

# Responding to the Law Commission's consultation on weddings law

## INTRODUCTION

The Law Commission is consulting on changing the law around weddings in England and Wales.

Currently, weddings in England and Wales must take place in a registered building. Venues must meet a number of criteria to be registered. There are also various requirements about what must and must not be involved in a ceremony. These include the "prescribed words": certain forms of words that must be used to declare the parties' consent and availability to marry.

The Law Commission would like almost all these building and ceremony requirements to be removed. It also suggests banning civil registrars from overseeing religious ceremonies, which will create difficulty for many churches.

The consultation also considers how 'independent officiants' could be allowed to conduct legally binding weddings. An independent officiant would be neither a civil registrar nor a member of a religious (or non-religious belief) organisation.

### Responses must be submitted by 4 January 2021

You can **respond online** here:

<https://consult.justice.gov.uk/law-commission/weddings/>

You can also **respond by email** to:

[weddings@lawcommission.gov.uk](mailto:weddings@lawcommission.gov.uk)

Or **respond by post** to:

Weddings Team, Law Commission,  
1st Floor, 52 Queen Anne's Gate, London, SW1H 9AG.

The only required information is your name, and whether you are responding as an individual or on behalf of an organisation.

We have listed the most important issues to respond to below, and identified the key question on each issue. The consultation document itself is very long and includes many more questions, but there is no need to answer them all.

We have included points below to help you form your responses, but please write answers in your own words: they are far more likely to be effective.

## IMPORTANT ISSUES

### No registrars in church weddings (Question 20)

*We provisionally propose that registration officers should only be able to officiate at civil weddings.*

*Do consultees agree?*

This proposal restricts civil registrars to officiating at civil weddings. Currently they can also register weddings at a religious ceremony, where they oversee the signing of the register and ensure that the prescribed words are said. Many churches have civil registrars to officiate at weddings, but this proposal will prevent them doing so.

#### We suggest answering "No".

- If the proposed change would affect your church, please mention this.
- Point out that many churches rely on civil registrars to register weddings, as they do not have their own authorised person.
- For some this might be because they hold weddings infrequently and are therefore less familiar with the legal requirements. For others it is felt impractical to have an authorised person, perhaps because the church is small or does not have a minister.
- One of the Law Commission's goals is that "the ceremony that is meaningful to the couple should be recognised by law". This can happen at the moment in churches that do not have an authorised person, by having a civil registrar to register the marriage. If this is not possible, many couples who attend such churches are likely to require a civil ceremony separate to their church wedding.
- The consultation points out that around half of places of worship registered for weddings do not have a person authorised to conduct weddings. Many of these will be churches, who are able to conduct weddings at the moment but will not be able to under the proposals unless they appoint an authorised person.
- Say that this idea poses a danger of some churches falling foul of weddings law, as they are required to take responsibility for unfamiliar legalities in order to hold a religious ceremony.

## Threat to unpopular beliefs (Question 26)

*We invite consultees' views as to whether the law should expressly exclude religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations from nominating officiants if the organisation promotes purposes that are unlawful or contrary to public policy or morality.*

This proposal sounds reasonable, but there is a danger that it could become a mechanism for penalising moral views that contradict prevailing opinion, which changes over time. Popular culture is increasingly at odds with faithful biblical teaching on marriage, sexual ethics and identity.

- Say that “contrary to public policy or morality” is too subjective an assessment. It would risk those with unpopular but entirely legal views being excluded from nominating officiants.
- Say the test should focus on objective criteria. These could include promoting purposes that are illegal or support illegal activity (such as terrorism), that advocate the violent overthrow of democracy, or that undermine the rule of law.

## Independent officiants (Question 29)

*We provisionally propose that (if enabled by Government to officiate at weddings) independent officiants should be able to apply to the General Register Office to be authorised and included on the public list of officiants.*

*Do consultees agree?*

Only civil registrars and religious officiants are able to officiate at legally valid marriage ceremonies at the moment. This question proposes a mechanism for ‘independent officiants’ to be able to perform legal wedding ceremonies. The consultation paper says that the Law Commission is not asking about whether independent officiants should be allowed, just how it might work if they were allowed. However, this is an opportunity to raise concerns about independent officiants.

