

## **POLICY NOTE**

### **THE CIVIL PARTNERSHIP, MARRIAGE BETWEEN PERSONS OF DIFFERENT SEXES AND SAME SEX MARRIAGE (PRESCRIBED BODIES) (SCOTLAND) AMENDMENT REGULATIONS 2016**

#### **SSI 2016/427**

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 8(1)(a)(ii) and 8(1B)(a)(i) of the Marriage (Scotland) Act 1977 (“the 1977 Act”) and section 94A(1)(a)(i) of the Civil Partnership Act 2004 (“the 2004 Act”) and all other powers enabling them to do so. The instrument is subject to the negative procedure.

#### **Policy Objectives**

The 1977 Act was amended by the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”). In particular, the 2014 Act:

- put belief bodies on the same footing as religious bodies in relation to the solemnisation of marriage;
- introduced same sex marriage; and
- introduced the religious and belief registration of civil partnership.

Under the 1977 Act and the 2004 Act, as both amended by the 2014 Act, there are three systems for religious or belief celebrants to be approved to solemnise marriage or register civil partnership. These systems are separate (one for opposite sex marriage; one for same sex marriage and one for civil partnership) as some religious and belief bodies do not wish to solemnise same sex marriage or register civil partnership. However, the systems operate along similar lines:

- Church of Scotland ministers and deacons are able to solemnise opposite sex marriage under section 8(1)(a)(i) of the 1977 Act;
- a religious or belief body may be prescribed by Scottish Statutory Instrument so that all of its celebrants, or persons recognised by the body as entitled to do so, may solemnise opposite sex marriage or same sex marriage under section 8 of the 1977 Act or register civil partnership under section 94A of the 2004 Act;
- a religious or belief body may nominate persons to the Registrar General of Births, Deaths and Marriages for Scotland (“the Registrar General”) to be registered as celebrants for opposite sex marriage or same sex marriage under section 9 of the 1977 Act or civil partnership under section 94B of the 2004 Act;
- the Registrar General may grant temporary authorisation to a member of a religious or belief body to solemnise opposite sex marriage or same sex marriage under section 12 of the 1977 Act or register civil partnership under section 94E of the 2004 Act. Such temporary authorisation may be for a specific ceremony or ceremonies or may be for a period of time.

Following the 2014 Act, Ministers made the Civil Partnership (Prescribed Bodies) (Scotland) Regulations 2014 (SSI 2014/303); the Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Regulations 2014 (SSI 2014/304) and the Same Sex Marriage (Prescribed Bodies) (Scotland) Regulations 2014 (SSI 2014/305). These SSIs prescribed a

number of bodies for the purpose of registering civil partnership and solemnising opposite sex and same sex marriage, respectively.

The current instrument amends these 3 SSIs to add Humanist Society Scotland (“HSS”) to the three lists of prescribed bodies for the purpose of solemnising opposite sex marriage, solemnising same sex marriage and registering civil partnership respectively.

Annex A to this Policy Note lists the religious or belief bodies prescribed for the purpose of solemnising opposite sex marriage, solemnising same sex marriage and registering civil partnership.

At the moment, HSS nominate persons to the Registrar General to be registered as celebrants under section 9 of the 1977 Act and section 94B of the 2004 Act. By virtue of this instrument, all HSS celebrants will automatically be able to solemnise opposite and same sex marriage and register civil partnership by virtue of HSS being prescribed.

A body can only be prescribed by Scottish Ministers under the 1977 and 2004 Acts if:

- it requests Scottish Ministers to prescribe it - section 8(1A)(a) of the 1977 Act (for opposite sex marriage); section 8(1C)(a) of the 1977 Act (for same sex marriage) and section 94A(2)(a) of the 2004 Act (for civil partnership). HSS have asked to be prescribed.
- it is a “religious or belief body” under section 8(1)(a)(ii) of the 1977 Act (for opposite sex marriage); section 8(1B)(a)(i) (for same sex marriage) and section 94A(1)(a)(i) of the 2004 Act (for civil partnership). Under section 26 of the 1977 Act and section 135 of the 2004 Act, the definition of a “religious or belief body” is “an organised group of people — (a) which meets regularly for religious worship, or (b) 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”. The Scottish Ministers are satisfied that HSS meets the definition of “religious or belief body” as the object for which it is established is the advancement of humanist philosophical beliefs and it meets regularly for that purpose.

