

LOCAL GOVERNMENT COMMITTEE

Tuesday 27 November 2001
(*Afternoon*)

Session 1

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LOCAL GOVERNMENT COMMITTEE

31st Meeting 2001, Session 1

CONVENER

*Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

COMMITTEE MEMBERS

Mr Keith Harding (Mid Scotland and Fife) (Con)

*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)

Tricia Marwick (Mid Scotland and Fife) (SNP)

*Iain Smith (North-East Fife) (LD)

*Ms Sandra White (Glasgow) (SNP)

*attended

WITNESSES

Tony Gallagher (Association of Registrars of Scotland)

Keith Jones (Aberdeenshire Council)

Kay McCorquodale (Scottish Executive Finance and Central Services Department)

Derek Miller (Dundee City Council)

Paul Parr (General Register Office for Scotland)

Brian Philp (General Register Office for Scotland)

Euan Robson (Deputy Minister for Parliament)

James Smith (Dumfries and Galloway Council)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Neil Stewart

LOCATION

The Hub

Scottish Parliament

Local Government Committee

Tuesday 27 November 2001

(Afternoon)

[THE CONVENER *opened the meeting at 14:04*]

Marriage (Scotland) Bill: Stage 1

The Convener (Trish Godman): Good morning comrades. There is a first time for everything. We are starting late because for the first time in two and a half years the microphones did not work.

The first item on our agenda is the Marriage (Scotland) Bill, for which the Local Government Committee is the lead committee. We have received written evidence, which is in members' papers.

I introduce James Smith from Dumfries and Galloway Council. He is the council's secretary and its monitoring officer—an interesting title. Mr Smith will speak for a few minutes, then I will invite questions from members of the committee.

James Smith (Dumfries and Galloway Council): I have another unusual title—I am returning officer for about 11 MSPs. As none of them is present, no special pleading will be allowed.

I will not go over anything that is in our one-page submission. The move in the bill to allow registrars to work outside local authority offices—a small step—represents a welcome extension of choice for the public in Scotland. Registrars are the only local authority officers who must stay in their offices to carry out their jobs. That is an obvious anomaly. Now that we will get them out of their offices to carry out weddings, I hope—as someone who comes from a rural area—that we will also get them out of their offices to celebrate births and to perform the necessary formalities for deaths. Mobile registration must come to rural areas. We must get away from the stuffy traditionalism that is inherent in births, deaths and marriages.

We in Dumfries and Galloway tend to feel that we know a little about marriages. In 1987, I spoke to the registrar in Gretna. Gretna is something of an historical anomaly. At that stage, the registrar was doing 800 weddings per year and she said that she could double that number if she had another room. We began thinking about another room and applied some market research and some intelligence. I did not do that—another member of staff did. That person came up with the

idea that we could make money out of Gretna—to the extent that we persuaded the council to give us £1.5 million to spend on building a new registration office.

We considered discretionary charging and we can provide and charge for absolutely everything, should couples wish that. We now run registration and there are approximately 6,000 weddings a year in the Gretna area. Few of the couples are local—most are from England and about 10 per cent come from abroad. We make sure that the 10 per cent from abroad appear in the local newspapers, because that means that we do not have to advertise Gretna—it is totally self-advertising.

Since we have treated the Gretna registry office as a proper business and a form of economic regeneration, four new hotels have been built in Gretna. All the existing hotels now have en-suite bathrooms in their rooms. We have a 100-page directory of local businesses, which offer for hire a range of things, such as kilts and ponies and traps. The development has been the equivalent of building about five factories in that area. That was the result of identifying a market and moving into it.

I am not saying that the extension of marriage provision that the bill will provide will do the same for the rest of Scotland. However, as we marry one couple in four in Scotland, I feel that what we have to say about marriage has a certain resonance throughout Scotland. The whole structure of our activity is quite intense.

I will speak only about my area for the moment. Two and a half thousand weddings are carried out by registered celebrants, who include Church of Scotland ministers and captains in the Salvation Army, as well as 700 people who belong to the Elim Pentecostal Church, the Brethren and various others. Getting on for 2,000 people can celebrate marriage in Scotland. They can celebrate a marriage anywhere and at any time they wish. Such weddings need not be seemly, proper or dignified—they need only be authorised. All we are talking about is releasing about 200 local authority registrars into the community, which is a small step, although I would be prepared to stop at that.

The question in the Humanist Society's submission about why there are licences interested me. At stage 2, it will become obvious that a registrar—in representing a local authority—has a necessary but limited and small expertise in marriage, births and deaths. Once a registrar goes into licensing in relation to planning, roads, fire and police—all the things that are being considered in the guidance—they are well out of their depth. They must be restricted to their particular expertise.

Why should there be licences? Local authorities did not ask for licensing. The proposal came forward from the registrar general. A charge should be made for local authority personnel working away from their offices, but I would never say whole-heartedly that there should, as an article of faith, be a licence. A celebrant should be licensed rather than a place so that the celebrant can carry out marriages wherever he or she wishes. Why should there be a seemingly, proper, dignified and almost Victorian attitude towards marriage by a relatively small sector of celebrants when we are trying to extend choice? That is the purpose of the bill.

The Convener: I will start the ball rolling before I catch members' eyes. Given the increase in demand that led you to open another room, do you have any evidence that there is demand from couples who opt for civil marriages to have their ceremonies conducted outwith registration offices?

James Smith: Yes. Of more than 5,000 marriages that were celebrated in the area last year, 2,500 were religious marriages that were held outwith the registration office. We did a trawl of 1,500 of those and 1,200 couples said that they would have preferred a registrar to marry them outwith the registrar's office if they had had that choice. Those couples did not want to be married in the registration office, albeit that it is a rather nice place. The alternative was that a minister of religion or another authorised celebrant could have married them.

In Gretna, we are about to fall heir to about 2,500 extra marriages—we must consider taking over that number. That is a guaranteed market and number every year. We will just move in and sweep up.

The Convener: Is there any obvious demand for a specified location, or is that not clear?

James Smith: I cannot answer that fully. The great majority of marriages in the area are held in recognised hotels and function suites so I expect the vast majority of registrar marriages would be in recognised establishments. That would be good for the area in general. There could be more such places. There are National Trust properties such as Sweetheart Abbey in our area, which is a brilliant place for a marriage—as long as it is a nice, warm day in Dumfries and Galloway. The abbey does not have a roof, but it is a lovely, historic building.

People want an extension of choice. In today's society, that does not necessarily involve the price of a minister of religion or another authorised celebrant.

Iain Smith (North-East Fife) (LD): I take it that you would prefer the registrar rather than places to be licensed. Would you prefer the celebrant to be

licensed? Are you not so concerned about approved places?

James Smith: I am not too concerned about approved places. I am sure that registrars would tell the committee that they must be careful about health and safety and other issues.

Dumfries and Galloway Council is a large local authority that has 10,000 employees. Many of those employees are sent out every day—social workers are sent to homes, care workers are sent to a range of places and men are sent down drains, for example. As part of the law, we have a health and safety remit. We would never place any of our employees at risk. As far as we are concerned, our registrars are authorised to conduct marriages.

If the proposals are implemented, existing registrars would not carry out the work in my area. They are 100 per cent occupied where they are. We would consider bringing in what have been called flying registrars. We must gauge the market and there must be a resource-neutral approach for the local authority ratepayer. Both the licence and the registrar must be resource neutral. That would not prevent us from making a profit and I am quite sure that we will find a small percentage for administration somewhere. Initially, we would use flying registrars, rather than our usual registration service.

Iain Smith: I want to take that further. Having read the supporting documents, I was struck by the suggestion in favour of the heavy hand of regulation. You seem to want strongly to frame the rules in a particular way. Are regulations needed? Do you think that more minimum regulations that set out the basics are required, or would you prefer that there were no regulations and that the matter was left to the discretion of local authorities?

14:15

James Smith: The amount of legislation that is needed is absolutely minimal. First, we need to change about three words in the Civic Government (Scotland) Act 1982 that restrict local authority personnel from performing marriages outwith an office. Secondly, it must be decided which power to give to the local authority—the power either to license and approve or to charge. That should take about six lines of legislation. My legal division has already drafted such legislation to help the committee gain the flavour of what is needed.

There is tremendous over-regulation. It is a waste of resources to draft totally separate legislation. When houses in multiple occupation were licensed earlier this year, that was simply tied into the Civic Government (Scotland) Act

1982. The favoured option for regulation of the private security industry, which is still out for consultation, is that that should also be tied into the Civic Government (Scotland) Act 1982. We do not want the paternalistic approach that all the regulation and guidance represents.

Government officials should not issue guidance on matters that are way outwith their remit. That is something of which the committee must be wary.

Ms Sandra White (Glasgow) (SNP): I congratulate you on your forward thinking in getting 6,000 weddings a year. If you put that fact on the VisitScotland website we might get even more visitors to Scotland.

There are two points that I want to clarify. In your submission you say that we should

"Delete all licensing specifications; Registrar General has no expertise in these."

