

MARRIAGE (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT

3. The present law of marriage in Scotland is governed by the Marriage (Scotland) Act 1977 (“the 1977 Act”). The current position is that there is no restriction on places where religious marriages may be solemnised but a civil (non-religious) marriage may be solemnised only within a registration office, unless there are exceptional circumstances (i.e. where an individual is unable to attend a registration office as a result of serious illness or serious bodily injury and there is a good reason why the marriage cannot be delayed (section 18(4)).
4. The Act amends the 1977 Act to permit civil marriages to be solemnised in places approved for the purpose by local authorities. It will therefore provide couples, who wish to have a civil marriage in Scotland, with a wider choice of venue for their wedding. The Act was initiated by the lodging of a proposal for a Member’s Bill by Euan Robson MSP, now Deputy Minister for Parliament. That proposal had the support of a number of MSPs, as well as of the Scottish Executive.
5. Section 1(2) of the Act amends section 18 of the 1977 Act to permit civil marriages to be solemnised in places approved for the purpose by local authorities.
6. Section 1(3) of the Act inserts a new section 18A into the 1977 Act. Subsection (1) enables the Scottish Ministers to make regulations to make provision for or in connection with the approval by local authorities of places in their areas where civil marriages may be solemnised. Subsection (2) provides that the regulations may in particular include provision as to (a) the kinds of place in respect of which approvals may be granted; (b) the procedure to be followed; (c) the considerations to be taken into account; (d) the duration and renewal of approvals; (e) the conditions that shall or may be imposed; (f) the determination and charging of fees; (g) the revocation or suspension of an approval or variation of conditions; (h) notification to the Registrar General; (i) notification to the district registrar; (j) the keeping of registers by the Registrar General, district registrars and local authorities and (k) the issue by the Registrar General of guidance supplementing the new provisions.
7. Subsection (2)(c) is of particular importance. Whilst the decision to grant an approval will lie with a local authority, the regulations that will follow the enactment of the Act will set out a range of factors that the local authority must take into account in determining whether to approve any places. Subsections (2A) to (2E) of section 18A provide that a person who has made an application under the regulations may appeal, by summary application, to the sheriff against any decision made by a local authority in relation to the application. This includes any decision to revoke or suspend, or to vary any of the conditions imposed in relation to, an approval granted in pursuance of that application. An appeal may be made only on one or more of the following grounds—
 - (a) that the local authority’s decision was based on an error of law;
 - (b) that the local authority’s decision was based on an incorrect material fact;
 - (c) that the local authority has acted contrary to natural justice; or

*These notes relate to the Marriage (Scotland) Act 2002
(asp 8) which received Royal Assent on 4 April 2002*

- (d) that the local authority has acted unreasonably in the exercise of its discretion.
8. An appeal should normally be lodged with the sheriff clerk within 28 days of the date on which the local authority made the decision being appealed against. In upholding an appeal, the sheriff may—
- (a) remit the case with the reasons for the sheriff’s decision to the local authority for reconsideration by the local authority of its decision; or
 - (b) reverse or modify the local authority’s decision.
9. A party to an appeal may appeal, on a point of law only, against the decision of the sheriff to the Court of Session within 28 days of the date of that decision.
10. Subsection (3) of section 18A allows for the regulations to make different provision for different cases or circumstances. The draft regulations allow, for example, the approval of a place for a specific marriage or for a specified period of time.
11. Subsections (4) and (5) of section 18A provide that the first regulations to be made should follow the draft affirmative procedure. Subsequent regulations would follow the negative procedure.
12. Section 1(4) of the Act amends section 24 of the 1977 Act by introducing an additional offence in relation to authorised registrars, where they solemnise a marriage otherwise than in accordance with section 18(1) of that Act. The penalty for this offence would be—
- on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both;
 - on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £1,000) or to imprisonment for a term not exceeding 3 months or to both.
13. The Scottish Executive consulted on the draft Bill and draft regulations in the White Paper *Civil Marriages Outwith Registration Offices*, published on 21 June 2001. The reader may also find it helpful to consult the draft *Guidance to Scottish Local Authorities for the Approval of Places for Civil Marriages* produced by the Registrar General for Scotland. This was published by the General Register Office for Scotland (GROS) on the date of introduction of the Bill. Copies of all of these documents are available from the Scottish Parliament Information Centre and from GROS, New Register House, Edinburgh EH1 3YT or on the Internet at <http://www.gros-scotland.gov.uk>.