primarily focus on the person conducting the wedding rather than its location. The same is true across the common law world, with Australia, Canada, New Zealand and the United States also regulating the celebrant rather than the location.

Legal duties and responsibilities of officiants

The officiant attending a wedding will have three legal duties to discharge.

1. Ensure that the parties freely express consent to marry each other. An officiant will be under a duty to ensure that both of the couple express their consent to be married in person in the presence of each other, the witnesses and the officiant. The requirement for couples to express their consent in the ceremony, before they sign the schedule or marriage document, applies to all weddings. A civil officiant will additionally need to ensure that the couple express their consent using required words of contract or words to similar effect (which we explain below).
2. Ensure that the other requirements of the ceremony are met. As part of this, an officiant will be under a duty to ensure that the wedding is attended by two witnesses, and that a civil ceremony is identifiable as such (we explain this requirement below).
3. Ensure that the schedule or marriage document is signed. Implicit in this duty is a requirement that the officiant ensures that the couple have a schedule or marriage document, which in turn confirms that they have completed the required preliminaries. The officiant will also need to ensure that the couple getting married are the couple named in the schedule or marriage document, and that it has not expired.

In addition, all officiants will have a responsibility to uphold the dignity and significance of marriage in their role as officiants and in officiating at weddings. Officiants will need to take account of this responsibility when agreeing to the form of ceremony, and will be under the responsibility for the parts of the ceremony at which they are present. An officiant will be able to pause or stop a ceremony in order to protect the dignity and significance of the occasion. But they are not responsible for aspects of the ceremony at which they are not present, or for celebrations that may precede or proceed the wedding itself, unless they impinge on the ceremony. Officiants will be provided with guidance by the General Register Office as regards the discharge of their responsibilities.

In line with the general approach of the law to uphold marriages where possible, the failure of an officiant to fulfil their legal duties or

responsibilities will not impact on the validity of the marriage (unless the couple have not in fact given notice or expressed consent to be married). It may, however, result in the officiant being de-authorised from acting as an officiant and, in egregious cases, may mean that the officiant has committed a criminal offence.

Categories of officiant

Under our recommendations there will be up to five categories of officiant.

Two types of officiant will conduct belief weddings:

1. Anglican clergy. This category consists of Clerks in Holy Orders authorised to exercise ordained ministry within the Church of England or the Church in Wales. They will automatically be recognised as officiants in order to conduct Anglican weddings.
2. Nominated officiants. These are officiants who will be nominated by religious organisations (other than the Anglican church) and, if enabled by Government, non-religious belief organisations. Nominations will be made by the organisation's governing authority, which will be required to ensure that those nominated are "fit and proper" persons to be officiants, by being of good character; not having been convicted of any offence determined by the General Register Office as preventing a person from being "fit and proper" to be an officiant; being at least 18 years old; having undertaken training on the legal aspects of being an officiant; and understanding the legal requirements for being an officiant and performing the role.

Three types of officiant will conduct civil weddings:

3. Registration officers who are employed by local authorities. Under our scheme, only one registration officer will be required to be present at a wedding, providing greater efficiency and flexibility. Registration officers will also be confined to officiating at civil weddings. They will no longer be able to attend a religious wedding in the place of a religious officiant (although they will, with the permission of the relevant religious organisation, be able to officiate at a civil wedding in a place of worship that could be accompanied by a separate religious ceremony).
4. If enabled by Government to officiate at weddings, independent officiants would comprise a further category of officiant able to conduct civil weddings. Independent officiants would be independent from any religious or non-religious belief organisation. They would apply individually to be registered as officiants by the General Register Office. In order to be registered, they would have to demonstrate that they are "fit and proper" persons by being of good character; not having been convicted of any offence determined by the General Register Office as preventing a person from being "fit and proper" to be an officiant; being at least 18 years old; having undertaken training on the legal aspects of being an officiant; and understanding the legal requirements for being an officiant and performing the role.
5. Maritime officiants, who comprise a special category of officiant, will be able to conduct civil weddings in international waters on board cruise ships registered in the United Kingdom with a port of choice in England and Wales. In order to be authorised as a maritime officiant, an individual will need to be a deck officer, a category that comprises the captain, chief mate, and other officers who take charge of a navigational watch on board a ship.