You touched on that in answer to Iain Smith's question. Will you expand on that?

Will you expand on why you think that local authorities should not consult registrars about approval of premises, given that registrars would conduct ceremonies in those places?

James Smith: I will take the second point first. My local authority has 10,000 employees and a turnover of about £500 million a year. We deal with about 729 acts of Parliament every day. The bill is a very small piece of proposed legislation—implementation will be like falling off a log.

The local authority is under no statutory obligation to consult any member or group of its staff in carrying out its functions. However, as a good employer we will always consult our staff and the unions. We make sure that whatever we do, particularly if it is new, is talked through. A statutory obligation to consult an individual employee—in this case it is not even a group of employees—would be inappropriate. Some such employees might have had only one week's training while others could have 30 years' experience, but the local authority would be required to consult them. In law, I could be required to go to a home registrar to ask whether we could license places in our area. However, we would not be required to follow what registrars say because the requirement would be simply to consult them. Nevertheless, it would be a very unusual course of action.

The registrar general is a necessary expert on a range of matters. However, once he starts guddling about in licensing he will begin guddling around in planning, fire and a whole range of other things. Guddle is a technical term that I am sure we all understand.

Ms White: You mentioned the fact that the proposals would require you to consult perhaps only one employee. If the bill is enacted—I presume that it will be because it is very forward thinking—and you must consult every time, will there be a delay in marriages being performed in the way that is proposed?

James Smith: I hope that consultation would not lead to delay. However, it might lead to some fear. Licences are money. If we took the word of our registrar that something is not "seemly and proper", on a Monday morning in the cold light of day somebody somewhere will see his or her livelihood going down the tubes. It will not be me or the chairman of the licensing committee who takes the stand before a junior advocate; it will be some poor registrar who must justify why he or she thinks that a particular place is not "seemly and proper". In terms of local authority gradings, registrars are quite far down the scale.

The Convener: If a registrar made it quite clear that he or she thought a marriage ceremony should not be conducted in a particular place and clung to that opinion, how could that be dealt with? Where would it be decided whether the registrar was correct and whether somebody else should carry out the wedding?

James Smith: We have already considered that in Dumfries and Galloway Council. The matter would go through the usual licensing system. Any licence would be considered by a group of consultees, including the chief constable, the chief environmental health officer and others. They would all have a view. At the end of the day, the decision to grant or refuse a licence is delegated to someone such as me, who must say on what ground a decision is taken. Thereafter there is usually a right of appeal to a sub-committee or a committee of elected members. There is a sifting process, which is necessary for the protection of staff, elected members and the public. If everyone else thought that there was no reason why a licence should not be granted, the view of the registrar alone might not hold sway. We must ensure fairness and transparency in the system.

Dr Sylvia Jackson (Stirling) (Lab): I want to get to grips with the way in which you see the system operating, as opposed to what is being suggested in the bill. You said that we need the minimum amount of change and that the bill is perhaps over the top. You said that a venue would go through the usual licensing process. Is that correct? You said that the introduction of flying registrars would accommodate the changes. Perhaps you could say something about the training that would be involved. Would anyone be involved apart from the flying registrars and the people who decide whether a venue is appropriate?

James Smith: If the bill is enacted as it stands, there would be a tremendous amount of unnecessary checks and balances—it would be an administrative nightmare. I advocate absolute minimalism in the matter. There is already sufficient law and practice in licensing—that is, if one thinks that there needs to be a licence at all.

Dr Jackson: Could you clarify that? How do you see the system operating? You say that a licence might not be needed. What is your view?

James Smith: It is for Parliament to decide whether licences are required. If they are, the Parliament should give local authorities the power to license. As I recall it, local authorities did not ask for a licensing system—they just asked for registrars to be released to carry out marriages outwith their offices. A variety of proposed legislation has been brought forward at the instigation of the registrar general—it is not local-authority inspired. Members will see from our submission and that of the Association of Registrars of Scotland that there should have been detailed consultation before we got to this stage. That would have prevented the many negative responses that are now part of proposals that we all welcome; that is the paradox. We all welcome the development, but are fighting a rearguard action against a Government agency that feels that it should have a greater say in the wider world.

On training, it is a fact that within a week I can put a registrar on the ground who is authorised by the local authority and the registrar general. A person could be trained from Monday to Friday and by the following Monday be a district registrar with full powers. People are trained intensively during that week and are brought back for refresher courses—the initial training is not a one-off. Local authorities are made up of a range of specialisms and registrars have one of them. The longer a person does a job, the better they get at it.

Dr Jackson: I am trying to get at your ideas about what could be called your council's minimalist approach to administration. Would you please take me through that process? You may have explained it already, but I have not yet grasped it.

James Smith: Okay. If there were no licensing requirement and the local authority was allowed to send registrars out with officers and to charge for that, at that stage they would be in the same position as a range of our other employees. For the most part, one would expect them to go into hotels, licensed premises and a range of other places that we have licensed under other legislation. As the council is the fire authority, the police authority and the environmental health authority, we will have visited those premises

already. What will another licence achieve? It is more than likely that we could do an admin check to find out what licences we had granted already. That covers the situation where a licence is not needed. If a licence is required, the question is how much we need to inspect the premises again. We do not want to make double or triple inspections, as they would be useless. We can look at the fire certificate to check how long it is valid for. We can look at the police reports to find out about the locality. There is a variety of checks that the local authority can carry out—we are all over those issues, all the time.

Dr Jackson: Would it be sufficient to amend the Civic Government (Scotland) Act 1982?

James Smith: That is my advice. The registrar general's argument against that is that the Civic Government (Scotland) Act 1982 is about to be reviewed. That is so, but that means that everything under that act will have its terms and conditions changed. As I said earlier, the recent regulations for houses in multiple occupation, which came into effect only in June of this year, were tied into the Civic Government (Scotland) Act 1982. Indeed, the consultation paper on the regulation of the private security industry—that is longhand for licensed establishment door keepers—favours a straight reference into the Civic Government (Scotland) Act 1982 rather than separate legislation. Somewhere in the draftsmen's society or in the Scottish Executive there is a view that is not shared by the registrar general.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): You have spent some time talking about your concerns about certain aspects of the proposals. Is there anything that would make the bill unworkable, or has the opportunity to improve it been missed?

James Smith: It is certainly the case that a splendid opportunity to allow registrars to undertake all their duties outside their offices, rather than just marriages, has been missed. It is outrageous that that opportunity has been missed.

You asked about my council's minimalist approach, but I am not sure that I can expand much on what I have already said. There are certain points in the bill that we can deal with at stage 2, if the registrar general does not change tack during the working party meetings. One totally abhorrent issue is that of the registrar general having a veto over a local authority decision, which is an outrageous proposal. It would be acceptable for the First Minister or Parliament to have a veto over a local authority decision, but it is absolutely unacceptable for a civil servant to have such a veto. Such a provision is unknown. Another unacceptable proposal is, as was stated earlier, the requirement to consult an individual member of

staff—that is not acceptable to a local authority. That is not to say that we are not good employers—we have good employment practices by which we must abide.

There are other issues, such as the appeal to the sheriff, which appears to give him the right, not only in law but in fact, to change a decision. The bill contains a tremendous number of flaws. The best thing about the bill is the fact that one side of the paper is blank—you could turn it over and write a much shorter bill.

Mr McMahon: I will follow up on those points. Short bills have come before the committee in the past and major areas of conflict and concerns have been raised. However, I do not think I have ever heard so many in relation to such a small bill. Did the Executive consult widely and adequately enough to allow the consideration of the types of concerns that you are expressing?

James Smith: I am sure that the Executive consulted widely enough on whether there should be legislation to remove that particular restriction, but there has been no implementation of that. There are so many detailed objections because the Civic Government (Scotland) Act 1982 already provides a well-settled route for handling all those matters.

14:30

Iain Smith: Are you suggesting that the powers to make regulations that are in the bill should be removed completely? Are you saying that the present regulations need to be significantly amended?

James Smith: My instructions to my solicitors were not to fight the bill line by line because it would be full of red ink and we would not be able to join up the commas. It is so restrictive that I could not consider doing that or justify the man-hours that would be needed to do it. That is why the solicitors were allowed to spend two hours redrafting a short act and regulations.

The way it stands at the moment, it is unworkable. We would make it work. Local authorities are about making things happen every day. If the bill were passed tomorrow morning, we would pick it up, pack it in and go do it.

The Convener: Thank you. You have raised some interesting points. As Michael McMahon has said, you have raised many points on a particularly short bill. In the experience of the committee that does not usually happen, but we will have regard to your points when we write our report. If we need to contact you again we will do so. Thank you for your time today.

Okay, comrades, we can proceed. We have representatives from Aberdeenshire Council and

Dundee City Council. Derek Miller is the administration manager of Dundee City Council and Keith Jones is head of law and administration (north) for Aberdeenshire Council. I am given to understand that it is a double act. Derek Miller will go first.

