



Tying the knot: reforming wedding law in England and Wales
Response to Ministry of Justice consultation

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Overview

This is my response to the Ministry of Justice consultation on reform of wedding law. I welcome this consultation and, in general terms, proposed reform. I have supported wedding law reform for many years including responding to Law Commission consultation in early 2021. I support the replacement of the process of registration of premises by that of the celebrant, however described. I support the relaxation of certain procedural requirements. I'm fully open to different ceremonies representing the diversity across our country. I have very substantial experience of foreign marriages and welcome bringing that to our laws. Nevertheless this can only go so far. There must still be recognition of what is the traditional approach to offer and acceptance, open understanding of a wedding which historically and continuing must be a public event, with its consequential impact on law for the parties and others. This is where I make most of my remarks

Personal background to the consultation

I have throughout my career practiced as a specialised family lawyer, solicitor, mediator and arbitrator as well as a part-time, DDJ, judge in the family court. My specialisation has been international family law and I have had a distinctive experience in many cases where there have been foreign marriages, sometimes followed by foreign divorces. I am the author of the chapter on recognition of foreign marriages and divorces for the leading LexisNexis textbook, *The International Family Law Practice*, sixth edition, of which I am also the editor. I am also an Australian qualified solicitor, having worked in Sydney for several years with significant ongoing connections and have seen how their celebrant weddings are conducted and they seem to me to work well.

At the same time, I am an evangelical Christian, in the Anglican Church and alert to the issues distinctive to the Church of England. I am an enthusiastic supporter of marriage. I hope I bring that element to bear in a fair fashion. Nothing in my remarks is intended to touch on the continuing distinctive position of weddings in the Anglican Church

Because of my faith background, I have been alert also to the issues facing members of other faiths. In the distinctive of this consultation, this is the significant number of members of the Muslim community who are in marriages recognised by their religious law but not in a civil marriage. A good many of them are unaware of this fact until sadly the relationship breakdown and they find themselves without rights and entitlements in law, and then too often subject to sharia councils which do not apply fairness according to English law. In too many situations, one of the purported spouses is aware that it is not a civil law wedding and it is a deceit on the other, perhaps not fully aware of English customs and laws. Sadly in some instances, the officiant is also aware is not a civil wedding without any indication being given of this fact. For many years I have been an active member of ROM, Register our Marriage, an initiative of Aina Khan OBE, a leading London family lawyer, getting information into that community about the need to have a civil wedding. My perception is that there has been a lot of opposition, some of it possibly gender-based. It's not the case in other religious groups. We have had leading conferences in London and several initiatives but without apparent success. I appreciate this wedding reform is in good part to make sure that we might be able to have more people engaged in civil law weddings alongside religious ceremonies

In the Law Commission paper there was much about review of the law of nullity. I and others strongly recommended this should not be concurrent with the wedding reform and I'm glad this has been dropped, at least from this consultation. Similarly questions of presumption of marriage are not in this consultation and again this is rightly so, is a complex topic and does not impose on the formalities and background to getting married.

I am a member of the Law Society family Law committee and a number of other organisations. I make it clear these remarks are personal only to myself and not represent any other organisation with which I am involved

The heart of my response is that marriage is the central relationship within our society, the focus for so many of their hopes, desires, ambitions, security, confidence and future. High divorce rates are a misleading picture and the vast majority occur in the first four years or so, see for example the statistical research of Dr Harry Benson. Thereafter the breakdown rate is low. Past the first five years, very many married couples have a happy and fulfilling life over many decades or lifelong. Moreover marriage is not just about the couple. It is a safe and wonderful place for the upbringing of children. It is a place for wider family relationships, spanning the generations and wider family members. It is a place for support and giving. From the comfort and confidence of the marriage relationship spreads out the multiple other relationships across our society. As a country, we must do everything possible to encourage marriage including making sure those considering entering into marriage are aware of what is marriage and with proper preparation, dignity and respect.

It goes without saying there should be no unnecessary barriers to entering into marriage and reasonable accommodations. It must be entered into freely, knowingly and with the required capacity and consent. Whilst it may have different meanings for different individuals and cultures, marriage is a status recognised by law giving rights and responsibilities in law. Accordingly with this comes responsibility to make sure there is a proper awareness of both in entering into this contract.

As below, of course I appreciate the importance of safeguarding in all realms of life. I have worked closely with the Forced Marriage Unit over the years including making orders at short notice as a judge. I've been aware of sham marriages of various descriptions, of which only some might feature in criminal law. I'm aware of some very deceitful marriages. We should not however proceed on the basis that a significant number of marriages involve safeguarding issues. They don't. The sensitivity is knowing how to deal with this carefully and appropriately in the marriage preparation

Preliminaries

As a preliminary to the preliminaries, the consultation refers to officiants whereas in my experience in much of the rest of the world, the term used is celebrant. I think that is far better and I recommend. This note may interchange terminology!

