

SECTION 3B

THE MINISTER AND MARRIAGE

1. BACKGROUND

Prior to 1939, every marriage in Scotland fell into one or other of two classes: regular or irregular. The former was marriage by a minister of religion after due notice of intention had been given; the latter could be effected in one of three ways: (1) declaration *de presenti*, (2) by promise *subsequente copula*, or (3) by co-habitation with habit and repute.

The Marriage (Scotland) Act of 1939 put an end to (1) and (2) and provided for a new classification of marriage as either religious or civil. Marriage by co-habitation with habit and repute was abolished by the Family Law (Scotland) Act 2006.

The law of marriage as it was thus established in 1939 had two important limitations to the celebration of marriage: (1) certain preliminaries had to be observed; and (2) in respect of religious marriage, the service had to be conducted according to the forms of either the Christian or the Jewish faith.

2. THE MARRIAGE (SCOTLAND) ACT 1977

These two conditions were radically altered by the Marriage (Scotland) Act 1977.

Since 1 January 1978, in conformity with the demands of a multi-racial society, the benefits of religious marriage have been extended to adherents of other faiths, the only requirements being the observance of monogamy and the satisfaction of the authorities with the forms of the vows imposed.

Since 1978, the calling of banns has also been discontinued. The couple themselves must each complete a Marriage Notice form and return this to the District Registrar for the area in which they are to be married, irrespective of where they live. Notice must be given in the three-month period prior to the date of marriage and **not later than 29 days before the date of marriage**. The form details the documents which require to be produced with it.

If everything is in order, the District Registrar will issue, not more than seven days before the date of the ceremony, a Marriage Schedule. This must be in the hands of the minister officiating at the marriage ceremony before the service begins. Under no circumstances must the minister deviate from this rule. To do so is an offence under the Act.

Ministers should note the advice given by the Procurator of the Church in 1962, that they should not officiate at any marriage until at least one day after the 16th birthday of the younger party.

Furthermore, a marriage involving someone who is not an EU citizen involves extra registration requirements, and initial contact should be made with the local Registrar several months before the intended date of marriage.

3. THE MARRIAGE (SCOTLAND) ACT 2002

Although there have never been any limitations as to the place where a religious marriage can be celebrated, civil marriage originally could take place only in the Office of a Registrar. The Marriage (Scotland) Act 2002 permits the solemnisation of civil marriages at places approved by Local Authorities. Regulations have been made to specify the kinds of place which may be 'approved' with a view to ensuring that the places approved will not compromise the solemnity and dignity of civil marriage and will have no recent or continuing connection with any religion so as to undermine the distinction between religious and civil ceremonies.

4. PROCLAMATION OF BANNS

Proclamation of banns is no longer required in Scotland; but, in the Church of England,

marriage is governed by the provisions of the Marriage Act 1949, which requires that the parties' intention to marry has to have been proclaimed and which provides that in the case of a party residing in Scotland a Certificate of Proclamation given according to the law or custom prevailing in Scotland shall be sufficient for the purpose. In the event that a minister is asked to call banns for a person resident within the registration district where his or her church is situated, the proclamation needs only to be made on one Sunday if the parties are known to the minister. If they are not, it should be made on two Sundays. In all cases, the Minister should, of course, have no reason to believe that there is any impediment to the marriage.

Proclamation should be made at the principal service of worship in this form:

There is a purpose of marriage between AB (Bachelor/Widower/Divorced), residing at in this Registration District, and CD (Spinster/Widow/Divorced), residing at in the Registration District of, of which proclamation is hereby made for the first and only (second and last) time.

Immediately after the second reading, or not less than forty-eight hours after the first and only reading, a Certificate of Proclamation signed by either the minister or the Session Clerk should be issued in the following terms:

At the day of 20

It is hereby certified that AB, residing at, and CD, residing at, have been duly proclaimed in order to marriage in the Church of according to the custom of the Church of Scotland, and that no objections have been offered.

Signed minister or

Signed Session Clerk

5. MARRIAGE OF FOREIGNERS

Marriages in Scotland of foreigners, or of foreigners with British subjects, are, if they satisfy the requirements of Scots Law, valid within the United Kingdom and the various British overseas territories; but they will not necessarily be valid in the country to which the foreigner belongs. This will be so only if the requirements of the law of his or her country have also been complied with. It is therefore most important that, before the marriage, steps should be taken to obtain from the Consul, or other diplomatic representative of the country concerned, a satisfactory assurance that the marriage will be accepted as valid in the country concerned.

6. REMARRIAGE OF DIVORCED PERSONS

By virtue of Act XXVI 1959, a minister of the Church of Scotland may lawfully solemnise the marriage of a person whose former marriage has been dissolved by divorce and whose former spouse is still alive. The minister, however, must carefully adhere to the requirements of the Act which, as slightly altered in 1985, are briefly as follows:

1. The minister should not accede as a matter of routine to a request to solemnise such a marriage. To enable a decision to be made, he or she should take all reasonable steps to obtain relevant information, which should normally include the following:
 - (a) Adequate information concerning the life and character of the parties. The Act enjoins the greatest caution in cases where no pastoral relationship exists between the minister and either or both of the parties concerned.

- (b) The grounds and circumstances of the divorce case.
- (c) Facts bearing upon the future well-being of any children concerned.
- (d) Whether any other minister has declined to solemnise the proposed marriage.
- (e) The denomination to which the parties belong. The Act enjoins that special care should be taken where one or more parties belong to a denomination whose discipline in this matter may differ from that of the Church of Scotland.

2. The minister should consider whether there is danger of scandal arising if he or she should solemnise the remarriage, at the same time taking into careful consideration before refusing to do so the moral and spiritual effect of a refusal on the parties concerned.

3. As a determinative factor, the minister should do all he or she can to be assured that there has been sincere repentance where guilt has existed on the part of any divorced person seeking remarriage. He or she should also give instruction, where needed, in the nature and requirements of a Christian marriage.

4. A minister is not required to solemnise a remarriage against his or her conscience. Every Presbytery is required to appoint certain individuals with one of whom ministers in doubt as to the correct course of action may consult if they so desire. The final decision, however, rests with the minister who has been asked to officiate.

See also

Section 3C Conduct of Marriage Services (Code of Good Practice)

Section 3D Marriage and Civil Partnership (Scotland) Act 2014