THE IMPORTANCE OF BEING AUTHORISED:

THE GENESIS, LIMITATIONS, AND LEGACY OF THE MARRIAGE ACT 1898

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On 1 April 1899, a new law came into force that effected an important change in the way that religious weddings were regulated. Under the terms of the Marriage Act 1898, the trustees or other governing authorities of places of worship that had been registered for weddings were able to appoint their own 'authorised person' to register the marriages that were celebrated there.[1] This degree of responsibility and autonomy was in stark contrast to the previous requirement that all such weddings had to take place in the presence of a civil registrar. That particular requirement had been in place for over 60 years, ever since the Marriage Act 1836 had first made it possible to marry in a registered place of worship.[2] It had, however, engendered considerable resentment, given that it only applied to those whose weddings had to be solemnised in a registered place of worship in order to be valid – that is to say, Catholics, the majority of Nonconformists, and a few Jewish groups.[3] From the 1870s the complaints of Nonconformists, the largest of the groups affected, had coalesced into a campaign to dispense with the presence of the registrar, and the 1898 Act was the result.

While scholarly commentary on the 1898 Act has been somewhat sparse, the overall tone has been positive. Roderick Floud and Pat Thane refer to the Act as ending the cost and complexity of 'chapel' marriage,[4] while Stephen Cretney suggested that it should be seen 'as completing the reforms of the law begun … 60 years before'.[5] Crucially, however, this is not how it was

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[1] Marriage Act 1898, s 4.

[2] See Marriage Act 1836, ss 18 (on the registration of places of worship for weddings) and 20 (on the requirement that a registrar be present).

[3] See further below for the special rules that applied to Anglican, Quaker and most Jewish weddings.

[4] R Floud and P Thane, 'Debate: the Incidence of Civil Marriage in Victorian England and Wales' (1979) 84 *Past and Present* 146, 147. The term 'chapel' is often used in relation to Nonconformists; it is, however, apt to cause confusion in this context given the different descriptions that different religious groups might apply to their own places of worship and the fact that there were also Anglican chapels. Moreover, since a significant proportion of non-Anglican places of worship were not actually registered for weddings, it would be misleading to give the impression that it was possible to marry in any chapel.

[5] S Cretney, *Family Law in the Twentieth Century: A History* (Oxford University Press, 2003) 21.

seen at the time. Contemporaries described it as 'as a meagre sop to Nonconformists'[6] and 'a bit of tinkering with the subject that may not improbably raise a fresh crop of difficulties and complications' and so was 'not final or satisfactory'.[7] Others were less temperate in their assessments: in the view of one correspondent to the *Sheffield Independent*, the Act was 'one of, if not the most, imperfect, disappointing, and irritating pieces of legislation ever sent forth by this or any other Parliament'; as he put it, 'having asked for a loaf, they have given us a stone'.[8]

Such assessments raise questions not just about the adequacy of the solution adopted in 1898 but also its implications for modern marriage practices and policy debates. The requirement for a registered place of worship to appoint an authorised person if weddings are to be celebrated there without a registrar being present remains part of the law today, the 1898 Act having been consolidated into the Marriage Act 1949.[9] Perhaps surprisingly, the official list of places of worship that have been registered for weddings does not indicate which have an authorised person.[10] All we know is that the number of registers that have been issued to registered places of worship is only around half the number of such places.[11] From that we can infer that the number of registered places of worship that currently have an authorised person is probably somewhat less than half of the total.[12] There is also the issue that not all places of worship are registered for weddings to take place there, and so do not have the power to appoint an authorised person. The fact that many mosques have not been registered has been a particular concern for policy-makers.[13] With reforms to the way in which marriages are to be

[6] *Hampshire Telegraph*, 8 April 1899.
[7] 'Marriage Made Easier: A New Act for the First of April', *Daily News*, 31 March 1899.
[8] *Sheffield Independent*, 8 April 1899. See also 'New Marriage Act: Yorkshire Presbyterians' Opinion', *Hull Daily Mail*, 9 May 1899, declaring that 'the new law was an insult to the Nonconformists of England. The new Act was one of the silliest and stupidest measures passed by any Government.'
[9] The relevant provision can now be found in Marriage Act 1949, s 44(2).
[10] While statute requires the trustees or governing body responsible for authorising him or her to certify their name and address to the Registrar General and to the superintendent registrar of the registration district in which the registered building is situated (Marriage Act 1949, s 43(1)), there is no requirement on either the Registrar General or the superintendent registrar to publish that information.
[11] Around 12,000 of approximately 22,500 registered places of worship have their own registers, indicating that an authorised person has been appointed: Law Commission, *Getting Married: A Consultation Paper on Weddings Law*, CP 247 (3 September 2020), para 5.110.
[12] The registers are issued to the place of worship, rather than to the person. While the trustees or governing body of the registered place of worship are meant to inform the General Register Office when they no longer have an authorised person (The Marriage (Authorised Persons) Regulations 1952, SI 1952/1869, r 5), there is evidence of other failures to keep the information provided up-to-date, for example where the group meets in a different building from that which was registered (see R Probert, 'A Uniform Marriage Law for England and Wales?' [2018] 30 *Child and Family Law Quarterly* 259).
[13] For an overview see RC Akhtar, P Nash and R Probert (eds) *Cohabitation and Religious Marriage: Status, Similarities and Solutions* (Bristol University Press, 2020).

registered having recently been implemented,[14] and provisional proposals for reform having been put forward by the Law Commission,[15] it is essential to understand why the existing option of being authorised has not been taken up more widely, and whether these reforms might encourage individuals to become authorised.

By examining the genesis, limitations, and legacy of the 1898 Act, this article will show why the option of being authorised has been unattractive to many individuals who conduct weddings, past and present. The first two parts will analyse the debates inside and outside Parliament that led to its passage and show why it was regarded with such disfavour by contemporaries. Part three will then focus on how the requirements of the 1898 Act are experienced today. To do so, it draws on focus group and interview discussions with a range of individuals who were, or could have been, authorised, to understand the differences in take-up. These were carried out as part of a project into non-legally binding wedding ceremonies funded by the Nuffield Foundation; the scope of that project, and our methods, are discussed further below. The final part then considers the views expressed by our participants about the Law Commission's proposal for religious groups to be able to nominate 'officiants' to oversee the process of getting married, as well as the potential impact of the new system of registration.

I: THE GENESIS OF THE ACT

The roots of the 1898 Act lie over 60 years earlier, in the provisions of the Marriage Act 1836 that had first established a process for marrying according to non-Anglican rites. The inclusion of the requirement that a registrar should attend every wedding in a registered place of worship had been important in securing the passage of the Act after a number of earlier proposals for reform had foundered. Knowing that a representative of the state would be present allayed legislators' fears that allowing any religious group to register their place of worship for weddings would undermine the existing safeguards against clandestine marriages. That this

[14] The Registration of Marriages Regulations 2021 came into force on 4 May 2021, implementing the new 'schedule' system envisaged by the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 (see further below).
[15] Law Commission (n 11).

representative of the state was to be one of the newly created registrars of marriage reflected how the Marriage Act was tied to the introduction of the new system of civil registration.[16]

What the 1836 Act did *not* do, then, was recognise non-Anglican ministers. There was in fact no regulation at all of who should conduct any wedding in a registered place of worship. It could be conducted by any religious officer-holder in the presence of the registrar, or the parties could simply exchange the prescribed words before the registrar with no religious office-holder present. This is a nuance that has been missed by a number of historians: while at one level it is true that the 1836 Act enabled Catholic priests and Nonconformist ministers to conduct weddings,[17] their presence added nothing to the legal validity of the ceremony. It was the presence of the registrar that was crucial, not the status of the person conducting the ceremony.

