

Inter-Departmental Committee on Reform of Marriage Law

Discussion Paper No. 2

Procedural Preliminaries

(Marriage Notification, Residence, Notice & Licences)

May 2003

1. Introduction

- 1.1 The Inter-Departmental Committee has been established by Government to review current marriage procedures and to bring forward a universally applicable framework of clear and simple procedures which will underpin the solemnity of the marriage contract.
- 1.2 The key objectives are to:
- Provide a universal system/framework that recognises and underpins marriage as a solemn contract;
 - Streamline procedures;
 - Provide clarity on formalities to be observed.
- 1.3 The present formalities for marriage are contained in Acts and Regulations enacted between 1844 and 1995. Societal norms and structures upon which the law was based have changed significantly over this period. This paper discusses the current procedures in relation to residence requirements, notice, licences for marriage and proposals for reform.

2. Current procedural preliminaries to a marriage

- 2.1 A person may get married by a religious ceremony, which is recognised by the civil law, or by a civil ceremony in the presence of a Registrar of Marriages. To contract a valid marriage certain procedural preliminaries laid down in statute must be observed – notifications, residence, notice and licences. The law relating to the formalities applicable to the different forms of marriages is both complex and in some respects may be discriminatory.

3 months written notification of intention to marry

- 2.2 The Family Law Act 1995 imposed a universal obligation on parties intending marriage to notify the Registrar of their intention to marry (Section 32). It also imposed 18 years as the minimum age for marriage (Section 31). Both these provisions are substantive requirements for a valid marriage and apply equally to all marriages.
- 2.3 There is provision for an application to the courts for an exemption to these requirements. However, there is concern about the level of recourse to the courts for exemptions - 1,189 applications were made to the Circuit Court under Section 33 of the Act in 2001 of which 1,160 exemptions were granted. It is understood that the majority of these applications were in respect of the three months written notification requirement.
- 2.4 The requirement for three months written notification was added to the existing law, which already included notice procedures for the issue of

licences for marriage. This has led to confusion not only for the public but also for licencers and solemnisers of marriage.

Forms of licence

- 2.5 The term licence in this paper is used to describe any permission or authority granted for the solemnisation of a marriage.
- 2.6 Marriage may be solemnised on foot of:
- A Registrar's certificate for marriage without licence;
 - A Registrar's licence;
 - A special licence issued by An tArd Chláraitheoir;
 - A special licence issued by a bishop or the head of certain denominations;
 - An ordinary licence issued by an authorised member of a church or religious body;
 - The reading of Banns.
- 2.7 These provisions are not universally applicable to all denominations and there are different requirements imposed on people who wish to marry according to the rites of the various churches and religious denominations. There are also differences in the privileges accorded to religious bodies with regard to the issue of licences for marriage. Therefore the procedure that must be followed by a couple intending to marry is determined by the denomination of the church in which the marriage is to be solemnised.
- 2.8 The procedures outlined above (except Registrar's licence) may be availed of by members of the Roman Catholic Church and of the Church of Ireland. The procedures for the issue of (ordinary) licences and the publication of banns in the Roman Catholic Church are governed by canon rather than statute law. Other denominations have more limited privileges in respect of the issue of licences. Members of the more recently established religious bodies lack the power to issue licences and their members must of necessity apply for a Registrar's licence or certificate for marriage by a religious ceremony. This imposes restrictions on where the marriage may take place.

Notice procedure and residence requirements for licences

- 2.9 The residence requirements and the timescale applicable to the different forms of licence vary. The following summarises the residence requirements and implications of the different licencing provisions.

Marriage by licence

- 2.10 A Registrar's Licence may be granted in respect of the following marriages:
- Marriage in the Registrar's office;
 - Marriage by Christian ceremony, other than Roman Catholic, Church of Ireland, or Presbyterian.
- 2.11 A Registrar's licence may not be granted for a marriage by the usage of the Jewish Religion or the Society of Friends.
- 2.12 The minimum timescale for the issue of a Registrar's licence is 23 days. This is made up as follows:

Residence

- **Party 1** - 15 days residence in the Registrar's district prior to giving notice plus 8 clear days from the date of notice before a licence may issue;
- **Party 2** - 7 days residence prior to giving notice if living in the same district or 15 days if living in a different district.

Notice

- At least one of the parties to the proposed marriage must attend at the Registrar's office;
 - Notice is entered in the marriage notice book and displayed on a notice board in the office;
 - A person giving notice must reside in the Registrar's district for 15 days immediately prior to giving notice to the Registrar;
 - If the parties to the proposed marriage live in different districts each party must give notice to the registrar in his/her own district.
- 2.13 If one of the parties lives in Northern Ireland s/he may give notice to the Registrar (of the district in which s/he resides) for a marriage in Ireland provided the second party resides in the district in which the marriage is to take place. If one of the parties lives in England and Wales s/he may give notice to the Superintendent Registrar, of the district in which s/he resides, for marriage in Ireland, provided the second party resides in the district in which the marriage is to take place.

Marriage by Registrar's certificate without licence

- 2.14 A Registrar's certificate for marriage without licence may be used for all forms of marriage, except Presbyterian marriages.

- 2.15 The minimum timescale for the issue of a Registrar's certificate is 30 days. This is made up as follows:

Residence

- Parties must reside in a Registrar's district for 7 days before giving notice to the registrar.