With one exception, a person will only be able to be an officiant within any one of the above categories at any one time. This bar on dual authorisation is necessary because responsibility for the training, monitoring and authorisation of the different categories of officiant is different. Further, the category of officiant officiating at the wedding determines the type of wedding that is taking place: whether it is a civil wedding or a belief wedding. As some different rules apply to civil weddings compared to belief weddings, it is necessary to have clarity as to the status of the officiant.

The one exception to the prohibition on dual authorisation is that it will be possible for a maritime officiant also to be an independent officiant. The problems identified with dual authorisation do not arise as these officiants will both conduct civil weddings and, with limited exceptions, will be subject to the same rules as regards training, monitoring and authorisation.

The criteria for religious and non-religious belief organisations

In order to nominate officiants, an organisation will have to show that it is a religious or non-religious belief organisation which has been established for a minimum period of time, during which period it has had members from at least 20 households who meet regularly in person for worship or in furtherance of or to practise their beliefs. It will also have to demonstrate that it has a policy in relation to nominating and monitoring officiants and that it would be a manifestation of an individual's religion or beliefs to have a wedding officiated at by an officiant nominated by that organisation.

To be a religious organisation, an organisation will need to meet the description in the current law, which is given in the judgment of the Supreme Court in *R (Hodkin) v Registrar General of Births, Deaths and Marriages*. In that case Lord Toulson described a religion as:

> A spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system… . Such a belief system may or may not involve belief in a supreme being, but it does involve a belief that there is more to be understood about mankind's nature and relationship to the universe than can be gained from the senses or from science.

Non-religious belief organisations will be limited to those whose sole or principal purpose is the advancement of a system of non-religious beliefs which have a level of cogency, seriousness, cohesion and importance that brings them within the meaning of article 9 of the European Convention on Human Rights.

Preventing commerciality and conflicts of interest

It is perfectly legitimate for nominated officiants to charge for officiating at weddings, and for that charge to reflect any preparation time and the costs involved in being an officiant. But it is important to guard against the commercialisation of the role of officiant. Under our recommendations, nominated officiants will therefore be prevented from subordinating the expression of their beliefs to commercial interests. This rule would prevent a nominated officiant from advertising their availability to officiate without explaining their connection to their nominating organisation.

Independent officiants, if enabled by Government to conduct legally binding weddings, would not be acting in pursuance

of particular beliefs. They could act purely to make a profit and out of commercial motivations. They would, however, be prevented from acting with a conflict of interest, for example, requiring the couple to buy goods or services such as floristry and catering from them or their company in order to officiate at their wedding, or accepting a payment to recommend another provider of goods and services.

Maritime officiants will also be prohibited from acting with a conflict of interest.

Training, monitoring and withdrawal of authorisation

The ability to officiate at weddings will not be subject to a fixed-time limit. Officiants will remain authorised unless or until they are de-authorised.

Anglican clergy will be officiants as long as they remain authorised to exercise ordained ministry. The provision of their training, monitoring and, where necessary, their de-authorisation, will be matters for the Church of England and the Church in Wales.

The training of nominated officiants may, if approved by the General Register Office, be provided by the nominating organisation or provided directly by the General Registrar Office. Primary responsibility for monitoring nominated officiants and requesting withdrawal of their authorisation if they fail to comply with the "fit and proper" person standard, or their duties or responsibilities, will lie with the organisation that nominated them. However, if the body who nominated them fails to act, the General Register Office will have the power to de-authorise nominated officiants who fail to comply with the "fit and proper" person standard or their duties or responsibilities.