However, different rules applied to Anglican, Quaker, and Jewish weddings. Anglican clergy had always been responsible for registering the marriages they had conducted; the only changes to their role were that new registers were supplied to them by the General Register Office and they were required to send copies of the entries made therein to the civil authorities to be entered into a central register.[18] Quakers and Jews, who had previously been exempted from the legislation requiring all weddings to take place in the Anglican church, were somewhat clumsily brought within the scope of the 1836 Act, in that couples were required to give notice[19] and a process was established for their marriages to be registered, with Quaker registering officers being certified by the recording clerk of the Society of Friends and Jewish secretaries by the Board of Deputies.[20]

The lack of recognition of non-Anglican ministers and priests – and the corresponding necessity of a registrar being present at weddings in registered places of worship – was a source

[16] On the passage of the 1836 Act, see R Probert, *Tying the Knot: The Formation of Marriage 1836-2020* (CUP, 2021).
[17] See eg L Stone, *Road to Divorce: A History of the Making and Breaking of Marriage in England* (Oxford University Press, 1990, 1995) 133, referring to the possibility of marrying in 'a sacred religious ceremony conducted by a minister in holy orders in a church or chapel'; C Lambert, 'Introduction: The Lottery of Marriage' in C Lambert and M Shaw (eds), *For Better, For Worse: Marriage in Victorian Novels by Women* (Routledge, 2018) 3, claiming that the 1836 Act 'enabled ministers of churches other than the Church of England to conduct marriages'.
[18] Births and Deaths Registration Act 1836, ss 30-31.
[19] Marriage Act 1836, s 2.
[20] Births and Deaths Registration Act 1836, s 30. On the unwillingness of the Board of Deputies to certify the secretaries of Reform and Liberal synagogues, and the necessity of such synagogues being registered as places of worship in order to conduct legally recognised weddings, see Probert (n 16).

of some resentment from the beginning. Catholics in particular complained that the presence of a registrar was 'both humiliating and expensive' and argued that efforts should be made to free themselves from this particular requirement.[21] However, the grievance began to be felt most acutely in the later part of the nineteenth century as relations with registrars changed. The initial guidance on the appointment of registrars of marriage had noted that their duties would almost exclusively relate to non-Anglicans,[22] and there are examples of Catholics and Nonconformists being appointed to the role.[23] By the late nineteenth century, by contrast, registrars were being described as 'Government officials'[24] who were all too 'ready to give a snub whenever they could to the Nonconformist ministry'.[25] In the graphic (and possibly defamatory) comments of one MP, Nonconformists were told that 'they are not allowed to have any spiritual adviser to marry their children, but that the marriage must be conducted by some lawyer's clerk, who may come in a fit state to marry, or in a state more spirituous than spiritual'.[26]

At the same time, more weddings were being conducted in registered places of worship as relations between the Anglican church and the Wesleyan Methodists shifted. In the wake of the 1836 Act many Wesleyan Methodists had continued to marry in the Anglican church, regarding themselves as falling somewhere between the established church and older dissenting groups such as Baptists, Presbyterians, and Independents/Congregationalists. As the decades passed, however, they increasingly identified themselves as Nonconformists and registered their churches and chapels for marriages. The fact that they had to marry in the presence of a civil registrar underlined the fact that their ordained ministers did not have the same status as Anglican clergy. As the largest religious group after the established church, they had considerable influence, and a campaign to dispense with the presence of the registrar began.[27]

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[21] *The Tablet*, 26 February 1848.
[22] Circular from the GRO to Superintendent Registrars, 23 January 1837, *First Annual Report of the Registrar-General of births, deaths and marriages in England* (HMSO, 1839), Appendix F.
[23] Probert (n 16).
[24] *Liverpool Mercury*, 6 January 1886, 13 March 1886.
[25] *Liverpool Mercury*, 1 March 1887, reporting the comments at a conference promoted by the Liverpool Committee of the Liberation Society.
[26] HC Deb 24 February 1891, vol 350 col 1542. For further evidence of the problems faced by Nonconformists, see the *Report from the Select Committee on Nonconformist Marriages (Attendance of Registrars)* (London: HMSO, 1893), cited by Floud and Thane (n 4) and Cretney (n 5), although see also O Anderson, 'The Incidence of Civil Marriage in Victorian England and Wales' (1975) 69 *Past & Present* 50, on the need for caution in interpreting the findings of the report.
[27] Probert (n 16).

Had this campaign been waged by the Wesleyan Methodists alone, then it is likely that the resulting reform would have focused on the recognition, or at least the authorization, of Nonconformist ministers. The first attempt to change the law, the Marriages Registration Bill 1880, began by reciting that since Anglican clergy could solemnise marriages without the presence of the registrar and 'satisfactory provision' had been made for Quakers and Jews, 'it is desirable that, under proper restrictions, the power to solemnise marriage without the presence of the registrar should be extended to the ministers of other religious bodies…'.[28] The challenge for reformers was to find a solution that would also work for other Nonconformists, given the range of views and practices that existed. Many Baptists and Congregationalists rejected the idea of having ordained ministers, their services being conducted by laymen instead. Many newer denominations, such as the hugely popular Salvation Army, had no concept of a clergy at all. And even if a group had an identifiable minister, there was the further obstacle that many of them had a theological objection to being tasked with registration. As one Nonconformist wrote to the *Daily News*,

> the appointment of Nonconformist ministers *quà* Ministers as State officials would certainly provoke very emphatic protest from Nonconformists generally. Some Congregational and Baptist ministers might feel themselves free to accept the position if offered to them in their private, not their official character; but a great number would not hold the office on any condition.[29]

The perception was that, in being approved by the state to register marriages, they would thereby become state officials, and, in the words of Halley Stewart MP, speaking for ministers of Baptist and Congregationalist denominations, 'amenable to the State as registrars, and punishable by the State if they neglect their duty'.[30] The *Manchester Times* reflected this view in commenting that:

> Congregational ministers cannot consistently become servants of the State in a religious function. Once registered by the Registrar-General they would practically be appointed by the State to perform a religious duty. 'What would then become of their great

[28] Marriages Registration Bill 1880.
[29] *Daily News*, 15 March 1886.
[30] HC Deb 24 February 1891, vol 350 col 1555.

contention for religious equality based upon the principle that the State has no province in religion?'.[31]

Contrary to earlier contentions regarding the desire for equality with Anglican clergy, one correspondent even suggested that the presence of the registrar should be seen as a tribute to the dignity of the Nonconformist minister, since it 'relieved the officiating minister from all responsibility as to the regularity and validity of the marriage at which he conducted the religious service'.[32] This diversity of views as to the status and role of the minister made the task of finding a solution that would work for all Nonconformists a challenging one.

