

ANGUS COUNCIL

ITEM No. 10

POLICY AND RESOURCES COMMITTEE - 4 SEPTEMBER 2001

CIVIL MARRIAGES OUTWITH REGISTRATION OFFICES

REPORT BY THE DIRECTOR OF LAW AND ADMINISTRATION

ABSTRACT

This Report informs the Committee of the response given by officers to a White Paper issued by the Scottish Executive setting out proposed changes in the law to allow civil weddings to be conducted in venues outwith registration offices.

1. RECOMMENDATION

It is recommended that the Committee notes and endorses the attached response (Appendix 2) to the White Paper - "Civil Marriages Outwith Registration Offices".

2. INTRODUCTION

On 21 June 2001 the Scottish Executive published a White Paper entitled "Civil Marriages Outwith Registration Offices" and sought responses to the proposals within it. The Paper sets out the detail of the Scottish Executive's proposals on a possible change to the law of Scotland which would allow civil marriages (ie those marriages which are not solemnised by a religious celebrant) to take place elsewhere than in the 247 local offices of authorised district registrars. The Paper also seeks views on these proposals the timescale for receipt of comments was 17 August and, after consultation with the Chief Executive, the Director of Finance, the Acting Director of Cultural Services and the Acting Director of Personnel, I sent the attached response on behalf of Angus Council (Appendix 2). It was pointed out, however, that this was a response by officers, which had still to be considered by the appropriate committee of the Council.

3. OUTLINE OF PROPOSALS

A copy of the narrative of the White Paper (excluding the draft Bill and Regulations) is attached as Appendix 1.

The Scottish Executive's proposals are that local councils should be given power to approve specific sites as venues for civil marriages. A temporary approval should also be available to cover use of a site for a specific civil marriage. In granting approvals, local councils are asked to preserve the dignity of the marriage ceremony. Guidance set by the Registrar General to councils on approving venues for civil marriages would take account of the need to preserve the clear distinction between a civil and a religious marriage.

Earlier consultation in 1998 also proposed going beyond what is provided in England and Wales, to include "places" rather than buildings. This would allow a civil marriage other than inside a building, for example in a marquee or in the open air, or on board a vessel, provided it remained within the appropriate registration district. These circumstances are already possible for religious marriages in Scotland.

Another proposed extension to the law is to permit a location to have a temporary approval for a single specific wedding, not just a three year authorisation. A temporary approval could be quite expensive, given that all the local authorities' costs would have to be met. Nevertheless, the Executive sees no reason to rule out such flexibility if couples are prepared to pay.

The White Paper therefore proposes that the present law, the Marriage (Scotland) Act 1997, be amended to extend the venue where a civil marriage may be solemnised to an "approved place". The amendment to the relevant Section (18) will also provide for a licensing scheme, the detail of which will be set out in Regulations and will be supported by guidance promulgated by the Registrar General for Scotland.

4. RESPONSE TO WHITE PAPER

As indicated above, the attached response was prepared after consultation with a number of colleagues who have a potential interest in the proposals. For example, the proposals could have significant implications for the conditions of service of registration staff and there are also, as is recognised in the proposed legislation, health and safety implications for such staff.

These proposals could also, however, open up opportunities of promoting the Council and the Angus area generally and, if enacted, the Council may wish to give consideration to seeking approvals for some of the buildings owned by it (eg Montrose Town Hall, Reid Hall, Forfar and Brechin City Hall). Also, it might be appropriate to consider the promotion of Angus as a venue for civil marriages in places such as Hospitalfield House, Arbroath, Glamis Castle and places of historic interest or natural beauty. To this end, the Acting Director of Cultural Services and the Public Relations Manager have agreed to give further consideration to what action might be appropriate in the event of the law being changed.

In light of the deadline for responses, I sent the attached letter which generally welcomes the proposals, but highlights a number of points of detail which I feel should be clarified.