Derek Miller (Dundee City Council): As well as representing our respective councils we are representing the views of the Convention of Scottish Local Authorities. We both serve on a working group with COSLA to consider this issue.

The bill is widely welcomed in Scotland. Councils have been seeking added value and giving it a high priority, particularly in recent years. Perhaps it would be true to say that the historical focus and emphasis of the registration service has been on the accuracy and completeness of the record of events. Less attention has been paid to whether things needed to change and move on as people's attitudes and society's values change.

I remember a seminar at COSLA's offices three or four years ago. Some English registrars were talking to us about their experiences in experimenting with similar legislation to allow them to provide the service outwith council offices. My recollection is that, at that time, the registrar general's office and some registrars thought that the experiments were an unnecessary complication. Happily, things have moved on considerably. The bill and the registrar general's recent paper on the future of registration are extremely encouraging.

On behalf of Dundee City Council and COSLA, I confirm that we welcome the bill. It is widely recognised that choice needs to be opened up for couples who seek a marriage ceremony in surroundings that will help make the day memorable for them. Many councils have tried to create attractive and even, in some cases, romantic venues in council premises, but that is not easy to achieve. Throughout Scotland choice has been limited. My council's registrars undertook a survey some time ago that underlined that fact. A couple of the survey's key results are quoted in my written submission, so I will not repeat them here.

We in Dundee expect the demand for civil marriages to rise when the bill is enacted. However, we are concerned about the process for approving venues. The word licence has been much used but, according to the wording of the draft bill, it is actually an approval that is being obtained—which is similar to the butcher's shop requirements that were introduced recently after the E coli outbreaks. So the wording is perhaps a rose-by-any-other-name situation.

My view, and that of others, is that the wording of the bill is sufficiently flexible to allow councils to

use their licensing staff's expertise. Day in, day out they process applications of a similar nature. My council will probably simply amend the terms of reference for our licensing committee to include consideration of applications for approval under this legislation.

The bill is probably slightly over-engineered for what it needs to do and could do with some review. A working party is considering the bill alongside the registrar general's staff. We are concerned about a couple of areas in the bill: there is a lack of provision for objections to applications, and we need greater clarity about appeals against a refusal. We also disagree that the registrar general should have the power to direct that an approval should be revoked. We consider that the decision whether to approve should be taken by a group of democratically elected councillors in an open and accountable way. A decision to revoke should be by means of those councillors considering the circumstances.

We are not happy either about the inclusion of a statutory provision to consult district registrars. Statutory consultation with the named post-holder is an anomaly, but it could be resolved by the bill referring to the registration authority rather than to the district registrar. Other anomalies could be resolved by having the application made to the registration authority instead of the council. The problem is that some registration districts are not coterminous with council boundaries. However, if an application is made to the registration authority, there is nothing to prevent a council consulting its neighbouring council about the current status of a hotel licence or about any other building.

Those and other matters of detail will, I am sure, be discussed by the working group that I mentioned earlier. We are looking forward to continued discussions on the subject.

I have one final point to make at this stage about the use of the phrase "seemly and dignified", which has a somewhat Victorian ring to it. I feel that that phrase is inappropriate for the 21st century. What is seemly and dignified to me or someone else might be completely the opposite to a third person. In this day and age, who are we to dictate what should make someone's ceremony memorable for them? As long as a couple are taking seriously the contract that they are making, the venue and the circumstances, in fancy dress or otherwise, should be immaterial. Only the contract needs to be taken seriously.

Keith Jones (Aberdeenshire Council): My written submission pointed out that we in the Aberdeenshire area think that the bill will be greatly beneficial for the local community. Areas such as Deeside and Donside are already popular for religious marriages. Our Strathdon registrar, who is known as a parlour registrar, does almost

70 civil marriages a year, which brings a considerable sum of money into the local community. It will be even more beneficial for the community when hotels and other premises also become entitled to obtain the status of a marriage venue. In my submission, I mention Duff House Gallery in Banff, which has already been in touch with me about how to obtain such a licence.

There could be a significant demand from couples for weddings at unusual times, including ceremonies on Sundays and candlelight ceremonies at midnight. Indeed, that demand already exists. I know of at least two wedding ceremonies that were conducted by parlour registrars in different areas at midnight on the night of the millennium. Perhaps the way forward in this respect is the so-called flying registrar that James Smith mentioned.

Our registrars have expressed reservations about how they will be required to work when the bill is passed. I had certainly envisaged that, initially, we would use our own registration staff and perhaps deploy extra cover from part-time staff to ensure that the office was run smoothly. Depending on demand, we might eventually have to staff up. However, we have to accept that, before the bill is passed, there will be negotiations with Unison and COSLA.

The crux of the bill is probably not its terms but the regulations, of which much has already been made, and my submission lists various general concerns that I or other authorities have expressed. As many of those concerns have already been mentioned, I will not spend my limited time going through them in any great detail.

We certainly echo the views that have been expressed about the powers concerning the licensing of premises that the registrar general wishes to take. All local authorities believe that such decisions are best left to them. As for a duty to consult the district registrar, it would be helpful if that were changed in the bill to a duty to consult "the registration authority". In some ways, the regulations over-regulate; in other ways, they contain insufficient detail, particularly on the appeal process and the rights of objectors.

On balance, I feel that there should be regulations, which should take the form of the requirements of the Civic Government (Scotland) Act 1982. In view of other issues affecting the 1982 act as it now stands, it would be perfectly acceptable for the regulations to be tagged on to what will become the Marriage (Scotland) Act. Like Mr Smith, I have had my licensing solicitors examine the draft regulations. They raised quite a number of points, some of which might add to over-regulation if they got into the hands of the council's licensing unit. However, other of their suggestions would improve the regulations. That is

probably the next stage as far as the committee's locus is concerned.

It is probably unnecessary to say any more just now. I am sure that Derek Miller and I will be able to answer the committee's questions.

The Convener: You have both pointed out that the legislation might have economic benefits. For example, as Keith Jones pointed out, hotels could begin to promote the facility. Have you discussed the matter with the owners of such premises and, if so, do they feel that the conditions of approval are acceptable, or is it still too early for them to say?

Keith Jones: I have not directly consulted hotels or other premises about the licensing conditions. Hotels are already affected by the liquor licensing legislation. As we have heard this afternoon, some fairly strict regulations apply in that respect. Civic government licensing of places of public entertainment might apply to other premises. Hotels, places of public entertainment and possibly National Trust properties are already working under licensing regulations.

We have to consider not only the safety of, but the confidence among, registration staff who have to visit those premises. I assume that, through the licence trade, hotels may have had the opportunity to comment on the proposed legislation in other ways; however, I did not regard it as my place to consult hotels directly.

14:45

Derek Miller: We have not consulted other hotels. There has been a surprising lack of knowledge among local hoteliers of the existence of the proposal. However, I recently spoke to a local area tourist board and arranged for it to run a short piece in its next newsletter to the trade, saying that the proposed legislation is currently being considered, that there is a business opportunity for people and that, if they want more details about what is going on, they should get in touch with our registrar's office, which will try to give them information about the bill. We have not received many inquiries from such places. We have spoken informally to one or two people who have expressed an interest, but it has been at an early stage for them and they have been waiting for further developments before making any formal moves.

Mr McMahon: Derek Miller has made information available to us concerning pay and conditions. I agree entirely about the wording "seemly and dignified" in the draft regulations. Regardless of what might be considered seemly and dignified, I do not know whether anyone could be paid enough to marry someone at the bottom of a loch, at the top of Ben Nevis or at the end of a

bungee rope. What has been COSLA's initial reaction to your suggestion that registrars' remuneration for conducting marriages should be dealt with under pay and conditions of service to be negotiated nationally?

Derek Miller: I raised the matter on that basis because I have been approached by my registration staff, who are aware of how the system operates in England, and there is anecdotal evidence of outrageous fees being paid—payment being made on a payment-per-wedding basis. Some of those fees have been far in excess of standard overtime rates. However, we do not want to create anomalies. I am sure that lots of people working for the council would like us to pay them a fee for each event or give them a share of the takings, but that is simply not the way in which local government operates. We would like to have some regulation of that aspect.

We also have to be careful not to fail to meet people's aspirations. If the demand for the service rises, some of us will have difficulty in finding enough staff to provide it. Our existing registration staff are kept fairly busy, but—like the rest of us—they like to keep their weekends and evenings free. They are making it clear that, if the demands on their time are increased, they will expect to be recompensed in more than generous terms. I expect also to have to recruit marriage celebrants, in some way or other, and find a way of training them. I mentioned the subject briefly to the registrar general's training people at a seminar that I attended recently, and I understand that they would be quite happy to work with us in devising some sort of training for that eventuality.

I am anxious that, if we recruit such people, we should not find ourselves in a constant Dutch auction in which our relief staff might be offered £5 extra from a neighbouring authority, meaning that we would lose the people whom we had trained to that authority. I would rather have some uniformity. In some areas, we might be able to share a resource. For example, in Dundee, Angus and Perth and Kinross, there might be a common pool of relief registrars, which we could use. Such ideas are just being thought through and have not been discussed formally. However, I would like guidance to be issued throughout Scotland before the matter goes much further.