Overlapping with the question of *who* would be responsible for registering the marriage was the practical issue of *how* they would do so. Registered places of worship were not issued with their own register books; the registrar brought the official register with him, and took it away again. One option was to issue register books to specific authorised ministers who would conduct and register marriages. The other was to require the person officiating at the marriage, whoever this might be, to complete certain prescribed documentation confirming that the marriage had taken place and return it to the superintendent registrar. While this would have sidestepped the question of the status of the person officiating, and obviated the need for new register books to be issued, the risk was that it would leave marriage entirely unregulated.[33]

Against that background, it is understandable that the Marriage Act 1898, like the 1836 Act before it, conferred no authority on ministers as such. The necessity of the trustees or other governing authorities of registered places of worship specifically appointing an 'authorised person' ensured that no one would be tasked with legal responsibilities automatically, or against their wishes. It also ensured flexibility as to who could be appointed: it could be a minister, or a trusted layperson.[34] But that flexibility was also a reflection of the limitations of the Act, to which we shall now turn.

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[31] *Manchester Times*, 5 March 1887. See also *Portsmouth Evening News*, 10 April 1886, reporting that the spring session of the Hants Congregational Union had passed a resolution recording its 'deep conviction' of a need for reform but 'its most earnest protest against any proposal to make Nonconformist ministers State officials by thrusting upon them the duties of responsible registration.'

[32] *Daily News*, 27 March 1886.

[33] Probert (n 16).

[34] See eg *Yorkshire Evening Post*, 1 April 1899, noting that '[t]hose who have mastered the complexities of the Act say that the "authorised person" may be a church secretary, a church officer, or a pastor.' Some newspapers also picked up on the gender neutrality of the term: '[i]f only a lady can put up with being called "a person", she may be made the authorised one' ('The Humour of the New Marriage Act', *Dover Express*, 24 February 1899).

II. THE LIMITATIONS OF THE ACT

The 1898 Act had three key limitations. The first was conceptual. Whilst some welcomed the clear distinction between the state and religion, the provisions did not address the inequality of some religious ministers being authorised due to their status, yet others essentially regarded as a substitute for a civil registrar with accompanying burdensome expectations to comply with the regulations of this role. The second was physical, in terms of authorised persons being appointed by the trustees or governing body of a specific registered place of worship, and only being permitted to register marriages in the registration district within which that building was located. And the third was religious, in that not all registered places of worship were able to appoint an authorised person. In this section we will examine these three limitations in more detail, before moving on to analyse their legacy in the third section.

It was acknowledged at the time that the 1898 Act was very far from recognizing the status of non-Anglican religious office-holders. As one Nonconformist minister objected, using the phrase 'authorised person' 'failed to give recognition to the ministerial status'.[35] This, of course, was precisely the point of the phrase: as noted above, focusing on ministers would have been problematic for many Nonconformist denominations. But an apparently minor textual amendment made to the Bill during its final stages in the House of Commons had fundamentally changed what it meant to be authorised, in removing any reference to an authorised person 'officiating at' or 'solemnising' a wedding.[36] While 'solemnising' might have implied that the authorised person was conducting the wedding, 'officiating at' was wide enough to encompass those who were attending in an official, rather than a ministerial, capacity. The removal of these words meant that there was no reference to an authorised person *doing* anything: like the registrar before them, they merely had to be there.

This conceptualization of authorised persons as passive observers was reinforced by the format of the new register books that were issued to those registered places of worship that had appointed them. Previous marriage registers had used the format 'married… by [name of

[35] 'New Marriage Act: Yorkshire Presbyterians' Opinion', *Hull Daily Mail*, 9 May 1899.
[36] HC Deb, 3 August 1898, vol 63, cols 1106-7.

religious office holder]', with the registrar adding their name underneath that of the person who had conducted the wedding. Where the wedding had been conducted in the register office, 'by' was crossed out and 'before' substituted. By contrast, the phrase printed in the new marriage registers was 'in the presence of'. This was the same phrase as preceded the signatures of the two witnesses. In other words, authorised persons were simply witnesses to the wedding.[37]

In effect, what the Act had permitted was 'not the abolition of the registrar, but the appointment of a lot of sub-registrars' by a different name.[38] A further indication of this was the way in which those taking on the role of authorised person were to be subject to the regulations issued by the Registrar General. These, issued in March 1899, were extremely detailed, filling at least thirty pages of close type.[39] With the warning in the Act that any failure to comply with such regulations would constitute a criminal offence,[40] and no indication as to which penalties might apply to which failures,[41] it was perhaps unsurprising that one Wesleyan minister asked for the prayers of his congregation upon becoming authorised.[42] As the *Sheffield Independent* predicted, 'the red-tape and troublesome requirements of the new Act will be a bar to its general adoption'.[43]

The second limitation, as noted above, was physical. The fact that the trustees or governing body of each registered place of worship were responsible for appointing their own authorised person suited those churches that operated on an individual basis rather than as part of a larger organization. The Wesleyan Methodists, by contrast, had been campaigning for all of their ministers to be automatically able to conduct marriages without a registrar being present: in other words, for an organizational model rather than a buildings-based one.[44] During the Committee stage of the bill they had, however, been reassured by the proviso that 'a person

[37] R Probert, 'Interpreting choices: what can we infer from where our ancestors married?' (2021) 5 *Journal of Genealogy and Family History* 75.
[38] *Western Mail*, 1 April 1899.
[39] 'Marriage Made Easier: A New Act for the First of April', *Daily News*, 31 March 1899; *Western Times*, 1 April 1899.
[40] Marriage Act 1898, s 12.
[41] The possible penalties set out in the Act were a fine of either £10 or £50 or imprisonment for a term of up to two years.
[42] *Yorkshire Evening Post*, 1 April 1899; 'The New Nonconformist Marriage Act: How it is Likely to Work in Leeds', *Leeds Mercury*, 1 April 1899; *Newcastle Courant*, 8 April 1899.
[43] *Sheffield Independent*, 6 April 1899.
[44] See the Marriages of Nonconformists (Attendance of Registrars) Bill 1891, which proposed that it should be lawful 'for all ministers of the Wesleyan Methodist Society, under the direction of the Wesleyan Methodist Conference' to conduct marriages in registered places of worship without a registrar being present (Bill No. 144, as printed 2 December 1891), and the attempts by Robert Perks MP to press this solution during the debates on the 1898 Bill: HC Deb 15 June 1898, vol 59, col 338.

authorised for one registered building may officiate at or solemnise a marriage in another registered building'.[45] The prominent Wesleyan Methodist MP Sir Henry Hartley Fowler commented that this would mean 'that the Bill authorises a certain person to perform a marriage in Leeds, and it will also allow him to perform a marriage at Birmingham if it is required.'[46] He also noted the particular issue that might face Congregational chapels 'in some small district' where 'there might not be a minister within 20 or 30 miles'.[47] A second MP, Mr Oldroyd, speaking on behalf of Congregationalists, noted that the possibility of a person authorised for one place of worship officiating in another would work well for them; as he explained:

