MARRIAGE (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Marriage (Scotland) Bill introduced in the Scottish Parliament on 13 November 2001. It has been prepared by the Scottish Administration to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Administration and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 41–EN.

POLICY OBJECTIVES OF THE BILL

2. The policy objectives of the Bill are—
   • to permit civil marriages to be solemnised at locations other than registration offices;
   • to authorise local authorities to license locations for that purpose and to charge fees to meet related costs and for connected purposes; and
   • to enable the Registrar General for Births, Deaths and Marriages to give guidance on the above to local authorities.

3. The law of Scotland in relation to marriage is set out in the Marriage (Scotland) Act 1977 ("the 1977 Act"). The Bill will give effect to the policy objectives by amending that Act and by providing by way of regulations made by the Scottish Ministers (supported by guidance promulgated by the Registrar General of Births, Deaths and Marriages for Scotland) a scheme for the approval and regulation of places where civil marriages may be solemnised outwith registration offices. The aim is to extend the choice of venue for those who wish to have a civil marriage in Scotland.

4. The 1977 Act allows civil marriages to be solemnised by any authorised registrar in his or her local registration office or in the registration office of another authorised registrar. Only in exceptional cases where a party is unable to attend by reason of serious illness or serious bodily injury and there is good reason why the marriage cannot be delayed does the 1977 Act permit a civil marriage to be solemnised outwith a registration office. There is no alternative permitted in the 1977 Act for civil marriages. Amendment of primary legislation is therefore necessary to allow the policy intention to be achieved.

5. The Bill will allow for civil marriages to be solemnised at locations ("approved places") other than registration offices. These places will be approved by local authorities. The
regulations will provide for both temporary approvals and period approvals. This two-tier system is designed to reflect the expected use of the new system. Period approvals are likely to be sought by hotels and other establishments that intend to provide a venue for civil marriages on a regular basis while the opportunity for a couple to apply for a one-off venue is catered for by the temporary approval procedure.

ALTERNATIVE APPROACHES

6. It has been suggested by a number of local authorities that the system for approval of places where civil marriages can be solemnised should be fitted into the existing structure of licensing contained in the Civic Government (Scotland) Act 1982. This approach has been considered by the Scottish Administration but a separate system has been promulgated in the draft regulations which is a deliberately less cumbersome procedure than that provided for in the 1982 Act. It is nevertheless thought that the system will not prove to be administratively incompatible with the existing licensing system.

CONSULTATION

7. In 1998 the Registrar General for Scotland issued a consultation paper *Civil Marriages Outwith Registration Offices*. The consultation paper is available on the General Register Office for Scotland web site at http://www.gro-scotland.gov.uk. This set out and sought views on the basic principle to allow civil marriages to be solemnised other than in registration offices. Copies were sent to the Chief Executives of each of Scotland’s 32 local authorities, to the Association of Registrars of Scotland, to Action of Churches Together in Scotland, to the Law Society of Scotland and to a number of potential venue proprietors that had expressed an interest. In addition, 35 organisations or individuals requested the paper and it was made available on the website of the General Register Office for Scotland. As part of the consultation exercise, the Convention of Scottish Local Authorities (COSLA) organised a seminar in Edinburgh that brought together local councillors, local council officials, registrars, hoteliers, trade union and other representatives. The consultation paper did not include detailed proposals or draft legislation. There was widespread support for the principle of new primary legislation to extend the choice of venues for civil marriages, with 36 of the 39 responses fully in favour and the remainder generally in favour but offering views on how the detail of the proposals might be developed. As far as possible, these points of detail have been taken into account in preparing the draft regulations and guidance.


9. A total of 662 copies of the White Paper were circulated widely, including to all local authorities, COSLA, individual registrars, the Association of Registrars of Scotland, Action for Churches Together in Scotland, and the main political parties. Copies were also placed in the Scottish Parliament Information Centre. The White Paper was also made available on the General Register Office for Scotland (GROS) website. A total of 37 responses were received by GROS as follows—
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<table>
<thead>
<tr>
<th>Respondent</th>
<th>For change</th>
<th>Against change</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Association of Registrars of Scotland</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Registrars</td>
<td>8</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Local authorities</td>
<td>21</td>
<td>-</td>
<td>21</td>
</tr>
<tr>
<td>Private individuals with links to the Humanist Society of Scotland</td>
<td>3</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Wedding organiser</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>The Sheriffs’ Association</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Scottish Council of Jewish Communities</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
</tbody>
</table>

| Totals                                                         | 36         | 1              | 37    |

10. Clearly there was almost unanimous support for the principles set out in the draft Bill. However there were a number of suggestions made that have been considered before introducing the Bill. These have resulted in some changes to the Bill and to the draft regulations. These are briefly outlined below.

11. In particular, there were comments regarding the mechanism by which local authorities would approve places in which civil marriages may be solemnised. Ten of the local authorities suggested that the mechanism for the approval of marriage venues should form part of, or reflect the nature of, the existing licensing system under the Civic Government (Scotland) Act 1982. The Scottish Administration’s view remains as set out in paragraph 6 above. Consequently, no such change has been made to the Bill.

12. Some respondents to the White Paper pointed out that the draft regulations made no provision for the notification to (or objection by) the public of applications for the approval of places as venues for the solemnisation of civil marriages. The draft Bill published in the White Paper had provided for such matters. Having considered the responses, the Scottish Administration has taken the view that the proposed approval mechanism already provides a sufficiently rigorous regime for local authorities and that notification of applications is unnecessary. Consequently, these provisions have been removed from the Bill. Importantly, the Bill continues to provide for the notification to the Registrar General and the district registrar of all approvals that are granted, renewed, revoked, suspended or varied. The Registrar General, district registrars and local authorities will keep registers of places that are approved. These registers will be readily accessible by the public.

13. The Scottish Ministers intend to make only 3 substantive changes to the draft regulations. Regulation 10 will be amended to include a provision to enable local authorities to determine and charge for the attendance of registrars at approved places. Regulation 11(2) provides an approval holder with a period of not less than 14 days to make written representations to the local authority in relation to a proposed revocation. It was suggested by local authorities that a period of not less than 28 days would be more practicable. This change will be made together with a consequent change to the period for making representations to the Registrar General in
regulation 12(2)(b). Finally, the period for appealing to the sheriff against any decision of the local authority in regulation 16(2) will be changed from 21 days to 28 days.

14. There were a number of comments in relation to the detailed operation of the new system. The draft of the guidance to be issued by the Registrar General incorporates some of the comments from the consultation. In addition, on the recommendation of a number of local authorities and Registrars, GROS has established a short-term working group to consider the detail of the regulations and guidance that will be brought forward after the Bill receives Royal Assent. This group includes representatives from COSLA, the Association of Registrars of Scotland as well as some individual local authorities and registrars.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

15. There are no negative implications for equal opportunities. The Bill will place religious and civil marriage ceremonies on a similar footing as regards choice of venue.

Human rights

16. There are no implications for human rights and in coming to this view the Administration has in particular considered Article 6 of and Article 1 of Protocol 1 to the European Convention on Human Rights.

Island communities

17. Any effect on island communities is likely to be positive. Those wishing a civil marriage may be able to be married closer to home rather than travel to a registration office. Some islands may be seen as attractive locations for civil marriages, with consequent economic benefit.

Local government

18. It will fall to local authorities to implement the approval mechanism and to provide for the attendance of authorised registrars at the approved locations.

Sustainable development

19. There are no implications for sustainable development.
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