Local authorities will remain responsible for the training and monitoring of registration officers, whose ability to officiate is necessarily dependent on their continued employment in their roles.

Independent officiants will be required to undertake training provided by the General Register Office, or a provider approved by the General Register Office. The General Registrar Office will be responsible for monitoring independent officiants and de-authorising those who fail to comply with the "fit and proper" standard or with their duties and responsibilities. Independent officiants will be automatically de-authorised if they fail to comply with a requirement to undertake ongoing training prescribed by the General Registrar Office.

Maritime officiants will be subject to the same processes for authorisation, training and monitoring that we recommend should apply to independent officiants. Again, their ability to officiate is dependent on their continued employment as a deck officer.

Requirements as to the ceremony

Under our scheme, in order to be married, a couple will need to have a wedding ceremony. That ceremony will need to consist of something more than the couple signing the schedule or marriage document; specifically, the couple will need to express their consent to be married in addition to signing the document. The process of getting married will therefore remain distinct from entering into a civil partnership, which can be formed simply by signing a document.

Our recommendations, however, enable couples to have a wedding ceremony that is meaningful to them, without imposing unnecessary regulation over the content of the ceremony. By focusing on the preliminaries stage as protecting the state's interest in identifying and preventing sham and forced marriages, and enabling impediments to a marriage to be brought to light, there is little need for the law to dictate the content of a ceremony.

The expression of consent

The core requirement of the wedding ceremony under our recommendations is that the couple express consent to be married, in the presence of each other, the officiant and the witnesses, in advance of signing the schedule or marriage document.

In a belief ceremony – that is, a ceremony officiated by a member of the Anglican clergy or a nominated officiant – there will be no legal requirement as to how the couple express consent, as long as they do so clearly (although belief organisations will be able to require their officiants to follow their own requirements). Consent will be able to be expressed by words or actions. The ability to express consent by actions is significant for religious groups whose wedding ceremonies involve the expression of consent by a series of rituals. For example, in a Sikh wedding, the couple walking together clockwise around the Sri Guru Granth Sahib Ji (the holy scriptures) would amount to their expression of consent. Such ritualistic actions are no less clear and unambiguous than words where their significance is understood by the couple, the officiant and the witnesses.

In a civil ceremony – a ceremony in which the officiant is a registration officer, an independent officiant (if enabled by Government to conduct weddings) or a maritime officiant – the couple will have to express consent using required words of contract, or words to the same effect. This requirement helps to distinguish civil and belief-based ceremonies. We do not make recommendations as to what form the words of contract should take, but they could consist, for example, of words such as "I accept you [name] as my [husband, wife or spouse]".

Under our scheme, the expression of consent will play a central role in the validity of a marriage. Although the ceremony will be required to include an expression of consent other than the signing of the schedule or marriage document – and the officiant will be responsible for ensuring that consent has been expressed before it is signed – the signing of the schedule or marriage document on its own will be sufficient to satisfy the requirement for consent in terms of the validity of the marriage. This approach provides certainty; as long as the schedule or marriage document has been duly signed, there can be no challenge to the validity of the marriage based on whether consent was expressed during the ceremony.

Other requirements

Beyond the expression of consent, there will be no specific requirements as to the form of the ceremony. The form of the ceremony will need to be agreed by the couple and their officiant. The ability of a couple to agree the content of their ceremony with their officiant is not unusual. It happens under the current law where a wedding takes place in a registered place of worship, although such weddings must currently include the prescribed words. When agreeing to the form of the ceremony, all officiants will need to have regard to their responsibility as regards the dignity of the wedding. Nominated officiants will also need to comply with the requirements of their nominating body, which may include using particular words or rituals. In this way, religious groups will continue to be able to ensure that their weddings are conducted only in accordance with their own practices and beliefs.

Religious and non-religious belief content in civil weddings

Many couples who have a civil ceremony might wish to include specific belief elements as part of their ceremony. For example, someone who was raised in a religious faith but who does not practice that faith as an adult might nevertheless wish to include religious references to pay tribute to their upbringing or to their parents' beliefs in their wedding. Couples may also wish to incorporate religious elements in their wedding for cultural rather than religious reasons.