Mr McMahon: Are there no national structures at present?

Derek Miller: At present, registrars are paid on standard local authority scales. The rate will vary from council to council. In my area, registration staff are full-time registrars; in some areas, they might be part-time registrars who also work in, for example, the housing office, dealing with rent collection, repairs requests and so on. There are some difficulties in that regard. The range of

payment rates will vary among authorities, but some guidelines would be useful.

Demand might also go up because people are increasingly considering baby-naming ceremonies, renewals of vows and so on. Most such events are likely to be tied to some sort of social event, whether in a hotel or at a family venue. Not many of them will take place during the normal working day, so there could be a high demand on registrars' time outwith what is now their normal working week. I want to find a balance to deliver the service without imposing unfairly on registrars and to ensure that the council has sufficient resources to meet people's expectations.

Mr McMahon: If an additional cost was incurred through increased payments, should that be met from existing council budgets, or should the additional costs be passed on to those who are seeking to be married through the council?

Derek Miller: Marriage should be, as far as possible, a resource-neutral activity. Our survey, which I mentioned both in my earlier remarks and in my written submission, clearly indicated that people were willing to pay extra to have the facility of choice. I recently came across some examples of authorities that have done some quite imaginative things. We attended a meeting at Aberdeen City Council headquarters last week. That council has a beautifully furnished room, which is almost in period style and is becoming very popular. I think that people pay about £370 for the hire of that room. The council has no difficulty with that.

I think that North Ayrshire Council has Chatelherault, the former seat of the Duke of Hamilton.

Mr McMahon: That is in South Lanarkshire.

Derek Miller: It is in South Lanarkshire—sorry. I understand that that venue is available on Fridays only, that people pay a similar fee, and that it is booked solidly every Friday for the next 15 months or so. There is therefore a strong suggestion that people are quite willing to pay for the service as long as they get the service that they want.

Dr Jackson: Is there anything to stop registrars going private?

Derek Miller: That issue has not been considered. The registrar general might have a view on that. Registrars are council employees, and most councils require staff to obtain the council's permission to take on spare-time remunerated employment activities. I am not sure whether councils would view such activities as helping them with their resource problem or as setting up in competition against them. We would need to look into that further.

Dr Jackson: I am sorry, but I could not resist asking that.

Your main concern with regard to the type of venue seems to be about health and safety. Is that correct?

Secondly, page 3 of your submission mentions "democratically elected and accountable councillors"

being involved in the final decision. I take it that you mean councillors on the licensing committee.

Derek Miller: Yes.

Dr Jackson: Thirdly, you seem to be suggesting that the bill could be amended. In contrast, a previous witness said that it would be better to start all over again.

Derek Miller: I will respond to your last question first. I think that the bill could be amended, and that a number of provisions are unnecessary, including the one covering the power of the registrar general to instruct that something be revoked. Under the bill, we would, before approving a licence, have to ensure that health and safety measures had been observed. We are all bound to observe health and safety legislation, and a further piece of legislation is not required for us to observe it. I am sure that there is a lot of scope for trimming and tidying up the bill. I do not think that the whole bill has to be thrown out with the bath water, as it were.

I have forgotten your first point.

Dr Jackson: It was on whether health and safety was the main issue when venues were being considered.

Derek Miller: Many of the venues will already have been licensed or approved in some way. That includes hotels and village halls, which might have received permission for public entertainment to take place. The more problematic venues will be the one-off ones, for example, a tree on a hilltop, beneath which a couple first met. Such places will take a bit more consideration and investigation. Other venues will be straightforward. If they already had a licence, I cannot think of many grounds on which we would not approve them.

Like others, we would ensure that a registrar had an opportunity to visit the location—the room that was to be used. Simple tasks might be required, such as ensuring that the bar of a function suite in a hotel was closed during the ceremony or that the door that connected the function suite to a public bar was closed during the ceremony. The one-off venues will be a bit more difficult.

Ms White: I would like one point in relation to Sylvia Jackson's question to be clarified. Do you

not agree that amending the Civic Government (Scotland) Act 1982 would be sufficient and that the bill is unnecessary?

Derek Miller: Options are available and that could be done. As others have, I have had our legal team examine the bill. We are fairly relaxed that the bill is flexible enough to allow us to operate it through a licensing committee. Amending the 1982 act is another option. I do not know whether it could be amended quickly. The bill has been produced and is ready; we would need to start again if we wanted to amend the 1982 act. The bill would make the change more quickly and we can adapt our existing procedures to fit in with it.

Ms White: The staff situation has been mentioned. If the Scottish Tourist Board advertised the possibility of weddings outwith registration offices and that was taken up after the bill was passed, would flying registrars for several local authorities be appointed? As I presume you expect, I expect that in the short term you might have a problem with the number of registrars and might not be able to train new registrars quickly enough. Would you think about flying registrars?

Derek Miller: Yes. That is a possibility. Consultation on formal pay and conditions of service is needed. COSLA has machinery that can do that on behalf of councils. None of us wants to take away anyone else's livelihoods or to threaten the jobs of existing registrars. However, a demand could be unmet and it is important that we find a way of getting our resources up to strength to meet that. Sharing registrars with neighbouring authorities is an option that is worthy of consideration. However, we would still need guidance on a common payment basis, because people might be paid differently by different councils. It would be nice to have some standardisation.

The staff who would do that work would not necessarily be the same people who registered the event. Registrars undertake much training and have much experience in registering such events. Accuracy is important. Other issues need to be addressed in this day and age, but the accuracy of the record is of undeniable importance.

We expect that the sort of person who would want to do such work on a relief basis would be a performer—someone whose talents lay in making the event memorable, not necessarily in recording it accurately. Some registrars will be good at both tasks and some will be good at performing the wedding and not as good at recording the events. I would like to ensure that we have people who make the event memorable. That might be what I would place most emphasis on in recruitment.

Ms White: We all know that the clergy can perform ceremonies in hotels and other places, and the bill opens up the choice of venues for civil marriages. Do you have a register of hotels and other venues where the clergy perform marriages at present? Will you be able to create a database of such places?

Derek Miller: I am sure that we will be able to create a database, but we do not keep a specific record of such places. The registrar has a record of where events took place, but we do not keep a register of hotels that do marriages, for example.

Availability will vary from place to place. A smaller wedding might be able to manage in one place, but not be able to have the reception there, too. Many practical issues affect how well such venues can cope, such as the size of the wedding, the time of day and other events occurring at the location. I am sure that we will be able to create in due course a database of venues that are recognised for the purpose.

Ms White: A previous witness mentioned that some places are subject to health and safety regulations and environmental rules. I assumed that a list of such places existed, which would avoid the need for a special licence.

Derek Miller: If a place is approved as a hotel or restaurant, it will have gone through a stringent process to obtain its licence. All those issues will be considered when the number of people who are allowed into the venue is set, taking into account appropriate fire exits, health standards and so on. To an extent, those venues will require less examination than a venue that has never been used before.

15:00

Iain Smith: My questions are short, although they might take a long time to answer.

Following on from the point about religious, or non-civil, celebrants of weddings, do you think that the bill's approach of approving places for civil marriages is correct, or would you prefer to license the civil marriage celebrants—the registrars—to perform marriages anywhere that they felt appropriate?

My second question is mainly for Keith Jones. In your submission, you say that regulation is required. Notwithstanding the fact that the draft regulations that are before us may not be the final version, why do you think that regulations are required, rather than a simple enabling bill that would allow local authorities to go ahead and provide the service?

Derek Miller: On your first point, councils, as employers, have a duty of care towards their employees. I cannot speak for how the Church of

Scotland or any other church regards that duty. If a minister of religion chooses to go to a location and perform a wedding without carrying out a risk assessment, that is the risk that that minister must take. Local authorities enforce legislation in our communities and it behoves us to set a good example. We would want to ensure that the venue was safe and secure, and having to approve the venue is one way of doing that. Your proposal would add another step, because we would still have to visit locations to check them out, even if we licensed the individuals rather than the premises. We would still want to repeat that checking exercise before we agreed to let our staff go to those locations.

Keith Jones: I will respond to the question about the principle of a licensing system. In order to reassure our staff, we should have a system of recognised, licensed—if that is the correct term—venues. If staff were unhappy about a venue, we would be able to indicate that it had been passed. That would be important if we were to attempt to provide the service at that venue. Therefore, the licensing system works both ways. Perhaps in a few years, once we have experienced the new system, it might be possible to review the terms and conditions and assess whether, in the light of experience, they are necessary or, indeed, whether further conditions might be necessary.

On the licensing of celebrants, if the local authority had to license ministers and various other religious celebrants—

Iain Smith: I was not suggesting that.

Keith Jones: That would present local authorities with quite a lot of difficulties.