Naturally I support provision of information and signposting on the online notice platform for those interested in getting married. It should include matters of consent and capacity. But for me the bigger question is what more is said about preparing for marriage and being married, what it entails and its commitments and responsibilities. There has been discussion amongst lawyers about whether there should be more information about consequences in law. As a solicitor and judge, I have several times come across people, particularly from non-English cultures, who have been completely unaware of what marriage means in England. This might be as basic as respect for women and that in law they are regarded as equal marital partners. So much resistance on divorce to financial settlements arises from men not acknowledging that their spouse is an equal. It should not have to be said but experience shows otherwise. There are several other component elements, of similar basic nature, where sadly the expectations going into marriage of marital behaviours are seriously wanting. Some might put it down to lack of intergenerational involvement, even lack of intergenerational examples. Undoubtedly in some marriages, the background culture, even sometimes religion, doesn't help. This is even before we start touching on duties in law during the relationship and on any breakdown. This might have not been necessary in past decades. It certainly is now. I would welcome this being discussed further regarding the preliminaries of information provided about what is marriage and what is expected as a minimum within marriage of each of the other in civic society.

I raise then another fundamental element, inevitably from my perspective as a divorce lawyer and keen that marriages succeed. Evidence shows that pre-marriage courses provide significant benefit for a couple getting married, particularly for the first three or four years. After that, evidence seems to suggest that pre-marriage course information falls away in recollection. An analogy perhaps with speeding awareness courses which have a benefit for drivers in their driving habits which also falls away with years passing. This is incidentally a reason why there is encouragement in places to marriage courses. But in fact I'm not too troubled about the relatively short longevity of the pre-marriage courses because the highest risk of breakdown is in those three or four years at the beginning, taking account of the fact that many will already have been cohabiting for some years. If we can help those couples in those most risky years navigate the troubled waters into the statistically safer waters after five years or so we will have done a very good job for that group of couples, many in number, and the cost for the public purse in divorces, consequential housing and income needs et cetera on the divorce fallout. Previous Home Office enquiries have recommended greater rate of reference to remarriage courses; voluntary of course but with encouragements and information about their benefits.

Therefore in the context of this consultation, I urge strongly that registrars should be given a duty to provide information about relevant local or online premarriage courses for those considering marriage. It's only information. No compulsion. I'm aware other recommendations in previous years have suggested a discount on the wedding fee for those attending. Of course there is a knock-on benefit and corresponding saving the public purse of less early relationship breakdown. But I suspect there is not yet the willingness to consider such early interventions respect of the wedding registration fee. But the duty on registrars to provide the information would be really stated in this new process. It is crucial and important. It must be high on the list of information and signposting anticipated at question one.

The legal formation of marriage

I disagree wholeheartedly with the opening question, number five, about consent to be expressed through the performance of actions. No. Similarly no to question six as to the actual words. This part of my response is crucial

A wedding ceremony may comprise lots of ritual, custom and personally important aspects. Only the most stripped down wedding ceremony consists of the bare minimum words. So of course ceremonies may contain performance of actions which mean something to the parties concerned and some or all of those attending. It may last for minutes or much longer. We are to be accommodating and respectful, even with religious or quasi-religious content. But that is not the crunch of the wedding in law. It cannot be the wedding in law

There must be minimum verbal expression of inviting to enter into marriage according to law and consequential acceptance on each side. This must be in English or Welsh or reliable simultaneous translation. This must be heard by the witnesses who can then say to themselves: this couple have made their commitment and are now married. It is at the point where the celebrant says in terms: I now pronounce you as spouses according to law. It is crucial. This cannot be substituted by performance of actions, whatever meaning or significance of the couple, which do not incorporate these minimum words. This is not to say that for the couple concerned, they may be in their own eyes married by the performance of those actions, whatever it may be. But for marriage by law there must be, in the technical contractual sense, offer and acceptance by each.

It indicates to the witnesses that this is the point in the ceremony, whatever fun and extravagance there may be, where they get real and make the marital commitment. It identifies the parties. It makes sure there is free and informed consent, not least in the actual presence of the witnesses. It shows intention to enter into a legally recognised marriage.

Incidentally, the verbal exchange of offer and consent is an additional safeguard against fraud, coercion, forced marriage or misunderstanding as far as that is possible.

It is the point in time. That matters. The surrounding events, actions, words and ceremony culturally matter but not in law and this is what matters in this consultation.

English case law in respect of recognition of marriage is full of ceremonies abroad where one or other party thought they were getting married but in reality were not. It is the crunch words or their absence. I have advised reality television companies setting up curious so-called reality TV experiments of people going through some sort of wedding arrangement as long as it wasn't a wedding. Again were the crunch words present? In these instances, they obviously weren't whatever other words were used. It also helps the celebrants who under this new proposed law

will have very significant burdens, liabilities and responsibilities in law. They know that as long as these crunch integral words are used, they have done their job at that point.

