

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 1 – Marriage

Chapter 3 – Solemnisation of marriage

Overview

65. This Chapter makes provision about who may be authorised to solemnise marriage in Scotland.
66. For opposite sex marriage, Church of Scotland ministers are authorised by way of the Church of Scotland being named specifically in section 8 of the 1977 Act. Other religious bodies may be prescribed by Statutory Instrument so that their celebrants are authorised to solemnise marriage. Other religious bodies can also nominate persons to be registered by the Registrar General for Scotland as celebrants under section 9 of the 1977 Act. And the Registrar General may grant temporary authorisation to individuals to solemnise a marriage or marriages under section 12 of the 1977 Act.
67. In addition, civil registrars are authorised to solemnise marriage.
68. The Act retains this system but makes provision for belief bodies to be authorised as well.

Section 12: Persons who may solemnise marriage

69. [Section 12](#) of the Act makes amendments to the 1977 Act for several different purposes.
70. Firstly, section 8 of the 1977 Act makes provision on who is authorised to solemnise marriage. This is amended so its current provisions apply to authorisations for opposite sex marriage only.
71. Secondly, section 12 of the Act amends section 8 of the 1977 Act to allow celebrants from belief bodies to be authorised to solemnise marriages. Subsection (4) amends the existing definition of “religious body” in section 26 of the 1977 Act so that it covers belief bodies as well. The relevant aspects of the amended definition in relation to belief bodies are “an organised group of people ...the principal object (or one of the principal objects) of which is to uphold or promote philosophical beliefs and which meets regularly for that purpose.”
72. Religious bodies can be prescribed under section 8 of the 1977 Act. The section is amended so that religious or belief bodies can be prescribed under this section. The effect of prescribing religious or belief bodies is that their celebrants and other persons recognised by them as entitled to solemnise opposite sex marriage can solemnise opposite sex marriages recognised by the state.

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73. Thirdly, the new section 8(1A) of the 1977 Act, inserted by subsection (2)(b), provides that the Scottish Ministers may only prescribe a religious or belief body so that its celebrants are authorised to solemnise opposite sex marriage if the body requests this and if Ministers are satisfied that the body meets the “qualifying requirements”. Qualifying requirements are those set out in regulations made by the Scottish Ministers. These regulations are subject to the negative parliamentary procedure (new section 8(1G) refers).
74. Fourthly, section 12 of the Act adds a number of provisions to section 8 of the 1977 Act to allow celebrants (of religious and belief bodies) to be authorised to solemnise same sex marriage. The new section 8(1B) of the 1977 Act, inserted by subsection (2)(b), provides who may solemnise a same sex marriage. The new section 8(1C) provides that the Scottish Ministers may only prescribe a religious or belief body so that its celebrants are authorised to solemnise same sex marriage if the body requests this and if Ministers are satisfied that the body meets the “qualifying requirements”.
75. Fifthly, the new section 8(1D) provides that nothing in subsection (1B)(a) or (1C)(a):
- (a) imposes a duty on any religious or belief body to request (under section 8(1C)(a)) to be prescribed so that their celebrants can solemnise same sex marriage;
 - (b) imposes a duty on any religious or belief body to nominate members under section 9 of the 1977 Act to be empowered to solemnise same sex marriage;
 - (c) imposes a duty on any person to apply for temporary authorisation under section 12 to solemnise same sex marriage;
 - (d) imposes a duty on a celebrant approved to solemnise same sex marriages to solemnise such marriages.

Section 13: Registration of nominated persons as celebrants

76. **Section 13** makes a number of amendments to section 9 of the 1977 Act, which relates to the registration of nominated persons as celebrants. Section 9 of the 1977 Act permits the authorisation of celebrants of bodies who have not been prescribed by regulations or are not, in the case of opposite sex marriage, the Church of Scotland.
77. Subsection (2)(a) amends section 9(1) of the 1977 Act so that it just relates to opposite sex marriages. This means that section 9(1) as amended provides that a religious or belief body, other than the Church of Scotland or a body prescribed by regulations to solemnise opposite sex marriage, may nominate to the Registrar General members so that that they can solemnise opposite sex marriages.
78. Subsection (2)(b) to (1) then inserts new subsections into section 9 of the 1977 Act. The new section 9(1A), inserted by subsection (2)(b), provides that a religious or belief body who has not been prescribed by regulations to solemnise same sex marriage may nominate celebrants to the Registrar General so that they can be authorised to solemnise same sex marriage.
79. A number of amendments are made to section 9 of the 1977 Act, which provides for when the Registrar General must reject a nomination; what happens when a nomination is accepted; the register of authorised celebrants and their bodies; and for appeals. These amendments are made to take account of the introduction of same sex marriage and the authorisation of belief bodies and their celebrants.
80. Under section 9(2) of the 1977 Act, the Registrar General must reject a nomination on various grounds including if the Registrar General considers the nominating body has sufficient celebrants to meet its needs. The amendment in subsection (2)(c) amends the grounds to reflect the changes made to subsection (1) and the new subsection (1A). The amendments reflect that bodies may have different needs in relation to celebrants solemnising same sex marriage when compared with opposite sex marriage.