Under our scheme it will be possible for a civil ceremony to include religious content, and content reflecting non-religious beliefs, including music, readings, prayers, blessings and rituals. It will not, however, be possible for a civil ceremony to take the form of a religious or non-religious belief service. In addition, a civil wedding will need to be identifiably civil. We impose two requirements on civil weddings to ensure that they are clearly identifiable as such. First, we recommend that every civil wedding ceremony should be identified as such, either by the officiant or (where relevant) another person leading the ceremony. Alternatively, the officiant should be required to identify themselves as a civil officiant. Second, couples getting married in a civil ceremony will be required to express their consent using required words, or words to the same effect, and they will not be able to use part of the marriage rites of any particular religion when doing so. Further, they will not be able to replicate in their ceremony the words or form of any ritual, vow, statement or expression of consent required of any couple marrying in a religious or non-religious belief marriage ceremony.

Open doors

Under our scheme, there is no requirement that a wedding takes place with "open doors". As we have explained above, the requirement does not apply to all weddings under the current law. Its abolition from where it does currently apply therefore places all weddings in the same position as Anglican, Jewish and Quaker weddings.

The fact that a couple intend to get married is a public matter. The state has an interest in knowing that the wedding will take place, particularly to provide protection against forced and sham marriages. The public has an interest in knowing about weddings so that members of the public can raise any existing impediments to the marriage. Under our scheme, the focus of these interests is at the preliminaries stage, where the intention to marry becomes known to the civil or Anglican authorities and is then publicised – in the case of civil preliminaries, online. The state is also represented at every wedding by the officiant and their duties and responsibilities.

There is therefore no need for the public to be able to attend weddings through them being held with "open doors" and nor is there evidence that the ability to do so is effective as a means of identifying sham or forced marriage or raising impediments. Further, there are risks in any requirement of open doors, including risks of violence against members of religious minorities and victims of domestic and "honour"-based abuse. There is also a risk of unnecessary and unwelcome disruption on a very important day in the couple's life.

The location of the wedding

A consequence of the shift to an officiant-based scheme is that the location of a wedding will no longer play any role in the regulatory regime governing weddings. That shift in focus paves the way for weddings to be able to take place in a much wider range of locations.

Under our recommendations, weddings will be able to take place in any type of location. That does not, however, mean that couples will have the right to get married wherever they choose. First, the location will need to be agreed by the officiant, who will have responsibility for considering the safety of those attending and the dignity of the location. Second, belief organisations will be able to set their own rules as to where weddings conducted according to their beliefs take place. Religions that wish to ensure that their weddings take place only within their place of worship will therefore be able to do so by means of their ability to de-authorise the officiants they nominated. For those religions, our recommendations in relation to location will in fact make no difference to their current practice.

However, our recommendations will solve problems caused by the current law, which places unnecessary barriers in the way of couples getting legally married. They will, for example, mean that couples whose religion does not look to their place of worship as the natural venue for a wedding, and is happy for its officiants to conduct weddings in other locations, will be able to have a legally recognised wedding somewhere other than their place of worship. The ability to do so will reduce the likelihood of couples having religious-only marriages.

The ability for a wedding to take place in a wide range of types of places will be new in England and Wales. But it is not untested. It is commonly the case in other countries, from Scotland, Northern Ireland, Ireland, Jersey and Guernsey to New Zealand,

Australia, and Canada. We are confident from the experience in those other jurisdictions that giving couples wider choice over locations does not result in weddings taking place in inappropriate venues. The officiant's responsibility to consider safety and dignity is a clear safeguard in that respect.