5. FINANCIAL IMPLICATIONS

The Scottish Executive considers that any new arrangements should be "resource-neutral". The approval scheme would require the Council to delegate an official to inspect the marriage venue beforehand, and to consult with the Council's Registration staff. The additional costs of the approval process would need to be met by the fee charged to the manager of the venue, whose prices would reflect it, so that costs would ultimately be met by the couple, or whoever paid for the wedding. The significant extra costs of staffing the local registration service to solemnise marriages at various locations in the district would similarly need to be met by an increased fee charged directly to the couple.

6 HUMAN RIGHTS IMPLICATIONS

There are no immediate Human Rights implications for the Council arising from this Report. However, if these changes were implemented, then there may be implications in respect of Article 12 "Right to Marry".

7. CONSULTATION

The Chief Executive, the Director of Finance, the Acting Director of Personnel and Acting Director of Cultural Services have been consulted during the preparation of this response.

CATHERINE A COULL
Director of Law and Administration

NOTE: No background papers as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing this Report.

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CIVIL MARRIAGES OUTWITH REGISTRATION OFFICES

A White Paper issued by
The Scottish Executive
setting out proposed changes in the law



Foreword

Since statutory registration of births, deaths and marriages in Scotland began in 1855, the task has always been undertaken by a successful partnership between the Registrar General for Scotland and district registrars operating locally as officers of Scotland's local councils.

The proposals outlined in this White Paper are the results of an initiative by both sides of this partnership and follow on from the extensive consultation which was carried out in 1998 by the Registrar General. That consultation opened up consideration of changes to the arrangements for civil marriages to allow the use of venues other than the present local registration offices.

The responses to the 1998 consultation were overwhelmingly in favour of the principle of new primary legislation to authorise civil marriage outwith registration offices. As a consequence, on 24 March 2000, Euan Robson MSP, now Deputy Minister for Parliament at the Scottish Executive, lodged a proposal for a Member's Bill in the Scottish Parliament:

"To permit civil marriages to be solemnised at locations other than registration offices; and to authorise local authorities to license locations for that purpose and to charge fees to meet related costs and for connected purposes."

Euan Robson's proposal had support from a number of MSPs and also from the Scottish Executive. Consequently, it is now our intention to take forward the proposal as a Scottish Executive Bill. The proposals are set out in this paper, together with the draft Bill and a draft of the potential Regulations that would flow from the Bill once it is enacted.

I value this opportunity to set out our proposals in this way. This builds on the consultation in 1998 and allows us to obtain the current views of the people of Scotland on the details of what we propose. I shall look forward to hearing the views expressed in response to this paper.

A handwritten signature in black ink that reads "Jim Wallace". The signature is written in a cursive style and is underlined with a single horizontal line.

Jim Wallace

Deputy First Minister and Minister for Justice

CIVIL MARRIAGES OUTWITH REGISTRATION OFFICES

Introduction

0.1 This paper sets out the detail of the Scottish Executive's proposals on a possible change to the law of Scotland which would allow civil marriages (that is, those marriages which are not solemnised by a religious celebrant) to take place elsewhere than in the 247 local offices of authorised district registrars. It also seeks views on these proposals.

0.2 The consultation period is fairly brief. This is because the issues set out in this paper were the subject of extensive consultation by the Registrar General for Scotland in 1998. In addition, since then, the General Register Office for Scotland has been closely working with COSLA and the Association of Registrars of Scotland in developing the proposals that are described here.

0.3 The Registrar General of Births, Deaths and Marriages for Scotland is responsible not only for the recording of marriages in the appropriate registers, but for the administration of the statutes relating to the formalities of marriage and to the conduct of civil marriage. Any views on the content of this paper should be sent to one of the following addresses, to arrive before **17 August 2001**:

(by post)

Civil Marriage Consultation
New Register House
Edinburgh EH1 3YT

(by fax)

Civil Marriage Consultation
0131 314 4400

(by e-mail)

civil.marriage@gro-scotland.gov.uk

0.4 For views sent by fax or e-mail, please give a full postal address. The Registrar General will assume that those offering views are content to have these views attributed to them unless they specifically ask to remain anonymous.