Iain Smith: I was referring to registrars, who are, effectively, the licensed celebrants for civil marriages. I was asking whether they should be licensed to perform marriages wherever they thought appropriate. The question was really about whether local authorities should license the person rather than the premises.

Keith Jones: At present, registrars are employed—sometimes in fairly small numbers—by local authorities. We know who the registrars are. There are a number of part-timers or parlour registrars, but we have a line management function over those members of staff. An inspection arrangement has been set up through the General Register Office for Scotland and, as far as our registrars are concerned, sufficient control exists without any additional form of licensing. If you wanted to extend licensing to hoteliers and others for the act of conducting wedding ceremonies, you would have to deal with issues such as access to information technology systems.

Iain Smith: I return to the regulations issue. I

accept that each local authority would want a scheme in place for how it went about approving under the act. The question I was trying to ask was whether you think that there should be a national regulation scheme—as is proposed—or whether it would be sufficient to allow local authorities to draw up their own schemes, bearing it in mind that there might be different requirements in different areas.

Keith Jones: As Derek Miller and Jim Smith said, we will work the scheme whatever the final form of the legislation. There would certainly be merit in the scheme being worked by individual local authorities, with each authority having regulations according to its circumstances. However, that could lead to one authority being played off against another for commercial or regulatory reasons. On balance, I subscribe to a national scheme.

Derek Miller: It is commonplace and standard practice for legislation to have regulations and guidance. However, we all probably agree that in this case the regulations are perhaps more complex and detailed than they need to be. There is definitely scope for severely wielding the pruning shears.

The Convener: You mentioned that clarity on appeals seems to be missing from the bill. Have you considered what you would like to be in the bill to achieve that? Has the Executive consulted adequately on the proposals that are being introduced?

Derek Miller: Keith Jones might be able to answer in more detail on the appeals, but in general the regulations refer to being able to appeal to the sheriff. However, they leave open the basis on which that could be done. At the moment, for normal licensing, that tends to be done on a point of law—assuming that the council has applied the regulation procedures properly. The draft regulations appear to give scope for the appeal to be judged on matters of fact in relation to the merits of the application that is being reviewed. That needs to be clarified, because the situation should be the same as in the Civic Government (Scotland) Act 1982.

On the question whether councils should adopt an appeals process, I think that that would be the same as going straight to the sheriff. The point was made earlier that the bill will allow people to regard registration as a way of making money. As soon as that is on the table, our experience is that the full weight of the legal system will be brought to bear on us if we dare to refuse someone permission for something. Appeals are perhaps best left in the legal arena, but we need to be clearer on the grounds for making appeals.

The Convener: Do you agree that we have

consulted adequately?

Derek Miller: We welcome this evidence-giving exercise, which is an innovation that came on the scene with the Scottish Parliament. The earlier any consultation takes place, the better, but how far back does it go? I am happy to have the opportunity to comment on the draft bill and to be involved in the working party, which has the opportunity to influence the content of the regulations and guidance.

Keith Jones: On the issue of appeals, the 1982 act specifies particular grounds of appeal, which arise if an authority has erred in law, has based a decision on any incorrect material fact, has acted contrary to natural justice, or has exercised its discretion in an unreasonable manner. No equivalent detail is set out in the proposed regulations. The suggestion is that something similar to the 1982 act, with which local authorities have been working for almost 20 years, might be the way forward, with a final appeal from the sheriff court to the Court of Session being allowed on a point of law only. My colleagues think that something of that nature should be incorporated in the bill.

On the consultation aspect generally, I am not unhappy, from the local authority viewpoint, about the consultation, but I cannot speak for other bodies.

The Convener: There do not appear to be any more questions. I note your comments about the bill being over-engineered. They were very much in line with those of the previous witness.

Thank you very much for taking the time to come along. If we need to be in touch again, we will be.

As this is a rather cold room, we will have a short comfort break.

15:09

Meeting adjourned.

15:16

On resuming—

The Convener: We will now get back to the business of the committee. In some circles they say, "Gentlemen can now remove their jackets." I will not say that as this is a cold room. Ladies and gentlemen can keep their jackets and coats on.

I introduce Tony Gallagher to the committee. Tony is the honorary secretary and monitoring officer of the Association of Registrars of Scotland.

Tony Gallagher (Association of Registrars of Scotland): I welcome this opportunity to speak to this committee as the only registrar who will be

interviewed here today. I hope that I will use this opportunity for the benefit of the registrars—the officers who solemnise ceremonies. I regret that, because I was on holiday, I did not have the opportunity to give you a written submission.

The Association of Registrars of Scotland has been in existence since 1865. In all of that time, it has been regularly used as a consultative body for the benefit of registration. We have been involved in consultative forums on many acts of Parliament affecting registration and in various working parties and groups.

From the copy of the letter that we sent to the registrar general, in which we outline our views on the white paper, you will know that we support the opportunity to extend civil marriage facilities outwith our offices. Ever since it became possible for that to happen south of the border, we have felt that it should happen here. At every annual general meeting and at every meeting that we have had with the registrar general, we have asked when civil marriage facilities will be extended outwith our offices.

I am not employed by the Association of Registrars of Scotland: in real life I am employed by West Dunbartonshire Council as the humble registrar of the district of the Vale of Leven, which includes Loch Lomond. Obviously, I might be seen as having a vested interest in ensuring that marriages are possible on the bonny banks of Loch Lomond.

I am here to represent the interests of registrars and I welcome any questions you may have to ask me.

The Convener: I thank you for your presentation. You appear to be saying that you have concerns about the consultation process. Will you expand on what those concerns are?

Tony Gallagher: Registrars in England and Wales have been able to conduct marriages outwith their offices, although not as extensively as is proposed in the bill, for many years now. As I said in my covering letter to our response to the white paper, it is unfortunate that the consultation period was comparatively short, given that we had waited so long for the change—as was the fact that the consultation took place over the summer holidays, when many registrars, who also undertake functions other than registration, were on holiday. We had about eight weeks in which to respond. That is why we felt that a longer consultation period would have been useful for all concerned.

Mr McMahon: In your response to the white paper, you indicated that you are unconvinced that registrars will be given sufficient protection from unreasonable demands about where marriages should take place. Do you feel that the bill and the

regulations and guidance meet those concerns? If not, how could they be met?

Tony Gallagher: The bill is simple: it will permit marriages to take place outwith registrars' offices. As a registrar, I approve the change, as does the Association of Registrars of Scotland. We are very much in favour of it. We think that those who conduct marriages outwith registrars' offices should be registrars. I want to make it perfectly clear that we support the change.

Although the regulations seem to cover many of the issues comprehensively, we are concerned about some of the views that we have heard expressed this afternoon on the proposed requirement to consult the district registrar. I will clarify the matter; I hope that I will be helpful to the debate. I do not think that the requirement to consult contains any power of veto. It is sensible and logical for a local authority merely to consult the district registrar. That is all the proposal says. It does not say that the registrar will have a power of veto; it says that the local authority should consult the district registrar.

In practical terms, the district registrar has to know his or her own registration district's boundary. The committee must realise that registrars do much more than marriages. Those are only part of a registrar's function. Registrars register births, still births and deaths, as well as marriages. They hold records that go back to 1855. They have all those responsibilities. They know their patch. However, I would worry about a registrar who had been trained in a week knowing his or her patch. In areas in which that was a problem, a chief registrar might help in the consultation process.

I consider the proposed requirement to be a valid and logical opportunity for the local authority to consult the district registrar, who will know their own patch, and ask whether the registrar knows anything about—or what they feel about—a particular venue. The district registrar would not have a final power of veto, but could express their concerns, such as, "That is not the best place," or recommend another place. The proposal says that the registrar should be consulted. It does not say that the registrar will have the ultimate power of veto.

Mr McMahon: You heard some of the evidence that was given earlier. Was anything said with which you fundamentally disagree?

Tony Gallagher: I fundamentally disagree with most of what the first witness said. I am glad that I am not employed as a registrar in Dumfries and Galloway if that is what the gentleman thinks of his registrars.

Of course parts of the regulations will have to be slimmed down. There is no doubt about that. It is

the reason that we have a working group. The committee can see that, in our response to the consultation, we stated that a working party should have been established long ago. If it had been, perhaps the negative responses that we hear from some quarters would have been addressed before we got to this stage. A useful opportunity was missed.

Let us remember that the public have been asking for the bill for a long time. Registrars from area to area are asked daily, "Can we have a marriage outside your office?" That choice has been available for seven years in England and Wales but it is not extended to the public in Scotland. I would respectfully point out that it is not usual for the Scottish registration system to follow the system south of the border; it is usually the other way round.

Iain Smith: Do you agree with the bill's approach of approving places for marriages instead of allowing registrars to hold marriages in the way that is available to religious or non-civil celebrants at present?

Tony Gallagher: Yes, I do. The word "licensing" has caused a great deal of debate. This may come under part of the licensing system, but the provisions are for a process of approving buildings or places. Registrars' main concerns are about one-off approvals for places that are not used nowadays by religious celebrants or for ceremonies outwith buildings.