There is provision, not yet in force, in the 1977 and 2004 Acts that bodies must meet “qualifying requirements” which may be laid down by the Scottish Ministers in Regulations, before being prescribed. No qualifying requirements are yet in place: the Scottish Ministers will need to consult with religious and belief bodies and other interested parties before laying any down. As a result, the decision on whether to prescribe a religious or belief body which has made a request is entirely at the discretion of the Scottish Ministers.

In exercising their discretion to prescribe HSS, Scottish Ministers have taken a number of factors into account, as outlined below, and have consulted with HSS and the Registrar General.

#### The track record of HSS in fulfilling the requirements in relation to marriage or civil partnership ceremonies in Scotland.

It is the aim of the Scottish Ministers to ensure the continued reputation, dignity and solemnity of marriage and civil partnership ceremonies in Scotland. Therefore, the Scottish Ministers would not normally prescribe a religious or belief body unless celebrants belonging to the body have previously been registered or temporarily authorised by the Registrar

General. The reason for this is that the Registrar General monitors the religious or belief bodies which nominate persons to be registered as celebrants or whose celebrants have temporary authorisation to ensure that they fulfil the requirements in relation to marriage or civil partnership ceremonies in Scotland.

The Scottish Ministers on the other hand do not monitor the religious or belief bodies which have been prescribed. These bodies are “self-policing”. On this basis, the Scottish Ministers, prior to prescribing a body, will wish to be satisfied that the body can demonstrate evidence of complying with the requirements in Scotland in relation to marriage or civil partnership ceremonies and, where necessary, of taking action against any celebrants who are not acting in compliance with those requirements. The Registrar General can, following a period of either registration or temporary authorisation, provide the Scottish Ministers with information on the record of the body:

- in complying with requirements; and
- in taking any action against celebrants who have not complied with the requirements.

The Scottish Ministers consider that any new body should establish a track record of at least 3 years before it is prescribed. When bodies nominate persons to the Registrar General to act as celebrants, the nominations generally last three years. It is reasonable to check that no problems arise during at least one of these periods which would prevent a new body from being prescribed. This enables the Scottish Ministers to come to a decision on whether to prescribe the body or not. The Scottish Ministers are satisfied that HSS has the appropriate track record to be prescribed.

#### Whether in relation to same sex marriage and civil partnership all celebrants are prepared to take part.

The Scottish Ministers will normally only prescribe a religious or belief body for same sex marriage or civil partnership, as the case may be, where it is clear that all of the body’s celebrants wish to solemnise same sex marriage or register civil partnership. Where that is not the case, the Scottish Ministers consider it appropriate for the body to nominate individual celebrants to the Registrar General for registration.

HSS have said that its celebrants would not refuse to solemnise a marriage or register a civil partnership just because the couple are same sex.

#### Whether a body is able to self-police.

For bodies that are not prescribed by the Scottish Ministers, a process operates for the removal of a celebrant’s name from the Register, under section 10 of the 1977 Act and section 94C of the 2004 Act. The Scottish Ministers therefore consider it appropriate that a body satisfies them that, once prescribed, it will deal properly with any concerns about a particular celebrant and has an appropriate disciplinary process in place that allows for the suspension or dismissal of a celebrant if he or she meets the criteria set out in section 10, namely:

- is convicted of an offence under the 1977 or 2004 Acts;
- has, for the purpose of profit or gain, been carrying on a business of solemnising marriage or registering civil partnership;

- is not a fit and proper person to solemnise marriage or register civil partnership; or
- for any other reason should not be solemnising marriage or registering civil partnership.

The Scottish Ministers are satisfied that HSS can monitor the activity of its celebrants in relation to marriage and civil partnership ceremonies and has in place an appropriate disciplinary process in relation to its celebrants.

Celebrants must not for the purpose of profit or gain carry on a business of solemnising marriage or registering civil partnership

The Registrar General can remove a person from the registers of approved celebrants if that person has, for the purpose of profit or gain, been carrying out a business of solemnising marriage or registering civil partnership. The Scottish Ministers consider it appropriate that the requirement not to carry on a business of solemnising marriage or registering civil partnership for profit and gain extends to celebrants of prescribed religious and belief bodies.