> We have in our denomination a considerable number of chapels, attached to which there is no resident minister, but all these chapels are connected with other larger chapels…. I take it that the clause of the Attorney General would work in this way, that the governing body at each of these chapels would give authority to some person to solemnise marriage. That person so authorised would be authorised for more than one place. It seems to me that the clause of the Attorney General would work admirably well so far as the Congregational body is concerned, and I may say also that the Baptist body would be satisfied with the proviso in the clause as it now stands.[48]

There had also been some discussion of whether, as one MP suggested, individuals should only be authorised to officiate in places of worship 'belonging to the same religious denomination'.[49] The case for the proposed amendment was put forward on two bases: one, that clergy from one denomination would not wish to perform a marriage in another; and two, that since the Bill might avail small breakaway sects to set up their own chapel and nominate a layman to perform marriages there, they 'should be limited to the denomination to which they belong, and they should not receive from Parliament power to perform the marriage ceremony in any registered chapel in England'.[50] However, the Nonconformist MP Carvell Williams roundly rejected the idea that Nonconformist bodies differentiated among themselves in the way that this implied:

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[45] HC Deb 15 June 1898, vol 59 col 337.
[46] Ibid, col 343.
[47] Ibid, cols 346-7.
[48] Ibid, col 339.
[49] Ibid, col 348
[50] Ibid, col 349.

> I think it would be highly objectionable if, for instance, a Congregational minister were not allowed to perform the marriage ceremony in a Wesleyan chapel. It is altogether foreign to Nonconformist feeling and Nonconformist practice, and I do not think it requires further argument.[51]

That particular amendment was accordingly withdrawn. But Carvell Williams had not addressed the second argument in favour of limiting the places of worship in which an authorised person had authority. And it may be that it was the concerns about laymen authorised by small breakaway sects being able to preside over legal weddings in any registered place of worship in England and Wales that led to a geographical limitation being proposed upon the third and final reading of the Bill. The new wording provided that authorised persons were only authorised to act within the registration district in which the place of worship that had appointed them was located.[52] It passed without any debate.[53]

From one perspective, the revision to this particular clause made sense. If authorised persons were seen simply as a replacement for the registrar, then as a matter of logic they should be subject to the same limitations as a registrar, and be limited to registering weddings within the specific registration district to which they had been appointed. But this of course overlooked the fact that for many Nonconformists the issue had been one of parity with Anglican clergy, not with civil registrars. Moreover, the result was to remove the flexibility that Nonconformist MPs had welcomed. Far from a person authorised by a registered place of worship in Leeds being able to officiate at a wedding in Birmingham, as Sir Henry Hartley Fowler had supposed, his sphere of authority would be limited to Leeds registration district. Even at a more local level, whether smaller churches would be able to share an authorised person would depend on where the boundary line between different registration districts was drawn. And for the Wesleyan Methodists, many of whose ministers changed circuits every couple of years or so, the need for them to be re-authorised every time that they moved into a new registration district was likely to prove something of an administrative headache.[54]

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[51] Ibid.
[52] HC Deb 3 August 1898, vol 63 cols 1106-7.
[53] Marriage Act 1898, s 6(3).
[54] For contemporary comment on this point see *Gloucester Citizen*, 29 August 1899; *Shields Daily Gazette*, 4 September 1899.

Indeed, the limits on the area within which an authorised person could act were more restrictive than those that applied to couples wishing to marry. While the general rule was that couples were required to marry in the registration district in which at least one of them was resident,[55] there were two important exceptions. First, if there was no registered place of worship of their own denomination in that registration district, they were entitled to marry in the nearest such place.[56] Second, if a registered building outside their district(s) of residence was the usual place of worship of one or both, a superintendent registrar could similarly issue a certificate to enable them to marry there.[57] But there was no equivalent provision allowing an authorised person to officiate in other chapels that he might serve.

The third limitation was a religious one, and related to the definition of places of worship for the purpose of the 1898 Act. The original version of the bill had defined a registered building as any place that had been registered for religious worship and certified under the Places of Worship Registration Act 1855. The final version defined it as 'any building registered for solemnising marriages therein under the Marriage Act, 1836'.[58] This subtle shift concealed the re-introduction of discrimination against non-Christian faiths. Prior to the 1855 Act, only Christian places of worship could be certified as such. The 1855 Act had removed this condition. By referring to the 1836 Act, the 1898 Act ensured that only those places of worship that could have been registered for weddings under the 1836 Act – that is to say, only Christian places of worship – could appoint an authorised person.

That particular limitation was to acquire significance for a new strand of Liberal Judaism that emerged in the early twentieth century. The existing exemption for Jewish marriages assumed authorization either by the Board of Deputies or the West London synagogue. Liberal Jewish synagogues could be registered for weddings, but they had to accept the presence of the registrar and the other constraints that went with marrying in a registered place of worship. So too did those marrying at the mosque in Woking when it was registered for weddings in 1920.

Not until 1949 was this particular limitation removed. During the course of discussions about whether Liberal Jews should be put in the same position as Orthodox and Reform Jews, the

[55] Marriage Act 1836, ss 4 and 9; *Ex p Brady* (1840) 8 Dowl 332.
[56] Marriage Act 1840, s 2.
[57] Marriage and Registration Act 1856, s 14.
[58] Marriage Act 1898, s 1(2).

Joint Committee became aware that Liberal synagogues could not appoint their own authorised persons under the Marriage Act 1898. The General Register Office argued that the removal of this particular anomaly was of sufficient importance to require separate legislation rather than being revised as part of the process of consolidation. It would, however, have been difficult to continue this anomaly without openly discriminating against non-Christian groups. There was no longer any justification for making the right to appoint an authorised person contingent on whether a particular place of worship could have been registered for marriages under the 1836 Act, since this Act was about to be abolished. As a result, this particular piece of legal discrimination against non-Christian religions was abolished by default.[59]

The recent reforms effected by the Registration of Marriages Regulations 2021 have made some fundamental changes to what is required of an authorised person. Registered places of worship will no longer be issued with register books. Instead, each couple wishing to marry will, after giving notice, be issued with a schedule authorising the wedding to go ahead. This schedule will be signed by the parties, their witnesses, the authorised person and (if different) the person who conducted the wedding, and returned to the register office for the marriage to be registered. However, the conceptual and physical limitations of the 1898 Act still remain in place. Moreover, as the next section will show, even though there is no discrimination between different religions as a matter of law, there certainly remains a sense of discrimination among those conducting weddings.

III: THE LEGACY OF THE ACT

Before exploring how the 1898 Act works – or does not work – in England and Wales in the twenty-first century, we should first explain how our data was collected. As part of a project funded by the Nuffield Foundation to explore non-legally binding wedding ceremonies, we conducted focus groups and interviews with a range of individuals who had been involved in such ceremonies.[60] All participants were asked a series of questions including whether they

[59] Probert (n 16).