Important safeguards are already included in the approval process, particularly for what is known as a period approval of premises. That is not clearly the case with one-off approvals for marriages that might not be conducted in the security of a building. That is a further area of concern.

Iain Smith: In your view, are national standard regulations required, notwithstanding the significant amendments that might be made to the draft regulations, or do you feel that, in granting an enabling power to local authorities to make their own rules, the bill is sufficient?

Tony Gallagher: Even before I came to the committee today I was thinking that good legislation is applied nationally, without being subject to local interpretation. Since I sat down in this room this afternoon, I have become even more convinced of that. A registrar should be able to conduct a ceremony anywhere in Scotland in the knowledge that national regulations and standards apply. It has been that way all along, even if we go back to so-called Victorian times. We have moved on from Victorian times now, but the principle should remain the same: a marriage conducted anywhere in Scotland has that security behind it. I for one support that.

Iain Smith: The draft regulations include some

fairly specific rules. You referred to one of them—that relating to temporary approvals—in your response to the white paper. You state in your submission:

“The suggestion that an application for a temporary approval should be no later than three months before the intended civil marriage is a good one.”

Do you really think that that needs to be included in the regulations, or do you think that individual local authorities, in consultation with registrars, could make their own decisions on the appropriate period?

Tony Gallagher: There was a good reason for specifying a three-month period. Three months is the maximum time for which a couple can lodge notice of intention to marry. The time for applying for a temporary approval did not match that period. Anyone wanting a one-off, non-period approval would therefore have that period of time for the approval process. We think that that would be a good thing.

Iain Smith: A local authority might be satisfied that it could give an approval earlier in a particular case—for example if a couple required a one-off approval when such approval had previously been granted to another couple for the same location. There is not the flexibility for that in the regulations.

Tony Gallagher: In time, that may happen. If a council has given a one-off approval for a certain marriage venue previously, that could be logged for future use and the process for any subsequent approval for the same venue could be simplified. There is a danger in that, however. I, on behalf of the association, have expressed the concern that couples often do not give notice three months before their marriage. Some couples decide on a whim to be married on the banks of Loch Lomond or wherever else after the minimum period of notice, which is 15 days. If people go down to that minimum, it hardly allows time for a one-off approval. It would be good for a logical time to be allowed for the approval process.

Dr Jackson: I like your reference to Loch Lomond but would prefer the Stirling side.

Tony Gallagher: We will share the loch.

Dr Jackson: I want to ask about the difficulties you highlighted, which followed the introduction of the regulations in England and Wales. Can you tell us a little bit about them? Do you expect similar difficulties here?

Tony Gallagher: In England and Wales, the legislation was introduced very quickly, without the same consultation process. In many areas, there were variations on the theme of problems, as there might be in Scotland. The authorities had to work within a framework of legislation that did not

account for all circumstances nationwide. As a result, there were various problems in England and Wales. A review is now in process, which is seeking to improve the situation. It is important to have legislation that is applied equally throughout Scotland to prevent similar problems arising here.

Dr Jackson: Can you give us examples of where there were difficulties because aspects of the legislation were applied differently in different areas?

15:30

Tony Gallagher: Some authorities were perhaps not ready. The demand from the public existed, but the process of approval was not in place, which caused conflict. In some areas, variations in the approval process meant that authorities did not have the staff to meet the demand. The situation varied from place to place. I do not foresee that being a problem in Scotland during the initial part of the process, as the approval process will take weeks or months anyway before registrars will be able to conduct marriages. That will vary from place to place in Scotland.

Dr Jackson: In response to an earlier question, one of the witnesses suggested to us the idea of using flying registrars who may have only a week's training, although it could take a lot longer to train someone. What are your views on that?

Tony Gallagher: I have been in the registration service for 34 years—I know that that is hard to believe—and as well as a registrar, I want to be a district registrar for births, deaths and marriages and a flying registrar if that is what it takes. I am extremely concerned that panic would be created in some areas if registrars who may not be necessary in the short term were put in place—although they may be necessary in the longer term. We view the use of flying registrars as a career development opportunity for registrars.

The truth of the matter is that there are fewer births than there were 20 or even 10 years ago, and 97 per cent of registrations are computerised. There are now opportunities for registrars to extend their career opportunities by providing their services at the new venues. That is what most of us look forward to. If the demand could not be met because it was overwhelming, that would be the time to bring on other members of staff.

Ms White: My question is to do with staff. You said that you do not foresee a problem with celebrities such as Madonna getting married in Scotland—Loch Lomond has been mentioned—and people wanting to emulate them. Do you think that there may be an upsurge once the bill is passed and people realise that they can get married in certain places of interest? You said that

you do not think that it will be a problem, but others have said that it may be a short-term problem. Do you not envisage a problem at all?

Tony Gallagher: I do not envisage a problem in the immediate short term, as there are enough registrars already in post throughout Scotland who are not—with the greatest respect—registering marriages all day, every day, except in certain areas. Most registrars do other things besides registering marriages. In areas where there might be a problem, they might need to think ahead; however, in most of Scotland that would not be the case.

Ms White: You also mentioned that you would be happy to be one of the flying squads.

Tony Gallagher: I said that because I do not like the term “flying registrar”. There are so many quasi-terms applied to registrars. The district registrar, one can see from the legislation, is responsible for his or her registration district. In addition, that registrar might have assistant registrars who are authorised to conduct civil marriages. At the moment those are done within registrars’ offices, but I hope that they will also be done outwith those offices in the future.

We have in place a core of experienced registration staff—registrars and assistant registrars—who are authorised to conduct civil marriages within their offices. Frankly, I do not foresee a demand to take all civil marriages away from registrars’ offices. That will not happen. There will always be a demand for a simple ceremony within the registrar’s office. There will also always be a demand for an enhanced facility—examples were mentioned earlier—within the registrar’s or the council’s premises. However, because of the publicity for the bill there is already a demand for outside venues. In some areas we have been receiving daily phone calls on that matter. We have, however, received inquiries from people for the past seven or eight years about why they cannot have a civil marriage at a hotel or other venue. In future, venues will be chosen according to cost.

Ms White: If there are extra costs, should they be borne by the hotel or the couple who are being married rather than by the local authority?

Tony Gallagher: I understand that the cost will be borne by the couple. The venue—a hotel, for example—will pay a fee to the local authority for the approval process, which is also referred to as the licensing process. There will also be a fee to have the registrar conduct the ceremony, which must amount to at least the fee that applies to all civil marriages in Scotland. Such marriages are preceded by a notice for a minimum of 15 days. In Scotland, the fee for a simple civil marriage ceremony with two witnesses is £79, so the fee for

a hotel venue, for example, will have to be at least £79. On top of that will be the costs of providing the registrar at the venue and the approval process.

I have spoken only of the basic civil marriage ceremony fee. My colleagues spoke earlier of the present variance of fees between councils who have enhanced premises such as larger rooms or annexes—Chatelherault and similar areas were mentioned. Those venues cost considerably more. In addition, if the marriages are outwith normal office hours—in the evenings or on Saturdays, for example—registrars have to be paid. That is a simple fact. The demand for civil marriages in other venues will be affected by what it will cost, but there are and always will be people who are prepared to pay more to have the marriage of their choice at the venue of their choice. We support that.

The Convener: Given that it is such an important day for couples, do you think that registrars should have the right to refuse to conduct a service—assuming that the health and safety aspect is okay? The registrar might think that something is inappropriate. Given how important the occasion is, people do not want to be married by someone who does not approve of where they are doing it, if not of what they are doing.

My second question is about the regulations and guidance. Will the Association of Registrars of Scotland pursue changes, through the working group, to the regulations and guidance?

Tony Gallagher: The problem is the question that I do not want to answer, which is what one does when faced with having to decide what is “seemly and dignified”. That phrase was discussed earlier. I agree that it seems slightly Victorian, but I think that it is necessary to have something like that—even the mere mention of it—just to remind everyone concerned they are talking about a legal marriage. Whether it is religious or civil, the core element of a marriage ceremony must always be—perhaps there is no better wording for it—“seemly and dignified” but deciding what that means is difficult.

The only time I have had to stop a marriage ceremony going ahead was because of inebriation—not on my part, I hasten to add, but on that of the couple. We had to wait until they had had one or two strong cups of coffee.

The registrar has to be satisfied—the registrar’s work carries a great responsibility. That is why I am extremely disappointed by—forgive me for saying this—frankly cheap remarks that have sometimes been used in the argument, for example that we are employees of the council. When we conduct a marriage ceremony, we carry

a great responsibility that we take extremely seriously. We feel that we need the security of good legislation behind us when we conduct that ceremony. We have that for the marriages that take place in our offices at present and we want also to have it when we conduct marriages in other venues.

The Convener: I was interested in your comments about the consultation lasting eight weeks and about the role of the registrar. You also said that, sometimes, couples get married on a whim. Dear me: is there any other way, I ask myself. Thank you for coming. If we need to contact you again, we will do so.