Further, the shift towards giving couples more options about where they can get married is already underway in England and Wales. It has recently been made possible for a civil wedding to take place in the grounds of approved premises. Government also intends to amend the law to make similar provision for weddings to take place on the grounds of registered places of worship and Anglican churches and chapels. These recent reforms – which those responding to Government's consultation were "overwhelmingly" in favour of – show the demand among couples to be able to have, and venues to be able to offer, weddings outdoors. As Justice Minister Tom Pursglove MP said when announcing the reforms:

A wedding is one of the most important days in a person's life and it is right that couples should have greater choice in how they celebrate their special occasion.

Under our scheme, officiants will be responsible for deciding whether to approve the location of each wedding, including by considering the safety and dignity of the location. They will be assisted in doing so by guidance provided by the General Register Office.

In terms of safety, the officiant's responsibility is a contextual one: they must consider whether the location is safe for those attending that particular wedding, not whether it is safe for weddings in general. Weddings are not inherently risky events and, in many instances, existing health and safety laws will be able to be relied upon. The officiant's *responsibility* to consider safety does not mean that they are legally *liable* in the unlikely event that something does go wrong. The officiant having a "responsibility" simply means that, in making a decision about whether to approve a location, the officiant will have a statutory responsibility to consider the safety of those attending. Failing to do so could result in the officiant being de-authorised. Officiants will otherwise be subject to the same existing legal regimes as anyone else. In particular, it is possible (although unlikely) that they may be liable, under the tort of occupiers' liability or negligence, for injuries or losses resulting from failing to take reasonable care in approving the venue or for their own actions. But no specific legal liability in respect of safety will arise merely by reason of the fact that a person is an officiant.

In terms of dignity, there are a number of matters that officiants may need to take into account, including ensuring that the couple is able to focus on expressing their consent to be married and on the significance of that act. Whether a location has personal meaning to a couple may also be relevant to assessing its dignity and may prevent couples from choosing a location for frivolous reasons (for example, to impress on social media) or to try to "push the boundaries". But it will also be important for any conception of dignity to be culturally sensitive, bearing in mind that culture plays a large role in what any given individual considers to be dignified or meaningful.

Registration

Once a marriage has taken place, it must be registered. Registration is an important part of the legal process of getting married. It provides a record that the ceremony took place, and the legal marriage certificate that can be obtained once the marriage has been registered provides the couple with evidence that they are married. For the state, registration underlines the fact that marriage is a public status as the record of the marriage is a public record.

The process of registering a marriage has recently been reformed by Government with the introduction of the schedule system. The foundation for these reforms had been laid at the time we published our Consultation Paper. The changes subsequently came into force in May 2021. Our scheme does not require significant changes to this newly introduced regime. Instead, our recommendations simply build upon these recent changes to ensure that they will operate with other aspects of our scheme. So, for example, we make provision as to how the officiant will be recorded on the schedule or marriage document. In addition, where the wedding takes place in Wales, we recommend that couple should be able to have their schedules and marriage documents completed in Welsh alone.

Under our scheme, and taking into account the current law, a schedule or marriage document will record the following.

- The nature of the preliminaries (civil or the form of Anglican preliminaries) that have been used; the name and surname, date of birth, marital status and occupation of each of the couple; and the identity of the intended officiant. This information is provided by the couple as a part of the preliminaries.

- At the ceremony, in advance of the schedule or marriage document being signed, the date and location of the wedding will be added, along with the identity and authorising or nominating body of the officiant, and the identity of the witnesses.

In addition, at the ceremony and before the schedule or marriage document is signed, the couple may choose to record on it (without there being a requirement to do so) the names and occupations of their parents. Additionally, in relation to a schedule, the couple may choose to record the name of any person conducting or solemnizing the wedding along with (where relevant) the religious or non-religious belief organisation with which that person is affiliated.

During the ceremony, the officiant is responsible for ensuring that the schedule is signed by the couple, their witnesses and the officiant in each other's presence, after the couple has expressed consent to be married. The officiant is then responsible for ensuring that the schedule is returned to the registration office in the district where the marriage took place within 21 days so that the marriage can be registered.

