MARRIAGE (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Marriage (Scotland) Bill introduced in the Scottish Parliament on 13 November 2001:
   
   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on Legislative Competence; and
   • the Presiding Officer’s Statement on Legislative Competence.

A Policy Memorandum, also prepared by the Scottish Administration, is printed separately as SP Bill 41–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Administration in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL

4. The present law of marriage in Scotland is governed by the Marriage (Scotland) Act 1977 (“the 1977 Act”). The current position is that there is no restriction on places where religious marriages may be solemnised but a civil (non-religious) marriage may be solemnised only within a registration office, unless there are exceptional circumstances (i.e. where an individual is unable to attend a registration office as a result of serious illness or serious bodily injury and there is a good reason why the marriage cannot be delayed (section 18(4)).

5. The Bill amends the 1977 Act to permit civil marriages to be solemnised in places approved for the purpose by local authorities. It will therefore provide couples, who wish to have a civil marriage in Scotland, with a wider choice of venue for their wedding. The Bill was initiated by the lodging of a proposal for a Member’s Bill by Euan Robson MSP, now Deputy Minister for Parliament. That proposal had the support of a number of MSPs, as well as of the Scottish Executive.

6. Section 1(2) of the Bill amends section 18 of the 1977 Act to permit civil marriages to be solemnised in places approved for the purpose by local authorities.

7. Section 1(3) of the Bill inserts a new section 18A into the 1977 Act. Subsection (1) enables the Scottish Ministers to make regulations to make provision for or in connection with the approval by local authorities of places in their areas where civil marriages may be solemnised. Subsection (2) provides that the regulations may in particular include provision as to (a) the kinds of place in respect of which approvals may be granted; (b) the procedure to be followed; (c) the considerations to be taken into account; (d) the duration and renewal of approvals; (e) the conditions that shall or may be imposed; (f) the determination and charging of fees; (g) the revocation or suspension of an approval or variation of conditions; (h) review of a local authority's decisions; (i) appeals; (j) notification to the Registrar General; (k) notification to the district registrar; (l) the keeping of registers by the Registrar General, district registrars and local authorities and (m) the issue by the Registrar General of guidance supplementing the new provisions.
8. Subsection (2)(c) is of particular importance. Whilst the decision to grant an approval will lie with a local authority, the regulations that will follow the enactment of the Bill will set out a range of factors that the local authority must take into account in determining whether to approve any places. The draft regulations were published in the White Paper Civil Marriages Outwith Registration Offices and set out such factors. In particular, the draft regulations provide that a local authority must not approve a place unless that authority is of the opinion that the place is a seemly and dignified venue for the solemnisation of a marriage. Subsection (3) allows for the regulations to make different provision for different cases or circumstances. The draft regulations allow, for example, the approval of a place for a single marriage or for a specified period of time.

9. Section 1(4) amends section 24 of the 1977 Act by introducing an additional offence in relation to authorised registrars, where they solemnise a marriage otherwise than in accordance with section 18(1) of that Act. The penalty for this offence would be—

- on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both;
- on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £1,000) or to imprisonment for a term not exceeding 3 months or to both.

10. The Bill should be read in conjunction with the draft Scottish Statutory Instrument containing the proposed regulations. The Scottish Executive consulted on the draft Bill and draft regulations in the White Paper Civil Marriages Outwith Registration Offices, published on 21 June 2001. The reader may also find it helpful to consult the draft Guidance to Scottish Local Authorities for the Approval of Places for Civil Marriages produced by the Registrar General for Scotland. This was published by the General Register Office for Scotland (GROS) on the date of introduction of the Bill. Copies of all of these documents are available from the Scottish Parliament Information Centre and from GROS, New Register House, Edinburgh EH1 3YT or on the Internet at http://www.gro-scotland.gov.uk.

FINANCIAL MEMORANDUM

INTRODUCTION

11. In general, the costs associated with the ability to solemnise civil marriages in approved places will be borne either by the business operators of venues who wish to have their premises approved by the local authority or by the couple being married.

COSTS ON THE SCOTTISH ADMINISTRATION

12. It will be the responsibility of the General Register Office for Scotland (GROS) to issue administrative guidance to the local authorities, and to maintain a register of places approved by local authorities for civil marriages, and to ensure that these are kept up-to-date. The ongoing
costs to the Scottish Administration will thus be minimal, estimated at less than the cost of one member of staff.

COSTS ON LOCAL AUTHORITIES

13. The Bill confers power to make provision by regulations for the charging by local authorities of fees in relation to the approval (and renewal of approval) of places, and for the attendance of authorised registrars to solemnise civil marriages at approved places. These charges will be payable directly to local authorities, which will be able to retain the income. The regulations will provide that the fees should be set at such a level as to enable local authorities to recover all of the costs incurred by them. Taking one year with another, there should therefore be no net cost to local authorities as a result of the new arrangements introduced by the Bill.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

14. The Bill will provide for a new option not hitherto available in Scotland, namely a civil marriage not held in a registration office, and the costs will be borne by those choosing that option.

15. Two kinds of customers are envisaged, who will together meet the additional costs—

- business operators of venues such as hotels, castles, etc who choose to pay the fee to have their place approved by the local authority and who will, in turn, recover an element from their customers when weddings are booked there; and
- couples who choose to pay an extra fee above the basic statutory fee to have the local registrar attend at an approved venue on their wedding day to solemnise their marriage.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

16. On 8 November 2001, the Minister for Justice (Mr Jim Wallace) made the following statement:

"In my view, the provisions of the Marriage (Scotland) Bill would be within the legislative competence of the Scottish Parliament."
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

17. On 26 October 2001, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Marriage (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
This document relates to the Marriage (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 13 November 2001

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