I now welcome the representatives of the General Register Office for Scotland. I also welcome the Deputy Minister for Parliament, Euan Robson. I think that this is your first visit to the Hub, minister. I point out that the microphones have already failed this afternoon, that it is very cold and that it is getting dark—but we are happy to have you here just the same. We hope that we can still see you at the end of our proceedings.

Joining the Deputy Minister for Parliament are Brian Philp, the deputy registrar general, Paul Parr, the head of registration, and Kay McCorquodale, senior principal legal officer. I ask you to make a few opening remarks, after which I will invite members to ask questions.

The Deputy Minister for Parliament (Euan Robson): I will be brief in making my opening remarks, given that it is cold and dark in here. My microphone appears to be working, anyway.

As members doubtless know, the Marriage (Scotland) Bill is designed to amend the Marriage (Scotland) Act 1977. The explanatory notes attached to the bill state:

“there is no restriction on places where religious marriages may be solemnised but a civil ... marriage may be solemnised only within a registration office”.

In fact, there are exceptional circumstances, such as a serious illness or bodily injury, in which the marriage cannot be delayed. In those circumstances, which are few in number, the service can be held outwith the registration office.

The bill will permit civil marriages to be solemnised in places or locations that are approved by local authorities and will therefore extend to couples choice in the selection of a venue for their wedding. I hope that if couples have a memorable day in the place of their choice, the bill will help to strengthen the institution of marriage.

For some time there has been a demand for the changes that the bill provides for. In England and Wales, civil marriages have been permitted in buildings—but not in locations or places—since

1995. In 1998, the registrar general for Scotland issued a consultation paper, and there was widespread support for the principle of introducing primary legislation. Of the 39 responses, 36 were fully in favour of the proposals. The remaining three were in favour in principle but offered views on how the details might be developed.

In my home area of the Borders there has been considerable interest in this issue for some time. After the Scottish Parliament elections in May 1999 I indicated that I would be prepared to introduce a member's bill. I was pleased to receive the appropriate number of signatures for that proposal and I thank all the members who signed. When I became a minister I asked to continue my interest in the bill and it was taken over as an Executive measure.

In June, as members know, the Scottish Executive published the white paper “Civil Marriages Outwith Registration Offices”. Of the 37 responses received, 36 were in favour of the changes proposed in the draft bill. Members will know that the bill's policy objectives are set out in the second paragraph of the policy memorandum. To save time, I will not go through them.

It is important to emphasise that it will be up to local authorities to ensure the seemliness of the locations that are licensed, to give due dignity to a solemn service. Local authorities will need to take into account the safety of the registrar and the participants. An appeals procedure is set out in the draft regulations to accompany the bill. The committee has a copy of them. It is important to understand that they are draft regulations that are subject to continuing work. They are for illustrative purposes and are not the definitive article. I am sure that the General Register Office for Scotland will be interested in any comments the committee might have on the detail of the regulations.

15:45

I will say a brief word about what is not in the bill. The bill makes no provision to change the nature of the civil ceremony or—it is important to mention—the celebrants. Those matters are beyond the scope of the bill.

I hope that the committee will share my view that the extension of choice will be welcomed by couples who choose a civil marriage. A secondary but nevertheless important consideration is that the bill, if enacted, will also add to business opportunities for the many excellent hotels and similar facilities throughout Scotland.

The bill has attracted wide support in the consultation. We hope that the committee will be minded to support it in principle. We will answer any questions that members might have.

The Convener: I have a point before we go to questions. A short-term working group is considering regulations and guidance on the bill. Perhaps you will expand on what the group's proposed guidance will be and when you expect it to issue a report.

Euan Robson: Mr Philp, who has been involved with the detail and has participated in the group's meetings, will comment on those matters.

Brian Philp (General Register Office for Scotland): The working group is, as you say, a short-term one to address the detail of the draft regulations and guidance. It has already met once and it meets again on 12 December. Some of the people who have already given evidence to you are participants in the group. We hope to improve the initial draft that was in June's white paper. The version now on our website shows the results of some minor changes in the regulations. We hope also to take account of anything that is said in this meeting.

Iain Smith: I will start on the issue of regulations. I am concerned because the original draft regulations seem heavy-handed and prescriptive about the procedure that councils must follow. I said earlier that the three-months notification that is required for approval of a temporary venue is a specific regulation that would not give flexibility to a local authority to take account of circumstances where three months might not be appropriate. Why are you going down that line of regulation rather than the more limited regulation that would simply outline the minimum steps that councils must take to ensure that the bill can be implemented?

Brian Philp: We felt that three months was the minimum time that a council would want as protection from couples who might try to bounce it into a hasty decision. It was felt that that was a useful period of time and I do not think that anyone has been critical of it. The local authority must be able to justify its decision to say yes or no to a particular venue. Couples who planned to use a one-off venue that is not a conventional registration office would probably be able to notify their intentions three months in advance, given that they must ensure that there will be a registrar available on the day to come to their chosen venue. In practice, plans for weddings are often in preparation for a long time.

Euan Robson: On the nature of the regulations, I am sure that you have seen the possible alternative approach, which is through the Civic Government (Scotland) Act 1982. It was decided that there should be separate, stand-alone regulations. For that to be possible, the primary legislation had to be amended to make it sensible and compatible to have regulations with the bill. I am not an expert in this matter and the GROS will

help us with it, but I understand that in practice the nature of even the draft regulations can be fitted into normal licensing procedures that are conducted under the 1982 act. I do not think that the regulations will be especially cumbersome administratively.

Iain Smith: I am still not entirely satisfied. The draft regulations might change because of the consultation, but they seem to be unnecessarily prescriptive. There are areas that lack clarity which other witnesses have mentioned.

If somebody submits an application in respect of a particular venue three months in advance but the council turns it down, they will not be able to make an amended application because they will be within the three-month period. There is no flexibility in the draft regulations for the council to take account even of its own advice that the person can have the venue if they amend the application. It is that lack of flexibility in the regulations that concerns me, rather than the suggestion that three months is an appropriate time scale in most circumstances.

Brian Philp: We will consider that matter.

Mr McMahon: I want to take the minister on to the costs that might be involved in implementing the procedures. Will there be any additional costs? If so, will resources be made available from the Scottish Executive or will it be done through the charging system?

Euan Robson: The resources will come through the charging system. The point is that if couples want the venue facility, it is fair and reasonable to ask them to pay for that. For example, if a venue such as a hotel offers a package, it might incorporate its licensing charges into that package. I think that it is right and proper that the couple should make the financial commitment.

Mr McMahon: You are very clear about that. I have a follow-on question. What control mechanisms will be put in place to ensure that local authorities do not charge the participants unreasonably high fees?

Brian Philp: A local authority that did that would find that people would not come to it but would go elsewhere. Couples will, after all, have a choice. They do not have to get married in a particular area, nor do they have to get married in a particular hotel or venue. We expect there to be competition.

Mr McMahon: So a desired aim of the bill is to generate competition between areas of registration so that we will have a sort of marketplace for marriage ceremonies.

Brian Philp: I would not like to say that. You might be aware that there are such considerations in the system as it operates at the moment.

Mr McMahon: That being the case, do you agree with Dundee City Council's argument that remuneration for conducting marriages should be dealt with as a pay-and-conditions service and negotiated nationally?

Brian Philp: What their registrars are paid is already a matter for local authorities.

Mr McMahon: There are no national agreements, however. We heard evidence earlier that the marketplace for marriage venues will cause competition. Who will pay the registrars? Should a national pay level be set so that registrars' pay does not become part of that marketplace free-for-all?

Brian Philp: I am not clear why you would wish to have the pay and conditions for one particular aspect of registrars' duties set centrally, through an official in Edinburgh, rather than leave such matters to the elected local authority.

Mr McMahon: It was a local authority that said that a nationally set standard would be a good idea. If local authorities are concerned about such issues and raise them in the contributions to the debate that they provide the committee with, it is appropriate for us to ask for your views on them. I appreciate that the concept of national pay bargaining is alien in modern times, but it is something that many people still hold dear.

Brian Philp: National pay bargaining has not been a feature of the system in Scotland. The registrar general has not had anything to do with the pay and conditions of local registrars, who often have multifarious duties—they are not always full-time registrars. It is felt that local circumstances are best reflected by what the local authority pays its people.

Euan Robson: Please correct me if I am wrong, but it may not be appropriate to isolate one part of a registrar's duties and impose a national rate of remuneration. I understand that local authorities have an opportunity to raise that issue if they so wish but I would have thought that it would be better to maintain the system as it stands than to pick out one particular duty and impose a national rate on it.

Mr McMahon: Earlier, the argument was advanced that marriage ceremonies in areas such as Gretna and Loch Lomond—as opposed to the pit bings of North Lanarkshire—may become more popular. Is it possible that you might find it difficult to recruit registrars in areas where it is less likely that civil marriages will take place? Therefore, should there be a negotiated, national scale? That would prevent people from being disadvantaged because they happen to be a registrar in an area that is not popular for civil marriages.