This must be something along the lines of each inviting the other to enter into marriage and the other agreeing. To have simply something like, I accept, as the minimum words is wholly inadequate. Not least reverting to contract law, accept what? If the witnesses aren't sure what is going on, arguably how is one of the spouses?

Performance of actions can also be wildly misleading and I give an anecdotal story. In the 80s, my brother married a Bulgarian. By all accounts at the time, the Western Europe mannerism was horizontal shaking of the head meant no and the vertical shaking of the head meant yes whereas in Bulgaria it meant exactly opposite. At the crucial time, with simultaneous translation for my brother, and indeed for myself present at the same time, he was asked if he would accept his fiancée as his wife. In his happiness, he quickly took his head vertically in joyful acquiescence. Only to discover everyone present, true to Bulgarian tradition, believing he had indicated no, creating great shame. It was pointed out and of course he said yes he did agree to marry her, suitably translated and with suitable shared happiness, thereby avoiding what could have been some Balkan difficulties! A Minor and silly example of how performance of actions and mislead, and certainly fail to engage witnesses and might even be contrary to intentions. Leave the performance of actions, using the wording of this question, to surrounding elements of the ceremony but keep the fundamental wording for the wedding, the joining of the couple in marriage.

The English tradition is the giving and sometimes exchanging of rings. I would no more suggest that could be the wedding commitment crunch content or equivalent. It is part of the surrounding ceremony and important for most.

Naturally there is the necessity to consider appropriate modern language. There should be interchangeability between husband-and-wife or spouse. Could be in Welsh if in Wales. But otherwise in English with appropriate translations if required. But I don't think it should be open to anyone to make up the words they choose on the day. There should be specific words known and publicised which make the marriage and is the point in the wedding when the couple are then married in law

The dignity framework

I agree and strongly. Marriage is not to be lightly entered into. Fortunately the Las Vegas experience hasn't yet come to England! It does need to be a good period of notice and awareness and information.

I'm perfectly happy to open out the opportunity of the location. Weddings are fun in the same way as being married is great fun. There may be boundaries and I have no doubt some couples

will press those boundaries. I think what the government has said is probably about right. Moreover tastes change over the years and what may be fully acceptable getting married might change and what may previously be unacceptable may now be fully okay. This is why I would not want to be too prescriptive. I agree with what is said in question nine. Similarly question 10. I agree with the duties for the celebrant in question 11. I think there are dangers in restrictions on alcohol, at least before the wedding ceremony. But this goes to capacity and consent. Of course it cannot go ahead if either party is clearly under the influence of drink or drugs, unable to express free and informed consent. It cannot go ahead if there is, bluntly, a drunken melee. But I presume the celebrant would bring this into account. In most circumstances, the consumption of alcohol is after the wedding itself. This is another reason why there needs to be a distinctive heart of the wedding ceremony, the use of the crunch words as above, at which point everyone gathered knows the couple married in law. What they do thereafter is a matter for them, and of course public decency and good order!

In respect of question 16, I consider the present law has been unduly restrictive on religious content in a civil ceremony. There are many instances where one person may be of a quite deep and integral personal faith and the other is not. For The former, it is very important that the symbols, language and music and prayers are part of the ceremony, even if not in the exact words of the marriage commitment. For the other, who is invariably prepared to go along with the important elements of faith of their fiancé, they will be content for it be part of the overall ceremony. But this has not previously been possible under the restrictive elements of civil registry ceremonies. We must open this out much more. There should be the opportunity of readings from religious or philosophical texts, prayers, blessings, reflections and statements of value, music and singing with religious content and contribution from family and friends of the faith element. None of this removes the central core of the wedding, the verbal marriage commitment as above. But equally none of it should be barred.

As a corollary, and despite my comments above, I agree question 17. The celebrant would keep out of this religious content. They should be there for one reason alone namely to make sure that in civil law all necessities are covered with consent and capacity and safeguarding and that at the appropriate time in the ceremony there is meaningful offer and acceptance of marriage. By avoiding, perhaps even preventing, the celebrant entering into the other aspect of the ceremony means there is no confusion of roles or indeed confusion about the key part of the wedding ceremony itself. By all means let those who are introducing a faith element into the service have representatives of the faith leading or taking part. However when the time comes for the wedding in civil law, the celebrant takes over. I know many in the Christian tradition who would be supportive of this. I am glad the Ministry of Justice have taken this line.