The effect on the validity of marriage of non-compliance with legal formalities

Where a wedding takes place without the legal requirements being complied with, a variety of consequences may follow. In some instances, the marriage will be void, in which case certain legal consequences will follow, or the result will be a non-qualifying ceremony, resulting in the couple being treated as cohabitants. In others the marriage will be valid, despite the failure to comply with a particular requirement, reflecting the long-standing policy of the law that a marriage should not be lightly set aside.

Our recommendations simplify the requirements for a valid wedding and ensure that, where a marriage is not valid, it is more likely that it will be void than that the ceremony will be non-qualifying.

Under our scheme, there are only four circumstances in which a failure to comply with legal formalities will render a marriage void:

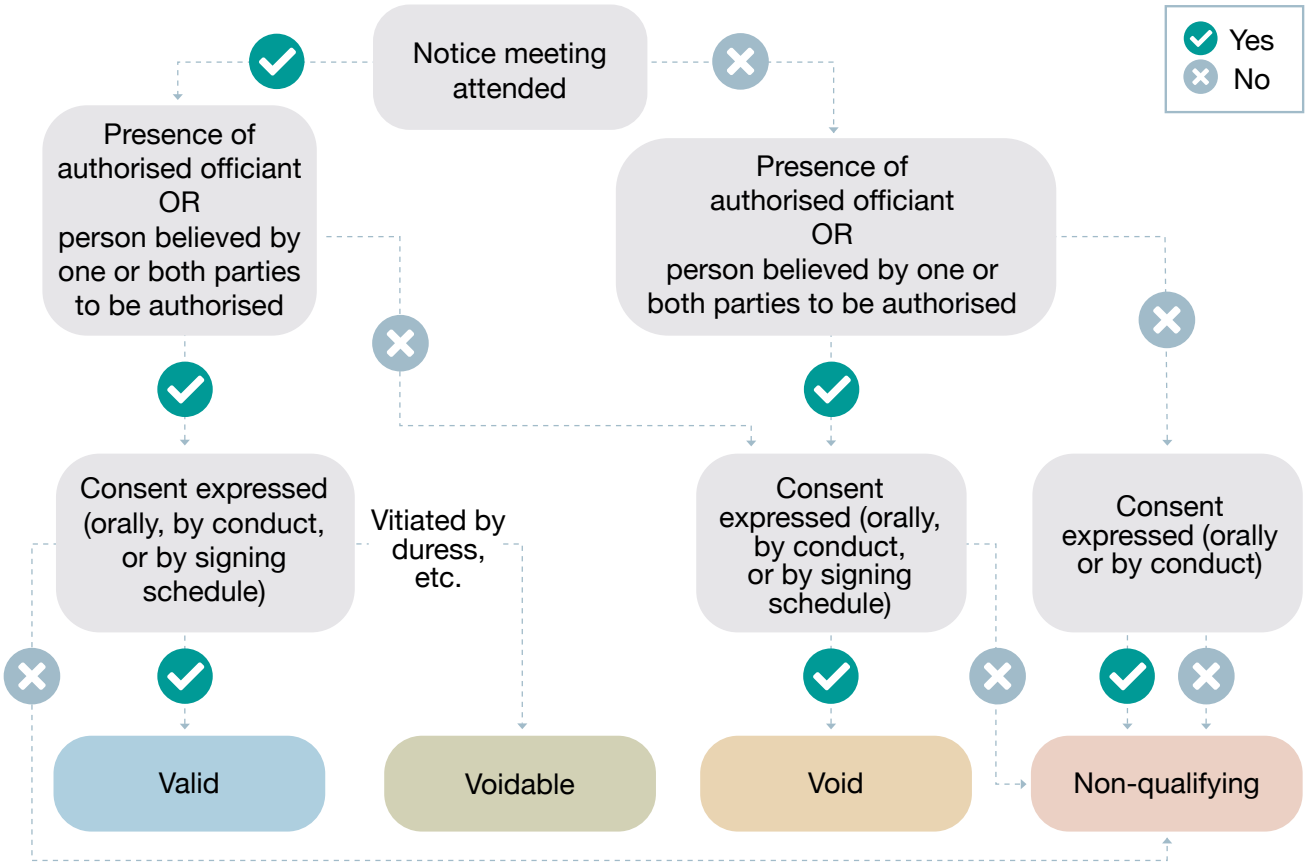
1. where either or both of the couple fail to complete the in-person stage of the wedding preliminaries (other than where the wedding is by special licence);
2. where the wedding takes place after the authority to marry has lapsed;
3. where both of the couple know that the wedding is not officiated at by an authorised officiant; and
4. in the case of a religious same-sex wedding, where both of the couple know that the relevant governing authority has not opted into providing same-sex weddings.

