

From the Proctor Substitut of the Ecclesiastical Court



Deputy John Le Fondré
Chairman,
Corporate Services Scrutiny Panel
Morier House
St Helier
JE1 1 DD

Dear Deputy Le Fondré,

I refer to a request from Mr S Spottiswoode, Scrutiny Officer, for advice on the interaction of the Canons of the Church of England in Jersey 2012 and the Draft Marriage and Civil Status Law.

I was appointed Proctor of the Ecclesiastical Court in or about 1980 until late last year when I retired and was appointed Proctor Substitut.

I am now not in practice as an advocate and this letter is written on the basis of information I have at home and my experience in the office I have held.

I have not seen a copy of the proposed law and notwithstanding my personal views as a committed Christian (as I have to be to hold office) I have taken as an objective look at the issue as it is embedded in the law of Jersey.

This letter is based on questions posed in an email from Mr Spottiswoode dated 22nd November 2017, a copy of which is attached.

Ownership of Church of England Churches in Jersey

The Ancient Parish Churches

These buildings, with others, are owned by the respective Rectorats of each Parish.

The Rectorats are for want of a better expression ancient trusts which hold the properties including the Church, the Graveyard(s) and Rectories.

The District Churches.

These are churches which have been separated into districts within the ancient parishes or a multiple of them.

Ownership will inevitably be through a trust and the Canons of 1623, reprinted with notes by The Very Reverend Samuel Falle, Dean of Jersey in 1909, list the then District Churches with Boundaries and the dates of the relevant Orders in Council.

These are as follows:

The District of St Luke
Order in Council of April 6th 1846 registered by Act of the States of Jersey on 15th September 1847

The District Chapelry of All Saints
June 19th 1868 and 12th January 1872

The District Chapelry of St Andrew
February 22nd 1870 and 12th January 1872

The Particular District of St Simon
April 22nd 1872 and 6th May 1872

The Consolidated Chapelry of Gouray
September 17th 1900 and October 20th 1900

The District Chapelry of St James
7th March 1904 and 22nd April 1904

At the time of writing I do not have information in relation to St Mark and St Matthew
But they would be post 1909.

These churches would be owned by a trust of which generally the trustees would be the Vicar and Churchwardens

Daughter and Independent Churches

There are a Daughter Churches within the ancient Parishes.

St Aubin – Parish of St Brelade
St George – Parish of St Ouen
St Nicolas - Parish of St Clement,
St Peter la Rocque – Parish of Grouville

Finally there is the Independent Church of St Paul.

All these churches are owned by Trusts and the trustees vary.

For Example the trustees of the Church of St George are the Rector, The Dean and the Churchwardens of the Parish of St Ouen,

The Ecclesiastical Assembly

The business of an Ecclesiastical Assembly is set out in Article 8 of the Loi (1804) au sujet des Assemblies Paroissiales.

The business of such an assembly relates to *Affaires Ecclésiastiques*

Article 8 provides as follows:

Les affaires ecclésiastiques sont comme ensuit; Le choix d'Officiers de l'Eglise du Cimetière, et de la Maison Presbiteriale, la disposition des bancs dans l'Eglise, et des biens attachés au Rectorat; la vente

des rentes du Trésor, de la Charité et autres biens appartenant du Trésor ou de la Charité et le choix du Lecteur, du Fossoyeur et du Ministre d'Ecole, pout être présenté au Doyen.

It goes without saying that definition of *affaires* in this context is based on the law of Jersey prevailing at the time and the Canons of 1623.

I am not aware of any matters additional to those described in the 1804 Law which fall to be considered a part of the business of an Ecclesiastical Assembly.

Within the definition of *les biens attachés au Rectorat* I would include as an example the business of an Assembly called to consider alterations to, or other projects relating to, a Church and the approval of the authority to the Rector and Churchwardens to apply to the Ecclesiastical Court for a Faculty for the work to be undertaken in, the Church or graveyard The Ecclesiastical Court has rules and guidelines made pursuant to the Canon Law to deal with this procedure.

It is clear that marriage does **not** feature as an *affaire* and is thus outside the remit of an Ecclesiastical Assembly. .

Decisions with reference to marriages in the Church of England are matters for the incumbents whether Rector Vicar or Ministre Désservant.

Such persons would all be bound by Canons B30 and B31 which I will not set out in his letter as the Canons are available to the Scrutiny Panel and the Public. These provisions are binding on all Anglican Clergy and reflect that set out in the Table of Kindred and Affinity in the Book of Common Prayer of which Anglicans will be familiar.

The form of the service for the Solemnization of Matrimony in the 1662 Book of Common Prayer is clear. I quote from a number of passages which are wholly reflected in the Canon Law to which I have referred: The Canon Law, whether it is that of Jersey or England, is binding on all Anglican Bishops, Priests and Deacons. Apart from local adjustments in the context of marriage the Canon Law does not differ significantly.

The Bidding

.....we are gathered together here in the sight of God and in the face of this congregation to join together this man and this woman in Holy Matrimony... ..

First it is ordained for the procreation of children, to be brought up in the fear and nurture of the Lord.....

This is fundamental in decisions made in the context of the Church of England.

A question has been raised by the Panel of possible differences between the views of the 'Church of England' and the views of an Ecclesiastical Assembly.

The phrase the Church of England is very wide and I have to make certain assumptions.

If by this is meant 'the Established Church' that would include the Diocesan and General Synods and goes well beyond the boundaries of the Island of Jersey.

One has to note however that the Ecclesiastical Assembly is open to all Principals and Officers of a Parish.

Parishioners of all faiths may take part unlike the Synods

There may therefore be differences of opinion BUT as marriage does not feature and as it is that issue which is under review I do not consider that it is necessary to look further at such an issue and I trust that with the full explanation I have offered this is well understood.

Use of Anglican Churches and Parish and Church Halls.

At this stage the Scrutiny Panel may wish to refer to Canon E14.

The Churchwardens and their assistants shall not suffer the church or chapel to be profaned by any meeting therein for temporal objects inconsistent with the sanctity of the place.

The view is held and is supported by Canon Law and the BCP that as marriage is only defined as between a man and a woman any other definition is profaning the Church.

As it is the responsibility of principally the incumbent and also the church officers to ensure that the use of a church complies with all the matters to which I have referred.

The question the Panel seems to pose about the church use for a civil wedding for persons of the same sex can simply be answered:

Church is not used for a civil wedding as that is the function of the Registrar.

A Church is used, in the particular context, for the Sacrament or Solemnization of Marriage and it is a religious service which is always conducted subject to the Doctrines of the Church of England in its widest sense and including Canon Law.

The Panel may have read Canons B1 and B2.

These clearly set out the requirements in relation to divine service. Any matters which may fall to be considered by any of the parties in relation to alternative services would have to be consistent within the doctrines of the Church of England as set out in Canon Law. Canon B4 would not allow those named as having the appropriate authority to allow the use of Church Buildings or Church Halls for same sex marriages.

Apart from issues relating to the Ecclesiastical Assemblies a Church Congregational meeting held for and in respect of District, Daughter or Independent Anglican Churches would still be bound by the requirements to which I have already referred.

Yours sincerely



Advocate P de C Mourant
Proctor Substitut