0.5 The paper comprises four sections. The first sets out some **first principles**, explaining why the State should want to set any 'rules' for weddings, rather than allowing a completely free choice. These principles were regarded as important by those who responded to the 1998 consultation. The second section describes the **present position** both in Scotland and south of the Border. The third section sets out an **outline of the proposals**. The final section provides a commentary on the **draft legislation** i.e. both the draft Bill which is to be introduced in the Scottish Parliament and a draft of the potential Regulations that are envisaged. The latter is provided solely for information purposes at this stage. No Regulations will be made until the Bill is enacted.

Section 1

First principles

1.1 It is widely accepted that the State should continue to take an interest in the legal and social aspects of marriage as an institution. However in recent years the marriage *ceremony* has increasingly come to be seen as a matter whose elements, including venue and circumstances, are properly for choice by the couple, rather than part of a uniform package with elements all decided by some religious or municipal authority. It is important first to address what the State's legitimate interests are in civil marriage ceremonies. That distinction is firmly maintained in the proposals set out in this paper.

1.2 The State's specific interests in the **arrangements for civil marriage** are perhaps threefold:

recording the relationship: The essence of the marriage ceremony is that the couple confirm their consent to the relationship, in the presence of each other, and in front of witnesses, after which it is formally and permanently recorded in an official book. Accuracy and reliability of the record are essential. The present Scottish procedure whereby the paperwork for all marriages, civil and religious, before and after the ceremony, is done by the local registrar, an official specially appointed for the purpose, and by no-one else, works well. There is no intention to change this.

seemliness and dignity of the ceremony: Marriage puts an official stamp of seriousness upon a relationship, and of course very significant legal and economic consequences flow from the multi-faceted marriage contract, underwritten by the State. Most people would regard it as important that the ceremony itself, marking the beginning of this contract, should focus the minds of the couple, and of others present, on its significance. Marriage ceremonies, civil or religious, should therefore be seemly and dignified rather than tawdry or frivolous.

'reasonableness' of venues for civil marriages: A related but not quite identical point relates to civil marriage only. The present law of Scotland authorises a very wide range of religious celebrants to solemnise religious marriages, and the effect is to put very few constraints upon the personal preferences of the couple for a religious marriage ceremony of a particular kind in a particular place, as long as the religious celebrant agrees. Whether they choose a cathedral, a mosque, their own home, a hotel, a canal-barge or a mountain-top, some celebrant can usually be found to marry them, and he or she can be presumed to have the authority to ensure it is done in a seemly and dignified way. Moreover, religious

celebrants are, by and large, free to make their own decisions about whether or not to conduct particular weddings, so if a celebrant is unhappy with anything inappropriate proposed by the couple, he or she can always say "No".

By contrast, registrars - who are local council employees working to detailed instructions issued by the Registrar General - are acting as officials of the State and, as such, they may find it more difficult to say "No" without good reason. The State therefore has an interest in ensuring a rather greater degree of control over the 'reasonableness' of venues for *civil* marriages, because it needs to protect individual registrars from discomfiture in the face of couples' unusual choices of venue or circumstances, even where seemliness and dignity may not apparently be at risk. At the very least the State needs to offer some such protection against unreasonable demands in order to ensure it can recruit, retain and motivate people to be local registrars.

Section 2

Present position in Scotland

2.1 The total number of weddings in Scotland has fallen, from a peak of over 53,000 in 1940 and some 43,000 annually in the early 1970s to just over 30,300 in 2000 (provisional figure).

2.2 Since 1940, when marriages were first solemnised by registrars, Scotland now has an established level of civil marriages, with the ratio of civil to religious weddings now at 40:60.

2.3 Over the period 1940-2001 the nature of the civil marriage 'product' has changed significantly. A typical civil wedding was once a way of recording a relationship quietly in an ordinary office, during office-hours, and was in effect a 'non-ceremony' for people who

for one reason or another did not want a church wedding. Some civil weddings still are of this nature, but many now are full-scale ceremonies, often at weekends, with traditional wedding attire, music, photography and video, and numerous guests present in addition to the two statutory witnesses.

2.4 The Marriage (Scotland) Act 1977 ("the 1977 Act") allows civil marriages to be solemnised by any authorised registrar in his or her local registration office. Only in exceptional cases where a party is unable to attend by reason of serious illness *and* where the marriage cannot be delayed does the Act permit a civil marriage to be solemnised outwith a registration office.