[60] These were conducted online, via Zoom. All sessions were moderated by one researcher and observed and audio-recorded by two further researchers. For a discussion of focus groups and interviews as research methods, see M Allen, *The SAGE encyclopedia of communication research methods* (Thousand Oaks, CA: SAGE Publications, Inc, 2017).

conducted legally binding weddings as well as the non-legally binding ceremonies the project was focussed on. If they replied in the affirmative, they were asked to describe how they had become authorised; and if they replied in the negative, they were asked whether there were any particular reasons why not. They were also given a summary of the Law Commission's provisional proposals and asked whether the proposed reforms would make it easier for the types of ceremonies they performed to be legally binding, or whether they might give rise to particular problems. While they were not asked specifically about the new schedule system – since at the time the regulations had not been laid before Parliament – a few raised this spontaneously, and their comments cast light both on the operation of the then current law on registration and the likely impact of the new regulations.

Because our project was concerned with non-legally binding wedding ceremonies, our participants were not chosen to be representative of those who are, or could be, authorised persons. But in understanding the limitations of the law it is important to ascertain who was *not* authorised, and what they said about the perceived ease or difficulty of navigating the legal requirements. For present purposes our sample consists of 49 individuals: 31 imams, nine Hindu priests, two Buddhists, two Roman Catholic priests, one Sikh priest, one Parsi priest, one Baptist minister, one member of an independent Christian fellowship, and one representative of the Bahá'í faith.[61] To preserve their anonymity, all are referred to by a code rather than by name.[62]

The audio-recordings of the sessions were transcribed verbatim, read several times to ensure familiarity and then deductively analysed by focusing on the three limitations of the 1898 Act identified in the previous section: conceptual, physical, and religious. It is however worth noting at the outset that for some participants it is somewhat artificial to talk about the 'legacy' of the 1898 Act, since they displayed a striking lack of awareness of the option of being authorised. This lack of awareness came out in a number of different ways. Some revealed their lack of awareness by the questions they posed: one Hindu priest said that he had 'tried to find

[61] We also spoke to 30 Pagan, Humanist, interfaith and independent celebrants, whose responses have been excluded from this analysis as they did not have the option of being appointed as authorised persons to conduct such ceremonies. The responses of two Anglican clergy and two Jewish rabbis were also excluded as their authority to register marriages is covered by a separate set of rules. For details of their views and experiences, see R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies* (Nuffield Foundation, 2022, forthcoming).

[62] The code consists of a letter (denoting either a focus group or an interview) and a number unique to each participant. A, B, C, E, J, K and L were focus groups; D, O and P were individual interviews and M was a joint interview.

out about… as you're doing the ceremony, can you also become a mobile registrar, so that you can actually certify the wedding ceremony is taking place?'[63] Others were clearly uncertain about what was required. One imam implied that if the mosque was registered for marriages any imam could conduct the ceremony;[64] however, when questioned by another imam within the same group, he expressed some uncertainty:

> Yes, this is what I understand, I'm not sure. But again, I would agree with your point in that probably the law is not clear or unfortunately we are not clear about the law, we don't know.[65]

And some were very upfront about their lack of knowledge: one imam had only become aware of the possibility of being authorised when reading the briefing that the team had sent him. He was both delighted by the idea and concerned about the lack of awareness of it among Muslims:

> I thought, 'Oh, wow!' while reading the questions, 'this is also possible for me.' If I knew… so, I mean, other organisations have to know this, but I… they didn't know… If we're talking about Islamic organisations across the country, maybe 90-plus[66] don't know about this. So, if you don't know, how can you do this?[67]

Of those who were aware of the option, a number did not think that it was applicable to them or did not want to be authorised. Both sets of views were linked to the conceptual ambiguity of what it means to be authorised. Some, for example, thought that the absence of any formal clergy within their particular faith group would preclude them from appointing an authorised person: for example, one explained that he would not be authorised because 'the Bahá'í faith doesn't have any clergy or doesn't have any people who have that kind of mandate or responsibility'.[68] Others, by contrast, conceptualised the role as simply being a registrar,[69]

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[63] K-212. D-139, an imam, similarly asked for guidance on how to become authorised, while D-142, another imam, said that he had tried to find out but could only find information on registering the building.
[64] This is true insofar as there are no legal restrictions on who can *conduct* the ceremony, but misleading in that either an authorised person or a registrar needs to be present to *register* it: Marriage Act 1949, s 44(2).
[65] C-121.
[66] Presumably 90%, rather than 90 per se.
[67] D-137. Two other imams (D-138 and D-144) also confirmed that they were unaware of the option, with the former adding that none of the mosques with whom he was connected were aware of it either, while D-143 assumed that a registrar had to be present.
[68] E-154.
[69] K-212; L-224.

leading some to hold the mistaken belief that they would be under precisely the same obligations as a civil registrar employed by a local authority and so might be compelled to conduct same-sex weddings, despite the Marriage (Same Sex Couples) Act 2013 making it clear that this would not be the case.[70] This was a particular concern among the imams.[71] One, who had previously been an authorised person, explained that:

> I've spoken with a number of Imams, they feel that they don't want to… become authorised because they feel that they will have to conduct the marriages of anyone that puts a notice up. And despite reassuring them that, 'you won't have to do same sex marriages and things like that', they still feel that if they do become authorised, then they will have to either choose between doing religious marriages or doing civil ceremonies.[72]

For a few participants, by contrast, it was not the ambiguity of the role that was an issue, but rather a sense that their religious role should not be mixed with a legal one. There were clear resonances here with the views expressed by many nineteenth-century Nonconformists about their reluctance to become agents of the state. Thus, in explaining why he was not authorised, one Roman Catholic priest noted that 'the priest I worked with was quite insistent that I shouldn't be, as he wasn't, because he didn't want to mix up the roles of Church and State, you know, to roll them up into one person. He wanted to keep them separate.'[73] Similarly, one Hindu priest explained that 'it is purely religious for me'.[74]

The conceptual limitations of the role of an authorised person were also revealed in the way that individuals focused on their responsibility for registration or described being an authorised person in terms of the 'paperwork'. As one of the imams explained, the authorised person would often be a member of the Management Committee of the mosque rather than the

[70] Marriage (Same Sex Couples) Act 2013, s 2; Equality Act 2010, Sch 3, r 25A.
[71] Although E-153 was happy to conduct *nikahs* for same-sex couples.
[72] A-103. This view was confirmed by the response of A-104), who immediately asked 'Brothers, can you clarify? … If you're authorised, then you cannot turn any couple away. So, any couple who then comes to you, you then have to do the Nikah. Is that right?' D-135 similarly noted that being required to conduct same-sex marriages would be the only issue that would deter him from being authorised, and A-101, A-103 and D-132 all suggested that the issue of same-sex weddings was a factor deterring mosques from being registered for weddings in the first place. Whether that is the case lies outside the scope of this article: on the one hand, it has long been the case that a relatively low proportion of mosques are registered (see A Bradney, *Religions, Rights and Laws* (Leicester University Press, 1993)), on the other, one might have expected the number of registrations to rise in recent years as a result of awareness-raising campaigns by groups such as Register Our Marriage.
[73] O-252.
[74] J-201.