Importantly, these four factors are all within the control or knowledge of the parties.

Under our scheme, there are only two circumstances in which a failure to comply with legal formalities will result in a non-qualifying ceremony:

1. where either or both of the couple do not complete the in-person stage of the wedding preliminaries and either both parties know that the ceremony is not being officiated at by an authorised officiant or, in the case of a religious same-sex wedding, that the relevant governing authority has not opted in; or
2. where either of the couple do not express consent to the marriage, because they do not do so as part of the ceremony and do not sign the schedule or marriage document.

Our Recommended Scheme: Validity



Religious-only weddings

Religious-only weddings conform to the beliefs and practices of a religion but are conducted outside the legal framework, and so are classified as non-qualifying ceremonies.

Non-qualifying ceremonies may arise more frequently within certain faiths, including Muslim, Hindu and Sikh groups, which developed their own rich traditions and ways of conducting weddings separately from the development of the legal rules governing weddings in England and Wales. The evidence suggests that non-qualifying ceremonies are a growing issue within some Muslim communities in particular.

The categorisation of a ceremony as non-qualifying as opposed to creating a void marriage has significant consequences. If a marriage is void, a court granting a decree of nullity has the same powers to reallocate assets between the couple as upon divorce, although in other contexts, including on death, a void marriage does not confer the same rights as a valid one. If the ceremony is non-qualifying, the couple are simply treated as cohabitants; in such cases a court has no power to reallocate assets between the couple on separation, and a cohabitant does not have the same rights on the death of their partner as does a person on the death of their spouse

Our recommendations will make it easier for religious weddings to comply with the legal requirements.

- A religious wedding will not need to take place in a place of worship, enabling couples to have a legally binding wedding at a venue that is meaningful to them and reflects the practices of their faith.
- There will be no prescribed words that have to be included in a belief ceremony, enabling couples to have a legally binding ceremony which reflects the traditions in their faith.

But there will remain couples who have a religious-only marriage. Some will do so as a matter of choice, fully aware of the legal consequences of their decision. Others, however, will not be aware that their marriage is not legally recognised or of the legal consequences of that, or will be pressured or coerced into accepting a religious-only marriage. For those for whom a religious-only marriage is not a free and informed choice, the consequences on the end of the relationship can be devastating. Those consequences are felt disproportionately by women and by the children of the relationship.

Our recommendations therefore also seek to reduce the circumstances in which couples find themselves in a marriage which has no legal effect.

- A marriage will be valid if the couple complete the in-person stage of the preliminaries and consent to be married in the presence of an officiant, or a person whom at least one of them believes to be an officiant.
- A marriage will be void (rather than non-qualifying) if the couple do not complete the in-person stage of the preliminaries but still consent to be married in the presence of an officiant, or a person whom at least one of them believes to be an officiant.

We also recommend that it should be an offence for an officiant, or a person who purports to be an officiant or leads the ceremony, to mislead either of the couple about the legal effect of their ceremony. In addition, an officiant will be guilty of an offence if they do not disclose that a ceremony at which they are officiating will not give rise to a valid marriage.