2.5 Scotland offers a wide choice of some 247 offices with an authorised registrar, and the couple seeking to be married are not restricted to the office(s) in their area(s) of residence. While some registrars work from home, or from small offices with limited scope for development, recent investment on the part of local councils has led to many marriage-rooms of very high quality.

Present position in England & Wales

2.6 Until April 1995 English civil marriages were restricted to specific registration office(s), for the district(s) in which the couple lived, but a Private Member's Bill, enacted as the Marriage Act 1994, provided for the kind of choice of local office which was already available in Scotland - and in addition allowed local authorities in England & Wales to approve specific buildings for the celebration of civil marriages, and to set fees both for consideration of applications for approval and for the attendance of registrars on specific occasions to solemnise marriages there. The first feature of the English Act was important for many people, removing an irksome restriction, but the second feature has also proved popular. English law already designated specific buildings for religious marriages, so the 1994 Act fitted into the tradition of specifying buildings rather than celebrants, in contrast to Scotland. It is

understood that the new arrangements in England and Wales are working well.

Section 3

Outline of proposals

3.1 Our intentions for legislation flow from the proposals for a Bill which was lodged by Euan Robson (see *Foreword*). In turn, that had its origins in the Registrar General's and COSLA's suggestions as outlined in the 1998 consultation paper *Civil Marriages Outwith Registration Offices*.

3.2 It proposed that local councils should be given power to approve specific sites as venues for civil marriages. A temporary approval should also be available to cover use of a site for a specific civil marriage. In so doing, local councils would wish to preserve the dignity of the marriage ceremony. Guidance set by the Registrar General to councils on approving venues for civil marriages would take account of the need to preserve the clear distinction between a civil and a religious marriage.

3.3 It was also considered that any new arrangements should be 'resource-neutral'. An approval scheme would require a council official to inspect the marriage venue beforehand, and to consult with the council's local registrar. The additional costs of the approval process would need to be met by the fee charged to the manager of the venue, whose prices would reflect it, so the costs would ultimately be met by the couple, or whoever paid for the wedding. The significant extra costs of staffing the local registration service to solemnise marriages at various locations in the district would similarly need to be met by an increased fee charged directly to the couple.

3.4 The earlier consultation also proposed going beyond what is provided in England and Wales to include 'places' rather than buildings. This would allow a civil marriage other than inside a building, for example in a marquee or in the open air, or on board a vessel provided it

remained within the appropriate registration district. These circumstances would already be possible for religious marriages in Scotland.

3.5 Another extension could be to permit a location to have a temporary approval for a single specific wedding, not just a three-year authorisation. A temporary approval could be quite expensive, given that all the local council's costs had to be met. Nevertheless, there is no reason to rule out such flexibility if couples are prepared to pay.

Section 4

Draft Legislation

4.1 The convention with legislation is to set out the broad principle of what is to be achieved on the face of a Bill, but to supplement this with Regulations that set out the detailed procedures. This allows any changes in procedures to be made in the future without the necessity of seeking primary legislation. However, this still provides for appropriate Parliamentary scrutiny as any Regulations would be considered by the Scottish Parliament. That is the proposed structure for the draft legislation for civil marriages outwith registration offices.

4.2 The present law – in the Marriage (Scotland) Act 1977 (the 1977 Act) – does not limit the choice of venue for a religious marriage, but does restrict the venue for a civil marriage (carried out by a local registrar) to a local registration office, unless there are exceptional circumstances such as serious illness. The relevant provisions are in Section 18 of the 1977 Act.

4.3 Consequently, the draft Bill at *Appendix I* will amend Section 18 of the 1977 Act to extend the venue where a civil marriage may be solemnised to an “approved place”. It will also add a new Section 18A which will provide for a licensing scheme, the detail of which will be set out in Regulations which will be supported by guidance promulgated by the Registrar General for Scotland. Finally, the Bill will add a new offence to the list of

offences in Section 24 of the 1977 Act: that of an authorised registrar solemnising a marriage otherwise than in accordance with the 1977 Act.