imam conducting the ceremony: 'they will take them into a room upstairs and will just get them to sign the marriage register, as they would sign at the Registrars'.[75] A Hindu priest referred to the 'appointed assistant registrar' witnessing the religious ceremony and then coming up 'to do the usual civil ceremony vows with the couple and the signing of the register'.[76] Similarly, the two Buddhists, who were both authorised persons, very clearly distinguished their role in registering the marriage from that of the celebrant and explained that their role was an administrative one.[77] And the Baptist minister, who was also an authorised person, commented on how the two roles did not have to be combined and how he was sometimes brought in just to do the paperwork:

> although I am the minister and I am doing the legal part of it as well, there are plenty of church situations, not Church of England but free churches and so on, where it's not the minister who's actually the person who is the authorised person and does the legal part of the paperwork, and we certainly don't view that it has to be the priest or the minister who would need to be that person. And I have been involved in weddings where another minister has come and led it and I've just been there to be the authorised person and to deal with the paperwork side.[78]

Linked to this was the sense that being an authorised person was administratively burdensome. The complaints about the regulations were also very similar to those voiced at the end of the nineteenth century. As one of our Buddhist authorised persons commented:

> If you look at the paperwork and the rules and regulations, there's so many do's and don'ts. It has to be this way and that way. And all the people doing it are volunteers and they may only do an AP [authorised person] for a wedding maybe three times a year. So, got to remember everything. So, the pressure on them is incredibly hard and I really feel it, as an Authorised Person, having done it for 20-odd years, I'm still like, 'What do I do now?' kind of thing.[79]

[75] A-103. One Roman Catholic priest (O-252) similarly noted that 'we have three or four people in the parish who were authorised to do that to fill in the registers'.
[76] K- 212. A similar point was made by P-161, a Sikh priest.
[77] M-231 and M-232.
[78] E-152.
[79] M-232.

Indeed, the desire not to be bound by imposed external guidelines was identified as a reason for not being authorised in the first place. The same imam who had noted how imams were concerned about being required to do same-sex weddings added that they also felt 'that if we're not authorised, we can do our own thing in our own way… and not be bound by rules and regulations', noting how some were averse to getting 'bogged down with red tape'.[80]

However, there was only a passing allusion to 'a fear of getting involved with authority',[81] and this was from the imam who had commented on the concern about having to conduct same-sex weddings. A number of imams either had been,[82] or expressed their willingness to become, authorised.[83] One imam, for example, noted that she was only waiting for the implementation of the new schedule system in order to be authorised:

> So, now we won't have to hold all this stuff in the safe and make sure … because it is a big ordeal, you know, to make sure that all the names are spelt correctly, dates, everything is filled in correctly and the certificate is registered properly. … So, we're just waiting until this happens.[84]

Such issues bring us on to the second limitation of the 1898 Act: the physical constraints on how authorised persons may be appointed, and on their sphere of operation once appointed. A number of our participants had no means of being authorised to register weddings because their particular religious group had no places of worship that could be registered for weddings in the first place.[85] Others explained their lack of authorisation on the basis that they were not affiliated to a specific place of worship. As one imam noted:

> the only reason I don't do authorised ones is because of the restriction to a place or a building and so once I left the *Masjid,* I lost that option which is a shame. Because I

[80] A- 103.
[81] A-103.
[82] A-103, A- 104.
[83] B-111; D-135 ('if I were part of an institution, either as an Imam or a manager or the like, then I don't see any issues conducting that'), D-137, D-138, D-139, D-140, D-141 ('if my Masjid says you will be one of the authorised, I don't have any problem with that'), D-142, D-143, and D-144.
[84] D-133.
[85] E-153; L-224.

> would have liked to continue helping couples by doing their Islamic and civil ceremonies in the same breath.[86]

Even some of those who were affiliated to a particular place of worship did not have the option of being authorised if it had not been registered for marriages.[87] Imams tended to identify the size of the mosque – and the number of weddings that it was asked to conduct – as a factor that might determine whether or not it was registered: as one noted, 'my mosque is sort of dwarfed by the larger mosques'; he felt that the legalities could be dealt with by those who were more experienced and qualified to do so.[88] Another, for whom three or four months might pass between him being asked to conduct weddings, noted that it was 'not something that I thought was pressing or that I needed to do… But I'm willing. There is no problem with that.'[89]

The geographical limits of authorisation were also problematic for some groups. As one Hindu priest noted:

> all of us priests are able to become a registrar by writing to the government department of death, birth and marriages… However, you will only become a registrar to conduct a legal wedding, civil wedding, in the area that you live. You can only choose one area. Hindu priests travel… all over the country, all over the world.[90]

As noted above, there is no longer any *legal* limitation as to which religious groups can appoint an authorised person. Yet what the focus groups and interviews indicated was that some individuals had found it easier to become authorised than others. In the case of the two Buddhists, it was the local register office that had suggested that they become authorised and offered to train them.[91] The Baptist minister confirmed that becoming authorised had simply required 'some paperwork' but added that he had voluntarily undertaken some training in what

[86] A-104. In a similar vein, B-115 explained that as a resident imam at a university it was not practical for him to be authorised, describing himself as 'more of a visiting Imam in different masjids', and C-122 was linked to a hospital rather than a mosque.
[87] C-121, C-123, D-136, D-139. D-134 noted that he had applied for the mosque to be registered 12 months earlier but was still waiting for the application to be processed.
[88] C-124. D-143 made a similar point about smaller mosques following the lead of the larger mosques in deciding whether to be registered or appoint an authorised person.
[89] D-140.
[90] J-203. D-144 also noted that he conducted weddings all over the country, although as he was unaware of the option of being authorised he did not comment on the geographical constraints on the role.
[91] M-232.

was required by spending a couple of hours with his local registrars 'to go through all the particulars for how certificates are filled out, mainly, and corrections are made, should any be required and the role that I had to play as an authorised person.'[92] However, another interviewee, a Roman Catholic priest, had been under the impression that training was mandatory: 'I think I would have been expected to do it in order to be deputised as an authorised person at the time'.[93]

By contrast, the imams tended to report more scrutiny, less support, and in some cases a strong sense that their application to be authorised was not welcome. One of those who had been appointed as an authorised person reported that the local registration officials had visited the mosque to check that it satisfied the requirements. As he reported:

> you apply to be registered as authorised marriage conductor to the registry office.... And then they will give you some documentation to fill in.… And you'll have to give the certificate, okay, that you'll have a fire-proof safe and also the place is registered as places of worship. And then, with the trustees, a signature, and other legally binding people of that place. And we applied. And the registry office, they came. And they checked. Then we became registered.[94]

In that case the checks may simply have been because an authorised person was being appointed for the first time, rather than being appointed as a replacement for an existing authorised person. It was however noticeable how many other imams reported difficulties in navigating the process to becoming authorised. Sometimes these difficulties were attributed to personal or internal factors. One imam commented that the council had been 'prepared to give us all the guidance et cetera so, a tonne of information', but that the mosque had felt 'we weren't ready to go into that aspect of it immediately.'[95] Another reported that 'when I looked up the training that was involved at that time I just couldn't do it because it was too much involvement'.[96] And a third confirmed that 'there was a time where we were looking into it'