The Scottish Ministers recognise that there are a number of legitimate costs, which have to be met e.g. travel, training of celebrants and maintaining buildings.

However, the Scottish Ministers consider a distinction can be drawn between these types of costs and running a business for profit or gain to make money from ceremonies. If solemnising marriage or registering civil partnership were carried out as a business for profit and gain, the focus could shift away from the couple, their commitment to each other and their faith or belief and could detract from the reputation, dignity and solemnity of marriage and civil partnership ceremonies in Scotland.

The Scottish Ministers are satisfied that HSS celebrants do not for the purpose of profit or gain carry on a business of solemnising marriage or registering civil partnership.

Celebrants of a prescribed body must be properly trained to solemnise marriage and register civil partnership

The Scottish Ministers are satisfied that HSS have an appropriate training programme and continuing professional development programme in place for its celebrants, including in relation to tackling sham marriage and civil partnership and forced marriage.

No other barriers to being prescribed

The Scottish Ministers are not aware of any other reasons why it would be inappropriate for HSS to be prescribed.

**Correction of a typographical error**

Regulation 3(2) of this instrument corrects a minor typographical error by inserting a missing word – “section” – into regulation 2 of SSI 2014/304.

## **Transitional arrangements**

As described above, currently all HSS celebrants are registered under section 9 of the 1977 Act and section 94B of the 2004 Act. HSS require to write to the Registrar General seeking removal of its celebrants from the register of marriage celebrants and register of civil partnership celebrants (section 10(1)(b) of the 1977 Act and section 94C(1)(b) of the 2004 Act). The Registrar General may then remove HSS celebrants from those Registers (in exercise of his powers under section 10 of the 1977 Act and 94C of the 2004 Act) to enable a seamless transition to HSS celebrants being automatically able to solemnise opposite and same sex marriage and register civil partnership, by virtue of HSS being prescribed in this instrument.

## **Consultation**

In preparing this instrument, the Scottish Government has worked closely with the Registrar General.

## **Impact Assessments**

A Business and Regulatory Impact Assessment (BRIA) has not been prepared for these regulations as no costs or savings fall on the private or voluntary sector, with the exception of HSS themselves. The (neutral) financial impact on HSS is outlined in the next section of this Policy Note.

An Equality Impact Assessment (EQIA) has been prepared and the results are being published on the Scottish Government website.

## **Financial Effects**

There are no significant financial effects arising from these Regulations.

HSS have indicated that the effect of these Regulations is cost neutral for them. Currently, HSS have to put forward persons to the Registrar General to be registered as celebrants. They will no longer need to do this but will need to maintain their own records and will need to be self-policing. Therefore, HSS have calculated that the costs and savings (both of which, in any event, are modest) would balance out.

In theory, there could be a very modest saving to the Registrar General from reduced administrative functions. In practice, however, the Registrar General will continue to liaise with HSS from time to time, given the large number of marriages solemnised by its celebrants. Therefore, the Registrar General considers that no real savings or costs will accrue or fall to him from these Regulations.

**Scottish Government  
Justice Directorate  
December 2016**

**ANNEX A: LISTS OF PRESCRIBED BODIES (INCLUDING HSS - TO BE ADDED BY THIS INSTRUMENT) IN RELATION TO OPPOSITE SEX MARRIAGE, SAME SEX MARRIAGE AND CIVIL PARTNERSHIP**

Opposite sex marriage

The Baptist Union of Scotland  
The Free Church of Scotland  
The Free Presbyterian Church of Scotland  
Humanist Society Scotland  
The Liberal Jewish Community in Scotland  
The Methodist Church  
The Orthodox Jewish Community in Scotland  
The Reform Jewish Community in Scotland  
The Religious Society of Friends (Quakers)  
The Roman Catholic Church  
The Salvation Army  
The Scottish Episcopal Church and other Churches of the Anglican Communion  
The Scottish Unitarian Association  
The Synod of Scotland of the United Reformed Church  
The United Free Church of Scotland

Same sex marriage

Humanist Society Scotland  
The Religious Society of Friends (Quakers)  
The Scottish Unitarian Association

Civil partnership

Humanist Society Scotland  
The Scottish Unitarian Association