Our recommendations go as far as we consider weddings law can go to give legal recognition to a marriage when legal formalities for getting married have not been followed. They will provide a better outcome for many people whose marriage is not legally valid. But they will not help everyone. For example, a woman who is pressured or coerced into entering a religious-only marriage, whether through cultural or religious expectations, or by the conduct of her partner, will still have a non-qualifying ceremony, where either of the couple do not give notice and both of them are aware that the ceremony is not officiated by an authorised officiant.

We do not think that people in that position should be left without a remedy. However, we think that the remedy needs to come from outside of weddings law. There are many people who are in a legally vulnerable position because their relationship is not legally recognised. Some of those will have undertaken a religious wedding ceremony which is non-qualifying, others will have had another form of ceremony which is not legally recognised (such as a Humanist ceremony or one conducted by an independent celebrant), while many will be cohabiting without having taken part in any ceremony. As is the case with religious-only weddings, some of those who have had another type of ceremony or are simply cohabiting will be doing so out of choice and will be fully aware of the legal consequences; others will do so unaware of the legal consequences, or will be in this position as a result of pressure or coercion from a partner who refuses to marry, or a partner who promises a marriage that never takes place.

We acknowledge that a couple who have had a religious ceremony would not consider themselves to be cohabiting, and would not be considered to be doing so by their religious community. Notwithstanding, we think there are many commonalities between them and a couple who have had no ceremony at all, or who have had another type of ceremony that is not legally recognised. Where there has been no engagement by a couple with weddings law, it is necessary to look beyond any ceremony that has taken place and to their relationship as the focus of legal redress. Reforming the law to provide financial relief to cohabiting couples at the end of their relationship would help those who have had a non-qualifying religious ceremony, those who have had a non-religious ceremony that is not legally recognised, and those who have had no ceremony at all. The Law Commission has already made recommendations for reform that would provide financial relief to cohabiting couples (including those in religious-only marriages) when the relationship ends through breakdown or death.

Covid-19 and emergency powers

Like everything else, weddings were severely affected by the Covid-19 pandemic. Many couples were unable to have the wedding they wished, with their friends and families in attendance, during various periods during the pandemic. Moreover, the emergency measures introduced to prevent the spread of Covid meant that for significant periods of time most couples were unable to get legally married at all.

Some of the recommendations that we make for a reformed weddings law could reduce the impact on weddings of any future national emergency. For example, the ability to begin the notice period online will enable notice of weddings to be given even when register offices are closed (although the couple would still need to attend an in-person interview to complete the preliminaries). The ability for more weddings to take place outdoors in a wider range of locations may also assist.

In a future national emergency, however, Government may wish to do more to help those who want to get married. We therefore recommend that weddings legislation should contain a power for special provisions to be made in a national emergency that prevents couples from complying with the formalities of getting married. Such measures could include, for example, enabling the in-person interview required to complete the wedding preliminaries to be conducted online, and enabling the officiant, the couple and the witnesses to attend the wedding remotely. Simple steps may also help, such as extending the validity of a marriage schedule beyond 12 months where (as happened during the pandemic) weddings are delayed by a national emergency beyond a schedule's period of validity.

What happens next?

Our recommended scheme would make the law simple, fair and certain. It would harmonise and rationalise the law, eliminating the differences in treatment between groups and couples. It would appropriately balance the regulation necessary to protect the interests of the state, to provide certainty about who is married and to protect against forced and sham marriages, with the freedom of couples to celebrate their weddings in a way that is meaningful to them, protecting their freedom of expression and belief.

It is now for Government to consider and respond to the Law Commission's recommendations. Under the Protocol between the Lord Chancellor (on behalf of Government) and the Law Commission, the responsible Minister will respond to the recommendations as soon as possible, and in any event with an interim response within six months of publication of the Report and a full response within a year.

If, as we hope, Government accepts our recommendations, it will be necessary for a bill to be drafted to give effect to them. That bill can then be introduced into Parliament in order to become law.