**We suggest answering “No”.**

- Currently, wedding officiants are either highly trained registrars or religious representatives who are likely to have strongly-held beliefs on marriage. Allowing independent officiants would open the door to those who may not place such a high value on marriage.
- Independent officiants (known as ‘celebrants’) can currently conduct weddings that are not legally binding. These have included ceremonies underwater, in a sadomasochism dungeon, at a comic book convention with a couple dressed as fictional characters, and at a ruined leper hospital on Hallowe’en.<sup>1</sup> Another involved a couple dressed as hedgehogs. Such ceremonies could be legally binding if independent officiants were allowed, undermining the dignity of marriage.

- One reason couples might choose independent officiants is because they have been refused the religious ceremony of their choice. This might happen where a couple’s beliefs or behaviour are not consistent with the religion they choose for the wedding. Having an independent officiant conduct a pseudo-religious ceremony could misrepresent the religious group’s position on, for example, same-sex marriage. Or there might be beliefs from more than one religion brought into a single ceremony, giving a distorted picture of all the faiths involved.
- Currently there is no financial incentive to officiate a wedding. Opening up a market for independent officiants makes wedding vows a commercial concern. Those more willing to be flexible with the ceremony would be likely to profit the most, encouraging people to push the boundaries. This also risks defeating the goal of reducing costs of wedding venues, which was one of the stated aims the Government gave the Law Commission in 2018.<sup>2</sup>
- A recent study found that most independent celebrants would give couples very little restriction in what they could include in their ceremony – even where the content “clashed with their personal religion, beliefs or values”.<sup>3</sup> This sets the bar extremely low for the seriousness of the wedding, and it is unclear what safeguards or training would be in place.

## Abolishing prescribed words (Question 42)

*We provisionally propose that:*

- (1) during every wedding ceremony, the parties:*
  - (a) should be required to express their consent to be married to each other, whether orally or otherwise, but*
  - (b) should not be required to express that there is no impediment to their marrying each other (with the issue of impediments being addressed during the preliminaries);*
- (2) religious organisations and (if enabled by Government to officiate at weddings) non-religious belief organisations should be able to submit details of their wedding ceremonies to the General Register Office, to identify the way(s) each party expresses consent in accordance with their beliefs;*
- (3) the schedule (or marriage document) should contain a declaration to be signed by each party that they had during the ceremony expressed consent to be married to the other, or they were now consenting to be legally married to the other, the signing of which would itself be an expression of consent if the ceremony did not contain an expression of consent; and*
- (4) the marriage should be formed at the point when both parties have expressed consent to be married to each other, whether during the ceremony or when signing the declaration in the schedule (or marriage document).*

*Do consultees agree?*

The Marriage Act 1949 sets out specific language that must be used by the couple to declare that they are free to marry and to express their consent to do so. These short phrases are known as the “prescribed words”. This question proposes removing prescribed words and instead requiring only the expression of consent “whether orally or otherwise”.

**We suggest answering “No”.**

- ❖ The prescribed words form a foundation for the declarations that are required for a marriage. Without them the wedding ceremony can be as meaningless as a couple or officiant chooses, and legal marriage can become nothing more than a certificate from the Government.
- ❖ Marriage is founded on solemn promises made between two parties. Under these proposals it would be possible to have a legally recognised wedding in which no words were said between the couple, let alone promises of any kind.
- ❖ The commitment made in marriage must be taken very seriously, and without the prescribed words it is much easier to treat the ceremony casually.
- ❖ The prescribed words are only a small part of the entire wedding ceremony. The rules are already extremely flexible about what happens in the rest of the ceremony. It is hard to imagine a genuine wedding in which the prescribed words could not be included at some stage.
- ❖ Allowing wholly personalised wedding ceremonies without any legally-required words would send the message that marriage is an entirely private matter.

### Full customisation of wedding ceremonies (Question 43)

*We provisionally propose that all weddings should take place according to the form and ceremony chosen by the parties and agreed to by the officiant.*

*Do consultees agree?*

The consultation puts great emphasis on ceremonies being ‘meaningfully personalised’ and in accordance with the parties’ wishes. This will inevitably reduce how seriously weddings are taken, even though the Law Commission suggests officiants should have a duty to uphold the dignity and solemnity of marriage.