Notice

- At least one of the parties to the proposed marriage must attend at the Registrar's office to give notice;
 - If the parties live in different districts notice must be given to two Registrar's;
 - Notice is entered in the marriage notice book and displayed on a notice board in the office;
 - A registrar may not issue a certificate until 22 clear days have elapsed from the day notice was served.
- 2.16 If one of the parties lives in Northern Ireland s/he may give notice to the Registrar in Northern Ireland for marriage in Ireland, provided that the other party to the marriage gives notice in the district in which s/he has resided for 7 days. If one of the parties resides in England and Wales s/he may give notice to the Superintendent Registrar in the district where s/he resides.

Special Licence granted by An tÁrd Chláraitheoir (Registrar General)

- 2.17 An tÁrd Chláraitheoir may issue a special licence allowing a Registrar of Marriage to solemnise a marriage at a location other than his/her office, where s/he is satisfied that one of the parties to the proposed marriage would be unable to attend at the Registrar's office by virtue of serious ill health certified by a registered medical practitioner. There is no residence requirement, but the requirement to give 3 months written notification of marriage or to obtain a court exemption still applies.

Marriage by licences issued by a religious body

- 2.18 There are two types of licence which may be issued by a religious body:
- **Special licences;**
 - **Ordinary licences.**

Special Licences

- 2.19 There is no timescale or procedures set out in legislation with regard to residence or notice provisions for the issue of special licences.
- 2.20 The following denominations are empowered by statute to issue special licences for the solemnisation of marriage:
- Church of Ireland (Bishop);
 - Presbyterian Church (Moderator);
 - Congregationalists (Chairman);
 - Methodists (Secretary of Conference);
 - Baptists (President);
 - Society of Friends in Ireland (Clerk of yearly meeting);
 - Jewish Community (Chief Rabbi).

Ordinary Licences

- 2.21 The timescales and procedures for the issue of an ordinary licence for marriage are provided for in legislation. The timescale for each denomination is as follows:

Church of Ireland – 14 Days

- One party must live in the licencer's district for 7 days;
- Personal attendance to give notice is not required by statute. A copy of the written notice is entered in the Marriage Notice Book which is open to inspection. A copy is sent to the officiating clergyman;
- Licence may be granted 7 days after service of notice.

Roman Catholic Church – 7 Days

- No residence requirement is specified in statute, but a person must give 7 days written notice. There is no requirement to publish the notice, but a copy is issued to the priest who will solemnise the marriage.

Presbyterian Church – 23-28 Days

- One of the parties to the proposed marriage must appear in person to

subscribe an oath or declaration that s/he has lived in the presbytery (district) for 15 days prior to serving notice;

- S/he must also produce to the licencer at least 7 days before the issue of the licence a certificate signed by the minister of the congregation of which s/he is a member that s/he has been in a member of the congregation for at least one month;
- A copy of the notice is entered in the Marriage Notice Book which is open to inspection.

Marriage following publication of Banns

2.22 There is provision in statute for marriage following the publication of banns by the Church of Ireland and the Presbyterian Church. Both parties to the marriage must be of the appropriate denomination and the banns are read on 3 successive Sundays in the parish or presbytery where the parties attend. It is understood that the publication of banns is rarely if ever used by any of the churches in question.

3. Proposed future approach

- 3.1 The provision for a residence requirement prior to giving notice to a Registrar or licencer of marriage was based on the premise of Victorian society, where people were, in general, born and known in the same or neighbouring parish/district. This is no longer the position. Society has become more mobile and the current residence rules impose an artificial burden on couples intending to marry. Anecdotal evidence would suggest that some persons who wish to marry outside their district are unable to do so. As a result of changes in society a residence requirement is no longer workable and unnecessarily bureaucratic. The intent of this requirement should be met by some other means.
- 3.2 The requirement to give three months notification of intention to marry was superimposed on an already complex notice system. The apparent conflict between procedures for marriage notice and marriage notification needs to be resolved.
- 3.3 The rules in relation to licences for marriage are complex and not easily understood by either couples wishing to marry and to some extent by those involved in the issue of licences. Modern universal procedures need to be developed and the system needs to be simplified, more transparent and more easily administered.
- 3.4 The reform of marriage preliminaries seeks to ensure:
- The significance of the marriage contract for the couple and society in general;
 - That there is no impediment to the marriage.

- 3.5 It is therefore proposed to:
- (a) Replace the present complex and uneven system of licences and notice by the introduction of universal civil preliminaries for marriage, and
 - (b) Remove residence requirements;
 - (c) Introduce a new:
 - (i) Marriage Notification Form
 - (ii) Marriage Registration Form

Universal Civil Preliminaries

- 3.6 The requirement to give three months written notification to a Registrar is now well established as a substantive requirement for marriage. It is proposed to strengthen this procedure by the inclusion of the following additional provisions:

- Joint personal attendance of the couple at the registrar's office;
- Production of identification;
- Joint completion of a statutory **Marriage Notification Form**;
- Making of a formal declaration of freedom to marry;
- Production of documentary evidence of the dissolution of a previous marriage if appropriate.

thereby introducing standard universal civil preliminaries for all marriages in the State.

Marriage Registration Form

- 3.7 On the completion of all civil preliminaries, a Registrar will issue a **Marriage Registration Form** to the couple. This form will contain details given at marriage notification and particulars in relation to the solemnisation of the marriage – intended date, celebrant, location and witnesses.
- 3.8 The marriage registration form will be valid for a period of three months from the intended date of marriage. A marriage may not proceed without a valid marriage registration form. This form will introduce standard arrangements for the registration of all marriages.