[92] E-152.
[93] O-251. His training similarly focused on the act of registering the marriage: 'Much of it was just explaining the rules, being clear about the rules, what could and couldn't be done. About the forms, how to fill them in, when to fill them, never to fill them in before the day and all those kinds of things before the actual ceremony.'
[94] B-111.
[95] B-113.
[96] C-123.

but was not sure why the option had not been pursued.[97] Significantly, none reported having help or support from their local register office in how to apply. One, who prior to the interview had been unaware of the possibility of being authorised, asked the interviewer in some bafflement 'why [do] local authorities not make us aware so we can apply?' And another commented that he had the distinct impression that he was being subtly discouraged from applying:

> I found that system in order to apply and go through to be able to become an approved person is not transparent and, I say transparent, it's not something that I personally feel is welcomed by the councils…. I contacted, I think it was a few years ago, the registrar office and I wasn't given really satisfactory answers. I was asked to go onto a particular website and go through and read the requirements, etcetera.… I don't know whether anybody else has felt that way, but I just feel that there isn't a concerted effort to incorporate approved personnel from other religions to be able to register a civil marriage in the UK. I felt that that was almost like it needed to be kept within the host community.[98]

The starkest evidence came from the imam who reported that his local register office had actually refused to accept him as an authorised person:

> [W]e've registered our mosque nearly ten years ago as a place of marriage. Rotten civil marriage people [haven't] given us the register. So, every time, people have to… they still have to go to the marriage registration, and then the registrar or the superintendent comes to do it.… They've been so… you know, it's that idea of not trusting the Muslims to give us the certificate… the register. And so, as a consequence, that's again an off-putting factor for people to register there and then pay extra for the superintendent to come into the mosque and to do both the civil and the Islamic Nikah.… They've been very rotten with us, but that's I presume, they're just saying, 'Oh, we want to keep our hands on our register ourselves and not give it to…' Yet we fulfil all the conditions. We've got a safe, proper safe. I know what I'm doing very clearly. I've done it a couple of times with the superintendents and well, I conduct it all. But no, they've been a nasty bunch…. But they said, because you don't get enough…

[97] B-114.
[98] C-122.

> you don't get lots of people coming to you. That is one of the reasons why we're not giving the register to you people.[99]

As this indicates, even if all religious groups have the ability to avail themselves of the provisions of the 1949 Act, they do not all have the same experience of navigating the legal requirements.

Viewed as a whole, then, the data from our focus groups and interviews demonstrates that the limitations of the 1898 Act – conceptual, geographical, and even religious – are still very evident today. There was some discussion that the new schedule system could make the prospect of being an authorised person less burdensome, but it only changes how marriages are to be registered, not where or by whom. We will now turn to the Law Commission's proposals for reform, and our participants' views on whether those proposals would address those limitations.

IV: THE OPTION OF BEING AN OFFICIANT

The concept of the 'officiant' is at the heart of the Law Commission's proposals for reform, as set out in its 2020 consultation paper. In many respects the role envisaged for them is not dissimilar to that of an authorised person. The officiant would be responsible for ensuring that the parties freely consent to the marriage and that the schedule was duly signed;[100] as the Commission explained, while the officiant could also be the person conducting the ceremony, this role could equally be taken by a third party, as at present.[101] Like the concept of an 'authorised person', the concept of the officiant is therefore intended to accommodate those groups that have a clear concept of religious leadership and those that do not. The key differences between the two are that the duties of the officiant are more explicitly spelt out, implying a more active role; that officiants would be able to officiate at weddings anywhere in England and Wales, being appointed by organisations rather than in relation to specific buildings; and that the differences between different religious faiths would be minimised. In

[99] D-131.
[100] Law Commission (n 11), para 5.65.
[101] Ibid, para 5.50.

this section we focus on those differences, which map on to our earlier discussion of the limitations and legacy of the 1898 Act.[102]

Interestingly, a number of participants clearly saw an 'officiant' as being something conceptually different from being an authorised person. No one identified this as problematic. Those who were already authorised saw no conceptual challenges in becoming an officiant.[103] And a number of those who were not authorised expressed their willingness to become so. For some, this was because it was clear that an officiant did not have to have a specific religious role. The representative of the Bahá'í faith who had explained that they had not appointed authorised persons because they had no clergy added that they had marriage officers in Scotland and Northern Ireland who were able to conduct legal weddings, and if the law was reformed along the lines that the Commission had proposed, 'that would be great. We would do the same thing. We would have a bank of appointed marriage officers, yeah.'[104] Conversely, others saw the role of officiant as being compatible with a religious role in a way that being an authorised person was not. As one Hindu priest commented:

> we would be able to conduct a wedding ceremony not according to just a Hindu ceremony, but also officiate and pronounce them as husband and wife, and make it as a legal binding wedding ceremony. That side of it really attracts me. I'll be all for it.[105]

His comments reflected the key reason why being an officiant was seen as different from an authorised person. Under the Commission's proposals the ceremony would no longer have to include the statutorily prescribed words that non-Christian groups often conceptualised as a separate 'civil' ceremony.[107] Instead, a couple would, with the agreement of the officiant, be able to give their consent to be married according to such form and ceremony as they might choose.[108] In other words, consent could be expressed as part of a Hindu ceremony, and once

[102] A fuller analysis of the Law Commission's proposals can be found in R Probert, R Akhtar and S Blake, *When is a wedding not a marriage? Exploring non-legally binding ceremonies: A Briefing Paper for the Law Commission* (2021).
[103] M-231 and M-232.
[104] E-154.
[105] J- 203. A similar comment was made by J-202, recommending that Hindu priests should be recognised so that 'once you've done the religious ceremony, you'll be able to officially sign the documents saying you have married them as an officiant'.
[107] On which see further Probert, Akhtar and Blake (n **).
[108] Law Commission (n 11), paras 6.68-9.

this had been done the person conducting that ceremony would be able to declare the couple to be married.

A further change proposed by the Law Commission is that officiants would not be limited to conducting weddings within a particular registration district, or even in a specific place of worship.[109] This would help to address the issue raised by a number of the imams: they would no longer need to be affiliated to a particular mosque, still less one that was registered for weddings, although they would need to be nominated by a religious group. A few expressly commented on the removal of geographical restrictions, welcoming the idea that they would be able to officiate at weddings anywhere in England and Wales. One Hindu priest favoured linking authorisation to the officiant rather than the building or district: 'you are registered as a Hindu priest and wherever you go within England, you should be able to do a wedding.'[110] Others welcomed the fact that it would be the person rather than the place that would be authorised. As one imam commented:

> it's just silly, what does the building have to do with it, the person should be registered to do the marriage not the four walls, what relevance do the four walls have?[111]

Another, who had previously been an authorised person, noted that he welcomed the 'new celebrant idea, not limited to a particular location, like they have in the US or Scotland', because that would make 'many more of us' able to conduct weddings.[112] And a third joked that English law was finally 'catching up' with what he described as his 'primitive village way' in Pakistan; as he put it:

> So, have a local official who has certificates, he's appointed by the council of Sharia and he would come into the house, or wherever… and the Imam would be there as well. The Imam would obviously do the *Du'aa* and the actual things. But the official does all the paperwork.[113]

[109] Law Commission (n 11), para 7.158.
[110] J-202.
[111] D-134.
[112] A-104.
[113] D-131.

