
MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

1.0 EXECUTIVE SUMMARY

The purpose of this report is to advise that the Marriage and Civil Partnership (Scotland) Act 2014 was passed by the Scottish Parliament and received Royal Assent on 12 March 2014. This Act makes provision for the marriage of persons of the same sex, the persons who may solemnise marriage and the procedures and the places where civil marriages may be solemnised, the registration of civil partnerships by celebrants of religious or belief bodies, gender change by married persons and civil partners and minor changes in relation to registration information. Certain sections of the Act came into force on 21 May 2014 and a summary of these is provided.

The main implications for the council are:

- the introduction of same sex marriage which will be able to be carried out by council registrars amongst others;
- the removal of the requirement for registrars to conduct marriages at “approved places”.

We do not expect same sex marriages to start until the end of the year. The removal of the requirement for marriages at “approved places” will be introduced from 1 September. This will apply to both opposite sex and same sex marriages. This will affect current arrangements for existing approvals which may be for a period or for one-off temporary licences and the income streams from these. We currently have 62 live approvals for venues across the council, and receive income of c £20,000 p.a. from these approvals.

In the light of the proposals to do away with the concept of such approvals from the start of September, Policy & Resources Committee is asked to agree to approve partial refunds for all new period approval applications already processed since 1 April 2014 where fewer than 3 marriages have been carried out between 1 April 2014 and 1 September 2014.

In order to offset the loss of income from period and temporary approvals, and to reflect the need for risk assessments to continue to be carried out for new locations, it is proposed that the fees for outside marriages be revised upwards from the date that section 21 is introduced. Delegated authority is requested for the Executive Director of Customer Services to set the new fees in consultation with the Council Leader and the Depute Leader.

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2.0 INTRODUCTION

- 2.1 The purpose of this report is to advise that the Marriage and Civil Partnership (Scotland) Act 2014 was passed by the Scottish Parliament and received Royal Assent on 12 March 2014. This Act makes provision for the marriage of persons of the same sex, the persons who may solemnise marriage and to the procedures and the places where civil marriages may be solemnised, the registration of civil partnerships by celebrants of religious or belief bodies, gender change by married persons and civil partners and minor changes in relation to registration information.
- 2.2 Certain sections of the Act came into force on 21 May 2014 and a summary of these is provided at Appendix 1. Others are coming in from 1 September. Many provisions are not expected to come into effect under the end of the calendar year. The provisions will affect some details of how registrars carry out marriages and will enable them to carry out same sex marriages.
- 2.3 One of the most significant changes is that the concept of approved venues for marriages disappears. As the council has made charges for approving venues up till now, this will remove an income stream. Consideration is given to whether partial refunds should be given to those who have recently renewed their licences for a 3 year period given that these licences will now expire on 31 August. The Council will also have to consider whether charges for marriages at outside venues should be altered as a result.

3.0 RECOMMENDATIONS

- 3.1 Note the implications of the Marriage and Civil Partnership (Scotland) Act 2014 for the Registration Service.
- 3.2 Approve partial refunds for period approvals granted from 1 April 2014 where fewer than 3 marriages have taken place before 1 September 2014.
- 3.3 Delegate authority to the Executive Director of Customer Services in consultation with the Council Leader and Depute Leader to set revised fees for outside marriages which include the costs of Health and Safety inspections following the abolition of period and temporary approvals for venues.

4.0 DETAIL

4.1 Key elements set out in the Marriage and Civil Partnership (Scotland) Act 2014 are as follows:

- Introduction of same sex marriage, and the religious and belief registration of civil partnerships.
- Civil marriage ceremonies can take place anywhere agreed by the registrar and the couple other than religious premises.
- Provides an opt-in procedure for religious and belief bodies who want to solemnise same sex marriage or register civil partnerships
- Individual celebrants who felt it would go against their faith to carry out same-sex weddings will be protected.
- Establishes belief ceremonies such as humanist ceremonies as a third form of marriage in addition to religious and civil versions.
- Authorises Church of Scotland deacons to solemnise opposite-sex marriage.
- Allows for the introduction of new requirements for religious and belief bodies to meet, when solemnising marriages or registering civil partnerships, in light of increasing concerns over sham and forced marriages and marriages being carried out for profit
- Introducing religious and belief ceremonies to register civil partnerships.
- Allowing transgender people to stay married if they wish rather than having to get divorced following a change of gender.
- Clarification that the introduction of same sex marriage has no impact on existing rights to freedom of speech and that it is possible to oppose same sex marriage without being homophobic.
- Amended guidance on the teaching of the issue in schools.
- States an intention to recognise same sex marriages registered elsewhere in the UK and overseas.