In my wedding, in our local parish church, the local minister conducted the formal parts of the ceremony as she was entitled in law. But a very good friend of ours, also ordained and in fact capable of conducting the wedding service as a registrar according to law, took the service and all of the introductory elements, the sermon and prayers and the blessings after the marriage commitment. It went very well. But it was very clear who was doing what. That is the model

Specific locations for weddings

I have dealt above with dignity. But in this section of the consultation, the primary issue is weddings in domestic homes

I am very conscious this is cultural, for a small but vocal part of our country. It has never been our tradition. But should it change? I have been ambivalent.

In many ways there is no difference between a private home and a hotel except size and public accessibility. For modest ceremonies, a reasonably sized private home is no different to a hotel or similar public venue. So in fact size is irrelevant. Of course there must be the opportunity for the celebrant to conduct their work privately with the couple. It must be dignified. It doesn't need registration because the celebrant is there.

The crucial aspect is public accessibility. It is here where there is crossover to the giving of notice. Hitherto, whether it is the banns or civil registrar notice, the public is technically aware of a forthcoming marriage. Of course we must move over to digital online notification. But here arises the difficulty. Whilst a member of the public might technically be able to gain access to a wedding at the local hotel, thereby justifying its public nature, this is not the case in a private home. Indeed reference is made to these personal details being omitted. Why should the public have the entitlement to enter into somebody's home? This for me is the difficulty. I have no problem in itself in marriages in private homes provided all of the other requisites of notice, dignity and respect, compliance with the requirements of the celebrant and similar happen. What do we do about notice?

It is a difficult balance. Do we allow marriages in private homes but thereby not have full notice of weddings occurring even if that may be of a technical nature in almost all instances? I think this needs further consideration. I suspect on balance there is little alternative but to put the confidence in the celebrant who will be the representative of the public in the living room of the couple concerned. I have wondered whether this should be put over until the fashion of celebrants in this country is more fully adopted with this new law. But I suspect that will be unsatisfactory to very many. I'm aware this aspect of the reform is of central importance to a number of cultural groups in our society. Accordingly I set out in this response my concerns in this regard which I think are shared by others

Remaining elements

I have no strong opinions either way on the remaining elements. On most I have no capacity to make any intelligent comment e.g. weddings at sea. There will be a crucial role for celebrants and their regulation, Chapter seven, will be vital but I've very little to add. As far as I can see, the consultation is very thorough and careful

Conclusion

I support the reform of wedding law and I have done so over many years. In dealing with many cases, as a lawyer and judge, of foreign marriages, I've seen what does and doesn't work. I believe replacing with the celebrant concept is beneficial. I'm keen that we accommodate and rejoice in the diversity of wedding experiences around the world and now found in the many cultures and communities within our country. Obviously, having seen some shocking instances of forced marriages here and abroad and of coercive conduct along with instances of real anxiety about capacity, we need proper safeguarding and again I support the consultation

The most important aspect for me in my general support is that we must have within all marriage ceremonies a time arising when certain distinctive words are exchanged, in English or Welsh with applicable translations, in which one offers themselves to the other for life in matrimony and the other accepts at which point the celebrant, authorised in law, declares them married in law. These exact words would be used throughout all ceremonies according to law. This is fundamental. This must be identical wording, with only the most minor of variations e.g. spouse instead of husband and wife, and thereby known by all that the couple are now married in law. This cannot under any circumstances be replaced by performance and actions or a multitude of different wording. This will produce confusion. I'm confident in saying it will produce litigation. It will give rise to uncertainties as to whether they were married in law and the family court system is already overwhelmed and doesn't want more sources of dispute! I regard this as fundamental and crucial, as I believe do many others

There are other important changes as I set out in this paper along with much support for the proposals. I congratulate the Ministry of Justice officials in the preparation of their paper. Thank you

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Biography

[Prof David Hodson OBE KC\(Hon\) MCI Arb](#) is a dual qualified English and Australian (NSW) solicitor, a mediator, an arbitrator and a deputy (part time) family court judge (DDJ) at the Central Family Court in London and recently also in Devon and Cornwall. He was a co-founder and for 16 years a partner at The International Family Law Group (iflg.uk.com), a specialist law firm representing international families. He is a member of the English Law Society Family Law Committee, a Fellow of the International Academy of Family Lawyers, a member of LawAsia, the Family Law Section of the Law Council of Australia and a similar contributor to many family law organisations worldwide. He is a

regular speaker at international family law conferences around the world. He was awarded the OBE for *services to international family law*. He was appointed a KC(Hon) in March 2022 by virtue of making a significant impact on the law of England and Wales. He is the editor and primary author of the LexisNexis textbook '*The International Family Law Practice*' (6th ed). He is Visiting Professor at the University of Law and Honorary Professor of Law at Leicester University. He is an Anglican lay preacher. See here for career interview: <https://tinyurl.com/y7stmwjy> He can be contacted on dh@davidhodson.com and more details here www.infinityfamilylaw.com