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81. A new ground for rejection of not meeting the qualifying requirements is added to section 9(2)(e) by subsection (2)(d) to the circumstances in which the Registrar General must reject a nomination.
82. Under section 9(2) of the 1977 Act, the Registrar General must also reject a nomination on the ground that the marriage ceremony used by the nominating body is not of an appropriate form. Section 9(3) of the 1977 Act sets out that a marriage ceremony will be of an appropriate form if it includes, and is no way inconsistent with particular declarations. Subsection (2)(f) amends section 9(3) to expand upon the declarations which will be considered to be of an appropriate form in the case of a marriage ceremony between persons of different sexes.
83. **Section 9(3)** (as amended) permits the Registrar General to accept nominations from religious and belief bodies which use (i) only gender specific language in marriage declarations, (ii) only gender neutral language in marriage declarations or (iii) a combination of both gender specific and gender neutral language in marriage declarations.
84. Subsection (2)(g) inserts provisions about the declarations for same sex ceremonies.
85. Subsection (2)(h) makes amendments to section 9(4) of the 1977 Act, which deals with cases where the Registrar General accepts the nomination. The Registrar General must currently decide how long the period of authorisation for the nominee should be, and may decide which area the nominee may solemnise marriages in. The amendments give the Registrar General the power to restrict any nominee to solemnising marriages in specific places.
86. Subsections (3), (4) and (5) make several amendments to sections 10, 14 and 24 of the 1977 Act. Section 10 makes provision about when a celebrant's name may be removed from the register of bodies and celebrants who are authorised to solemnise marriage. Section 14 is about the form of ceremony to be used by a celebrant. Section 24 is about offences under the 1977 Act.
87. The amendments made by subsections (3), (4) and (5) are consequential, as a result of changes made to other provisions of the 1977 Act about authorisation of belief bodies; maintaining separate registers for same sex and opposite sex marriages; creating separate declarations for same sex and opposite sex marriage ceremonies; and enabling the Registrar General to authorise a nominee celebrant for a particular place only.

Section 14: Temporary authorisation of celebrants

88. Section 12 of the 1977 Act allows the Registrar General to grant temporary authorisation to solemnise marriage to a person. Section 12(1)(a) relates to temporary authorisation for a specific marriage or marriages and section 12(1)(b) relates to temporary authorisation for a period of time.
89. Subsection (2)(a) amends the Registrar General's power to clarify that temporary authorisations may be granted only to members of religious or belief bodies.
90. Subsection (2)(b) inserts new subsection (1A) into section 12 of the 1977 Act to provide that the Registrar General may grant an authorisation only if the religious or belief body meets the "qualifying requirements". The "qualifying requirements" are those set out in regulations made by the Scottish Ministers (new section 12(1D)). These regulations are subject to the negative parliamentary procedure (new section 12(1F)).
91. Under section 12(1B), as inserted, temporary authorisation may be granted for opposite sex marriage only, for same sex marriage only or for both.
92. Under section 12(1C), as inserted, the Registrar General can only grant a temporary authorisation for a period of time under section 12(1)(b) to solemnise same sex marriages if the relevant religious or belief body is prescribed by regulations under

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section 8 so that its celebrants can solemnise same sex marriage or has nominated members under section 9 to solemnise same sex marriage.

93. Subsection (3) clarifies the existing offence under section 24(2)(c) of the 1977 Act of solemnising a marriage not covered by a temporary authorisation. The amendments made by subsection (3) have the effect that it is an offence to solemnise a marriage:
- (a) where it is not specified in a temporary authorisation;
 - (b) where it is outwith the period of the temporary authorisation;
 - (c) otherwise than in accordance with any terms and conditions in the temporary authorisation.

Section 15: Religious or belief marriage: further provision

94. Sections 12, 13 and 14 of this Act make provision for celebrants of belief bodies to solemnise marriage. Section 15 makes a number of consequential amendments to sections 6, 11, 13, 14 and 15 of the 1977 Act, as a result of these provisions, to reflect the authorisation of belief bodies and their celebrants.