Same Sex Marriage

4.2 Religious ceremonies for Civil Partnerships are no longer prohibited and same sex marriage has been introduced to give same sex couples the option of getting married. Civil same sex marriages can be solemnised by a registrar or assistant registrar appointed by the Registrar General in the same way as an opposite sex marriage. These can be carried out in a registration office or at any place agreed between the registrar and the couple. Religious marriages between two people of the same sex can take place as long as the religious body and the religious celebrant are content to solemnise same sex marriage. Similarly these can be carried out in religious premises or at any place agreed between the celebrant and the couple. Ceremonies will require to be updated to encompass these changes and be made more appropriate for same sex marriage. Argyll and Bute Council had 11 civil partnerships in 2012 and 12 in 2013, compared to 483 and 431 civil weddings respectively. The expected numbers of same sex marriages are small and these changes should not affect our income or workload significantly.

Removal of Licensing Arrangements and fees for “Approved Places” for civil marriages.

- 4.3 There are currently three types of licences for “Approved Places” as follows:
- (a) Period Approval; a venue (e.g. castle, hotel) may purchase a 3 year licence, which does not have a limit on number of civil marriages/civil partnerships which can take place at the venue.
 - (b) Temporary Approval; couples may purchase a “one off” licence e.g. if a bride wished to be married in the garden of her parents home.
 - (c) Temporary Remote Licence; couples may purchase a “one off” licence for a remote location e.g. Island/landmark etc.
- 4.4 At this time there are 62 Period Approvals in place and 7 pending renewal shortly. There is no provision in the legislation covering treatment of these applications in advance of the implementation of the new legislation coming into effect, which is expected to be on 1 September 2014. A benchmarking exercise (Appendix 2) carried out recently shows that 6 out of the 10 authorities who responded are intending to extend existing approvals free of charge, 2 will be offering a reduced rate and 2 intend to charge the full fee up until the new legislation is in place.
- 4.5 Within Argyll and Bute, since the Act received Royal Assent, we have been advising applicants about the proposed changes to remove the licence procedures and applicants are being encouraged to wait until 1st September where possible. There have been two cases where period approval licences have been renewed since 1 April.
- 4.6 It is proposed to continue charging for temporary approvals and temporary remote licences in the same way as at present right up until the new legislations comes into effect. However for period approvals, the owner of the venue may be in the position of renewing their licence without being fully aware of the changes coming into effect on 1 September. In order not to disadvantage these venues, and in view of the uncertainty until the commencement order was laid on 24 July, it is proposed to offer a partial refund of the fee paid if fewer than 3 marriages have taken place by 1 September 2014. This will apply to all renewals from 1 April 2014 onwards.

Health and safety considerations

- 4.7 Prior to any approvals being granted, a Location Assessment is carried out by the Registrars in order to deem the site suitable for a marriage to be carried out in line with statutory requirements and also to ensure the safety of both staff and customers. Currently there is no additional charge for this inspection as the costs are covered by the period and temporary approvals fee. We consider that these assessments will still be required in future for new venues that are not commercial premises

(such as hotels) in order to ensure the safety and wellbeing of council staff and other attendees at the ceremony. This is despite there being no requirement for a venue to be “approved” as such. We will not be able to charge explicitly for such risk assessments but would intend to increase the fee for outside ceremonies to include this element. The plan is to work closely with the licensing section. If the venue already has a liquor/entertainments licence and a valid fire certificate, then there may not be a requirement to inspect the property further.

- 4.8 Delegated authority to the Executive Director of Customer Services in consultation with the Council Leader and Depute Leader is requested to set revised fees for outside marriages which include the costs of Health and Safety inspections following the abolition of period and temporary approvals for venues. This delegation will allow further consultation to take place with other councils to ensure that the revised fees are set in line with practice elsewhere.