Euan Robson: Far be it from me to comment on the merits of Lanarkshire—

Mr McMahon: That is my point. Other people might not see the merits of that area.

Euan Robson: I am sure that Lanarkshire, the Scottish Borders and other areas can compete with Loch Lomond and Gretna. However, the proposal on national pay bargaining was not considered to be the right way forward. If a case in favour of it is made, it could be considered.

Ms White: That was an interesting response.

May I pick up on one of the points that was made, convener?

The Convener: Yes, if you are quick. I am freezing.

Ms White: Mr Philp said that people will go to another area if a ceremony is too expensive in one area. The deputy minister said that people approached him because they did not want to be married by a clergyman in a church. People might not go outwith their own area because they want the reception and the church in the same area. If there is no negotiation on a national wage scale, we might end up skewing local authorities' budgets. Some local authorities might charge more, but they might be the authorities that are in the more popular areas. Mr Philp said that he will consider that proposal, and I ask him to do so. If we are talking about so-called flying registrars, who would be mobile, there would have to be a national pay scheme. That concern was raised by the registrars as well as by the councils.

Another concern was about the consultation process. You were present when the previous witnesses said that they do not think that the consultation process went far enough, or that it was long enough. What were the main issues that arose from the consultation process?

Euan Robson: I remind you that there were two consultation processes. One was held before the Scottish Parliament was established. A white paper has also been produced. I appreciate that the consultation exercise covered the summer holiday period, but we thought that it was important to move matters forward. I hope that the committee will accept that a genuine effort was made to consult. In fact, the responses that came in suggested that a number of people had taken a serious look at the white paper.

I am sorry—I have forgotten your second point.

Ms White: What were the main issues that came out of the consultation process? Although we have received an indication of the councils' main concerns, everyone wants the bill to go through.

16:00

Paul Parr (General Register Office for Scotland): Wholesale support for the bill's principles came out clearly in the consultation exercise. To an extent, the consultation process is continuing in the form of the working group. Last week, the General Register Office for Scotland held its annual seminar, which involved registrars and local authorities. Thirty out of the 32 councils were present and gave the bill their wholehearted support.

Only a few key areas arose in the original consultation on the white paper, in the working group and at last week's seminar. People focused on the issues that we have already discussed today. For example, how can we provide effective and reasonable staff cover for registration offices when registrars have to travel out of their offices to conduct wedding ceremonies? What protections will there be for registrars, in terms of health and safety? What will registrars be expected to do? What can registrars contribute to the consultation exercise? Costs also came up, but we emphasised in the white paper that the impact of the bill should be cost-neutral to local authorities. Why did we go down the route of having a separate, free-standing bill, with the regulations that will flow from it, rather than amending the Civic Government (Scotland) Act 1982 and using the licensing procedures under that act? At the seminar, local councils strongly agreed that the system as laid out in the draft bill and draft regulations would allow them to continue to use their own committees and procedures for civic government licensing.

Those were the key issues, some of which are being addressed. However, the focus was more on the detail rather than on the bill. The consultation process is continuing and the working group is considering some of the issues that were raised, such as notification periods and temporary approvals.

Ms White: The local authority representatives told us that they supported the bill because it would be passed more speedily than a local government bill would be passed. When will the bill be enacted? Do you have any further information on the review of the local government legislation? When will that review be completed?

Euan Robson: I have the opportunity to exercise some influence over that issue. I think that the date we thought of for royal assent was 14 February 2002.

Paul Parr: May I pass on a small piece of additional information? We will need a short period after the royal assent date of St Valentine's day next year to ensure that local authorities have time to get up to speed. They are already getting there,

but we need to finalise the preparations and to make the regulations that are already in draft form. We might need a little time beyond 14 February 2002 but not, we hope, too much.

We have no information on the timing of the reform of the Civic Government (Scotland) Act 1982. That is beyond our purview.

Dr Jackson: Why do you not want to go down the route of amending the licensing provisions of the Civic Government (Scotland) Act 1982? I remain a little concerned about that and, at your seminar, councils said that they were also concerned. You indicated that they could use their existing licensing systems, which means that they could easily accommodate amendments to existing legislation.

Why is the bill necessary if councils will use their existing licensing systems to approve venues?

Paul Parr: First, we need the primary legislation partly to allow local registrars to carry out marriages outside their offices. We must amend the Marriage (Scotland) Act 1977. Irrespective of whether we went down the civic licensing route, we would still need specific amendments to primary legislation to allow local registrars to do that. Secondly, we felt that a free-standing bill that contained the necessary provisions—and the regulations that flowed directly from it—would provide clarity.

Thirdly, we were aware of the reform of the licensing provisions in the Civic Government (Scotland) Act 1982 that was announced last November. We have no idea what might result from that. We have a legislative opportunity to proceed with the Marriage (Scotland) Bill, which—as other witnesses have said—has long been looked forward to.

Dr Jackson: Is not your third point irrelevant if you need new legislation in order to achieve the first two points? You say that you do not know what will be in the review, so you must use—

Paul Parr: Yes, but if it makes sense at some point in the future—once the review has been completed—we could amend our provisions, as appropriate, to address further some of the detailed points that will have been made.

I am sorry if I slightly misdirected you in my earlier remarks. The local authority members at the seminar in Aberdeen last Tuesday were quite clear that they did not need to go down the local licensing route as the bill and the draft regulations would give them a framework within which they could operate.

Dr Jackson: Thank you.

The Convener: The Marriage Act 1994 allowed local authorities in England and Wales to conduct

civil marriages in approved premises. Have you consulted the General Register Office for England and Wales and, if so, what sort of things came out of that? Did that inform in any way the proposals before us today?

Brian Philp: Yes, it did. We consulted widely with colleagues in the Office for National Statistics, which runs the General Register Office for England and Wales, and have taken into account their experience.

You heard from Mr Gallagher that initially there were some small difficulties in getting the system under way, but we understand that they were ironed out fairly swiftly. In principle, we saw no difficulties in moving in the direction of that successful legislation south of the border. The Marriage Act 1994 has been popular with couples. As Mr Gallagher also said, the Scottish registration system tries to be innovative and a little bit ahead of England and Wales. The Marriage (Scotland) Bill contains an element of innovation, in that it extends the provision for local authorities to conduct marriages more widely than the English have done—they have long focused on specific buildings. By widening the choice of location beyond specific buildings, the bill attempts to mirror the choice that is available to couples who seek a religious marriage.

Iain Smith: One of the earlier witnesses—who I think was here before you arrived—mentioned that the phrase “seemly and dignified” was a bit Victorian. I wonder how you would define that phrase. Why is it necessary in the bill? Will you give a few examples of circumstances that you might not consider seemly and dignified?

Brian Philp: We have it in mind that the wording will be helpful to local authorities, but we are content to let them interpret it as they will. To some extent, an elected member of a local authority will have a view on what might be seemly and dignified and what might be unseemly and undignified. An elected member who was asked for their view would be prepared to stand up for it. We do not want to dictate from Edinburgh what might be regarded as seemly and dignified in the Western Isles or the Scottish Borders. We have elected local authorities that are perfectly able to make such judgments.

Iain Smith: In that respect, if “seemly and dignified” refers to what is done in St Andrews as opposed to North Lanarkshire, how does that tie in with the proposed appeals process? In the draft regulations, the appeal to the sheriff does not seem to be simply on points of law or fact; it appears to be able to be made on any grounds.

Brian Philp: Members of the working group have raised the point that appeals should be restricted to a point of law or fact. We wish to

consider that rather than give full discretion. Perhaps Kay McCorquodale will comment on that.

Kay McCorquodale (Scottish Executive Finance and Central Services Department):

That is correct. At the moment, appeals are not confined to points of law. The matter has, however, been raised and there is no legal obstacle to confining appeals in that way. The working group will consider that matter in further detail.

Iain Smith: I have one final question. There was a comment in some of the written evidence about the definitions in relation to former religious venues. Would the Hub be deemed a suitable venue for a civil marriage?

The Convener: Not on a day like today.

Brian Philp: If I was asked as a member of an elected local authority whether the building had a continuing religious significance, I am not sure that the Hub could now be regarded as suitable. That would be my opinion, but such cases are a matter of the opinion of the relevant local authority.

Euan Robson: I can think of one example in my constituency, where Dryburgh Abbey—effectively a ruin—has extensive grounds. Only a small part of the site has a continuing religious significance. However, a civil ceremony held a long way from the ruins would be perfectly acceptable. That is the kind of discretion that we would like local authorities to have. As Mr Iain Smith knows, it is impossible for ministers to comment on unseemly places.

The Convener: There do not appear to be any more questions. I thank the witnesses for coming today.

That concludes the evidence that we are taking for the Marriage (Scotland) Bill. A summary will be brought to the committee meeting on 11 December, to allow the committee to consider its conclusions. I warn you that it will be a long meeting.

I thank everyone for their attendance. I also thank the official report, and I thank the sound operator for fixing the microphones.

Meeting closed at 16:12.

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