**We suggest answering “No”.**

- ❖ It is far more important that a legal wedding ceremony reflects the seriousness of the commitment the parties are making than that it is personalised to the couple.
- ❖ Non-legally binding ceremonies can already be as personalised as people want. These have included ceremonies underwater, in a sadomasochism dungeon, at a comic book convention with a couple dressed as fictional characters, and at a ruined leper hospital on Hallowe’en.<sup>4</sup> Another involved a couple dressed as hedgehogs. Personalisation will damage the dignity of the wedding ceremony.

- ❖ A requirement for officiants to ensure that the ceremony does not undermine the dignity and solemnity of marriage is too subjective. It will not prevent couples finding an officiant to agree to even the most outlandish wishes.
- ❖ The possibility of fully-tailored wedding ceremonies will encourage commercialisation. Those more willing to be flexible with the ceremony would be likely to profit the most, encouraging people to push the boundaries.
- ❖ If people can entirely customise their own weddings, they might blend together different elements from faith ceremonies inappropriately, effectively making a parody of those ceremonies. This could be highly offensive to people of those faiths.

### Scrapping ‘open doors’ (Question 47)

*We provisionally propose that the existing requirements for a wedding to take place with open doors, or otherwise for public access to be allowed, should be repealed.*

*Do consultees agree?*

Although many couples choose to celebrate their wedding reception with selected friends and family, wedding vows have long been accessible to the entire community through the requirement that wedding ceremonies have ‘open doors’. This question proposes to remove the requirement for weddings to take place with “open doors”.

**We suggest answering “No”.**

- ❖ You should state that the ‘open doors’ requirement is a valuable part of wedding day celebrations, making it clear that marriage is not a private affair, but rather is important to society as a whole.
- ❖ The opposite is also important; weddings which are not publicly accessible make a statement that the marriage is private and of interest only to the couple. This couldn’t be further from the truth.
- ❖ Ensuring that weddings are open to any member of the public, rather than just those invited, is a way of protecting against forced marriage and bigamy, for example.

### No restrictions on venues (Question 48)

*We provisionally propose that all weddings should be legally permitted to take place anywhere.*

*Do consultees agree?*

The current law only recognises weddings in buildings registered for the purpose. This and the related questions propose a system by which weddings can take place in any venue considered “dignified and safe”.

There are **clear advantages** to changing the system. Many churches that do not own their own premises but worship in shared buildings like community centres or schools cannot currently hold weddings in those venues.

**But the danger** is that removing the restrictions opens the door to inappropriate venues being used.

- Express serious concern that it is unclear what safeguards will prevent unsuitable venues being used. How will the dignity of such ceremonies be guaranteed?
- The consultation states that venues would need to be 'dignified' and 'safe', but lacks precision on what this means or how it will be tested. Venues must not detract from the solemn occasion of the wedding.
- The Law Commission has made it clear it sees no objection to weddings "in the air", suggesting that the terms 'dignified' and 'safe' could be interpreted very broadly.
- Unofficial weddings have been conducted underwater, in a sadomasochism dungeon, at a comic book convention with a couple dressed as fictional characters, and at a ruined leper hospital on Hallowe'en.<sup>5</sup> Such settings clearly trivialise marriage. The law must not allow such venues to host legally binding ceremonies.

## REFERENCES

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- <sup>1</sup> Pywell, S, 'The day of their dreams: celebrant-led wedding celebration ceremonies', *Child and Family Law Quarterly*, 177, June 2020
- <sup>2</sup> Budget 2018, HM Treasury, 29 October 2018, para 6.10
- <sup>3</sup> Pywell, S, 'The day of their dreams: celebrant-led wedding celebration ceremonies', *Child and Family Law Quarterly*, 177, June 2020
- <sup>4</sup> Pywell, S, 'The day of their dreams: celebrant-led wedding celebration ceremonies', *Child and Family Law Quarterly*, 177, June 2020
- <sup>5</sup> Pywell, S, 'The day of their dreams: celebrant-led wedding celebration ceremonies', *Child and Family Law Quarterly*, 177, June 2020