Potential loss of income

- 4.9 The table set out below details of total income received over the past three years in respect of Period Approvals, Temporary Approvals and Temporary Remote Approvals.

- 4.10 The current fees and income are as follows:

Fee type	Each	2011/12 total income	2012/13 total income	2013/14 total income
Period Approval	£655.65	£12,025	£18,701	£8,804
Temporary Approval	£254.60	£9,409	£12,176	£8,955
Temporary Remote Approval	£463.60		£1,492	£1,463
Total		£21,434	£32,369	£19,222

5.0 CONCLUSION

- 5.1 The implications of the Marriage and Civil Partnership (Scotland) Act 2014 for the Registration Service are that same sex marriage will be able to be carried out by council registrars amongst others. The requirement for registrars to conduct marriages at “approved places” is being removed. As the council has charged a fee for licencing approved venues, this income stream will be removed with a potential loss of income of c £20,000 p.a. There will still be a requirement to ensure that venues where council staff members are carrying our marriages do not pose health and safety risks to staff and others attending the ceremony. It is proposed to carry out further work to ensure that the council’s proposals for these risk assessments and any amended charges for outside ceremonies will be in line with other councils. Delegated authority is therefore sought for the Executive Director of Customer Services to set these charges following appropriate benchmarking and in consultation with the council leader and depute leader. Approvals is also

sought to give partial refunds to venues who have recently renewed period approvals where fewer than 3 marriages have taken place before 1 September 2014.

6.0 IMPLICATIONS

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| 6.1 | Policy | Any amendments would be in line with statute |
| 6.2 | Financial | Possible loss of income of up to approximately £20,000 per annum due to removal of licence fees. |
| 6.3 | Legal | Any amendments would be in line with statute |
| 6.4 | HR | None |
| 6.5 | Equalities | The new Act will improve the equalities position for same sex couples. |
| 6.6 | Risk | None. |

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Executive Director of Customer Services
8 August 2014

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APPENDICES

1. Marriage and Civil Partnership (Scotland) Act 2014 – Sections currently in force
2. Summary of feedback from other Scottish Local Authorities in respect of plans to offer refunds for period approvals and carry out risk assessments in future.

Provisions of the Marriage and Civil Partnership (Scotland) Act 2014 commencing 21 May 2014

Section 7: This section abolishes the common law defence for wives against the crime of reset (the crime of possessing goods stolen by another) where she receives or conceals goods stolen by her husband. The repeal of the defence will, by virtue of section 7(2) of the 2014 Act, only apply in relation to things done after 21 May 2014.

Section 19: This section amends section 7 of the Marriage (Scotland) Act 1977 (“the 1977 Act”). The effect is that where a person wants to marry out with Scotland and seeks a certificate about his or her legal capacity from the district registrar, the person must provide a copy of the decree of dissolution or annulment of any civil partnership which the person has previously been in.

Section 20: This section amends the provisions of section 8(1)(a)(i) of the 1977 Act about automatic authorisation of ministers of the Church of Scotland in respect of opposite sex marriage. The effect is that Church of Scotland deacons, like Church of Scotland ministers, are automatically authorised to solemnise opposite sex marriage.

Section 22: This makes provision for a couple to go through a second marriage ceremony in Scotland if they have already married out with the United Kingdom but there is some doubt about the validity in Scots law of the overseas ceremony. Section 20 of the 1977 Act sets out the process for a second marriage ceremony and provides for an endorsement to be made to the Marriage Schedule by the authorised registrar. The amendment made by section 22 repeals references in the endorsement to years starting with the prefix “19”.

Section 23: This section amends section 8 of the Domicile and Matrimonial Proceedings Act 1973 to clarify the jurisdiction of the sheriff court in relation to declarators of opposite sex marriage. (Schedule 1 to the 2014 Act makes provision on the jurisdiction of the courts in relation to, among other things, declarators of same sex marriage. Schedule 1 has not yet been commenced).

Section 27: This section provides that Article 2 of the Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012 (SSI 2012/111) (on civil partnerships dissolved using the simplified procedure and without obtaining third party evidence) is to be treated as having had effect since 5 December 2005, the date when civil partnership was introduced.

Section 32: This section corrects an erroneous cross-reference to section 34(3) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 which ought to refer to section 34(4).