Others, however, assumed that the building would continue to be registered,[114] and some favoured keeping the focus on the building (although possibly without the burden of registration).[115]

> I think it would be good for us, for our sake, or just for the general idea of keeping the sacredness of the marriage to say, 'okay, ideally it should be kept in the masjid, that's where your registered marriage will be more official'…. From an imam's perspective, that's all I'm saying, that's all.[116]

The Sikh priest was clear that his religion would only permit weddings in their places of worship.[117] This was because of the sacred nature of their holy book, the Guru Granth Sahib, which could not be taken into any place that was deemed impure on account of serving meat or alcohol. Since the wedding involved processing four times around the Guru Granth Sahib, and prayers respecting it, 'we are very restrictive. It is because of the sanctity and respect of Guru Granth Sahib that we cannot go anywhere apart from the Gurdwara to have this ceremony.' Under the Law Commission's proposals, it should be noted, while there would be no legal requirement for a wedding to be held in a specific place of worship, it would be open to any religious group to make this a condition of their conducting a wedding.[118]

The way in which the Law Commission's scheme minimised the differences between different religious groups was also welcomed. In particular, the possibility of being an officiant was seen as confirmation of the status of religious celebrants. One imam was particularly eloquent on this point:

> [I]t would give us some sort of authority and significance…. It would give us some recognition. It would make us feel as if we are part of the community a lot more. It would make us feel appreciated and then show that, you know, we're not just a people that live here. We are an important part of the community.[119]

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[114] D-137.
[115] D-139, for example, suggested that what 'would help is to have like official kind of places of worship, for example, designated as registered places or whatever. Without these places having to go through the registration process, or whatever.'
[116] C-124.
[117] P-261.
[118] Law Commission (n 11), para 7.124.
[119] D-143. C-121 similarly suggested that the imam's role 'would be appreciated'.

In a similar vein, one Hindu priest thought that the proposals 'would go a long way forward in creating the uplifting of our Hindu culture and respect to the Hindu priests'.[120]

To some extent this emphasis on recognition and respect reflected participants' lack of awareness of the option of being authorised. But for some it was because they saw being an officiant as different from being an authorised person. There are likely to be a range of reasons for this. One, as noted above, is that an authorised person is effectively appointed as a substitute for a registrar, whereas the duties of an officiant are broader in scope. Linked to this is the fact that an authorised person oversees the exchange of the statutorily prescribed words, whereas an officiant oversees the exchange of consent between the parties, which may be shaped by their own religious culture. Another factor may simply be that the term 'officiant' is better at conveying a sense that this is a role to be respected than 'authorised person'.

Some participants, it should be noted, wanted more detail about who would be an officiant.[121] One imam, for example, raised 'the issue of who would oversee the ceremonies', noting '[t]hat is a very, very important factor for me'.[122] Another was worried about the possibility of 'any Tom, Dick or Harry Muslim' being 'picked out of a group to conduct a marriage … I mean even the marriage itself, I just need the Muslim community to give it the relevance and the respect that it deserves'.[123] Similar concerns were expressed by one of the Hindu priests, who commented that:

> I am very passionate about the Hindu religion and I don't want any… Probably not right to use Tom, Dick and Harry, but any Amit, Arjun or Krishna to come in onboard and start saying that I'm a priest and so on. That's very important.[124]

Those who expressed such concerns emphasised that thought would need be given to who would be responsible for nominating officiants. As one of the imams suggested:

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[120] J- 203.
[121] As noted above, we had only provided our participants with a summary of the Law Commission's proposals, rather than the entire 438-page consultation paper.
[122] C-123.
[123] D-133.
[124] J- 203.

> I think there would have to be some maybe discussions held so that the community would be able to set up a kind of a structure around that, which would give it that importance and responsibility and ceremonial effect.[125]

Those ideas of responsibility and the importance of the ceremony being conducted in a particular way were also identified by one of the Hindu priests:

> I thoroughly welcome this wholeheartedly because there are so many people out there who put their hands up to say that they're a Hindu priest. Well, how? A Hindu priest or anyone who's going to belong to his organisation must have some basic understanding and knowledge of what they're doing. They must be brought forward with confidence from the members of the community who have heard about them.…We would be able to standardise some kind of ceremony in terms of timing and the content, but also, very important, we would be able to train these people in the areas of risk assessment, whether it be a Havan fire or Covid, and it'd be much more of a regulated system.[126]

Suggestions were also made as to what training should be required in the legal aspects of being an officiant. One suggested a week-long course in the legal rules with a test at the end.[127] Another noted the importance of DBS and CRB checks and of having knowledge of health and safety requirements in order to be able to carry out risk assessments.[128] Others, by contrast, indicated that individuals might be deterred from becoming officiants if the process was made too complex. This was something highlighted by imams in particular, perhaps reflecting their perception that it was not easy for them to become authorised. As one noted, it would come down to 'what the process is … how easy or difficult it is'; tellingly, he also referred to the need for 'transparency'.[129] If the Law Commission's proposals become law, it will be necessary for those tasked with its implementation to engage with religious groups and take steps to counter the clear sense among some celebrants that they are not trusted to officiate at weddings.

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[125] D-133.
[126] J-203. Similarly, J-201 expressed his anxiety 'that 20 people from non-Hindu believing background can declare someone, as has happened in India, come together, nominate somebody and then he actually puts some non-religious, non-Hindu symbol over there and performs a Hindu wedding'.
[127] J-202.
[128] J-203.
[129] C-124. C-123, made the same point more obliquely when he commented that he had been deterred from becoming authorised by the training that was required.

CONCLUSION

Looking solely at the statute book, it might be assumed that every religious group in England and Wales has had the right, and the power, to decide who will be responsible for registering marriages conducted under its auspices for over 120 years. In practice, take-up has been far more limited. Many registered places of worship did not appoint their own authorised persons after 1898, and marriages in such places were – and still are – required to take place in the presence of the registrar.

The data from our focus groups and interviewees underlines the importance of thinking about the process of getting married from multiple perspectives – not merely in terms of what it means to the state, or to the parties, but also from the viewpoint of those who have a role in the creation of the marriage. The limited take-up of the option of being authorised can at least in part be attributed to the fact that the final terms of the 1898 Act did not reflect what had been discussed with those representing the interests of Nonconformists. Had the 1898 Act retained the reference to authorised persons 'solemnising or officiating at' weddings, it would have sent a very different message about the status of such persons. And had it retained the option of an authorised person officiating at any registered place of worship in England and Wales it would have provided greater flexibility, and been better able to accommodate new religious groups who do not have a registered place of worship in every registration district. As one Hindu priest noted in welcoming the Law Commission's proposals, this was something that 'should have been done yesterday'.[132]

[132] J-202.