4.4 As noted above, we have provided a draft of what might be considered reasonable by way of Regulations, using the assumptions and proposals in *Section 3* as a guide. So, the draft Regulations at *Appendix 2* set out:

- the parties who may apply for approval of a place as a location for a civil marriage (either for a period of 3 years or for a temporary approval) and the application procedures (together with procedures for the review of decisions by the local authority and for appeals to the Sheriff Court);
- the considerations to be taken into account by the local authority, including certain criteria (no recent or continuing connection with religion/religious practice, seemly and dignified venue for the solemnisation of marriage, the authority has obtained and considered the views of the appropriate district registrar, fire precautions; availability of the location);
- the power to impose standard and additional conditions on an approval;
- duration, renewal and grounds for revocation of an approval;
- determination of fees by the local authority for the approval of places;
- keeping by the local authority of a register of approved places in its area;
- the issue of supplementary guidance by the Registrar General, which a local authority must take into account.

4.5 The Scottish Executive would be grateful to have the views of any interested member of the public on the proposals outlined above, and on the appended draft legislation.

CAC/DMS/MK

16 August 2001

Registrar General for Scotland
Civil Marriages Consultation
New Register House
EDINBURGH
EH1 3YT

Dear Mr Randall

CIVIL MARRIAGES OUTWITH REGISTRATION OFFICES: RESPONSE TO WHITE PAPER

Angus Council, as a local authority containing six registration districts, is grateful for the opportunity to respond to the above White Paper. The proposals are seen as an opportunity to provide a wider choice of venue for couples considering a civil marriage ceremony. The Council also has wide experience of the licensing of a range of activities under the Civic Government (Scotland) Act 1982 and is therefore well placed to offer comments on how the proposals can be put into practice.

Generally, the Council welcomes the Scottish Executive's proposals to extend venues for civil marriage ceremonies. There are, however, some aspects which are of concern to the Council and these are detailed below:-

- 1 This Council sees the "approval" of civil marriage venues as an extension to the already well established civic government licensing system and considers that there is no need for totally separate and time consuming procedures to meet what will be, at best, a relatively small demand.
- 2 With reference to draft Regulation 6(2)(d), the Council does not think it appropriate for one of its employees to be a statutory consultee. The district registrar would, as a matter of good practice, be part of the normal internal consultation procedures whose views would be taken into consideration when an application is being considered.
- 3 In a similar vein, the Council views as undemocratic the proposed power given to the Registrar General to revoke an "approval" in terms of draft Regulation 12(1). If deemed necessary, the Council feels that this should be with the appropriate Scottish Minister.
- 4 The draft Regulations do not appear to provide a facility for public notification of applications and the right to lodge objections by those with legitimate cause, such as neighbouring owners/occupiers. This is at odds with most other licensing regimes.

- 5 This Council would wish the Regulations to give guidance on the issue of approvals to premises previously used for religious purposes (such as Arbroath Abbey) which are now considered tourist attractions, and buildings which contain private chapels still used for religious purposes (eg Glamis Castle). If the intention is to provide as wide a choice of venue as possible for the conduct of a civil alternative to a religious ceremony, then perhaps these buildings should be allowed to be "approved places".
- 6 Whilst the Council welcomes the proposals to extend approvals beyond buildings, it does feel that the scope for mobile venues such as ships and trains requires more definitive guidelines, as the venue may move between registration districts during the ceremony.
- 7 As a final point, this Council can foresee certain operational difficulties as some of our registration districts are not co-terminus with the Council's boundaries. Anomalous situations will arise whereby a registrar for a neighbouring authority may be required to perform a ceremony in premises approved by another Council. This Council would therefore encourage and support, as part of any legislation following the White Paper, provision for registration district boundaries being co-terminus with local authority boundaries.

I trust that the above comments, which should not be seen as opposition to the general thrust of the proposals in the White Paper, will be taken into consideration, so that any new legislation enacted is transparent and workable with the minimum of resource implications to local authorities. This response has been prepared by officers of the Council and has still to be considered by elected members. I will write to you again after the meeting of the Council's Policy and Resources Committee on 4 September if there are any additional points raised by members.

Yours sincerely

Catherine A Coull
Director