

## **Marriage Celebrants – NRS Policy on Authorisation**

### **1. Purpose**

The Marriage (Scotland) Act 1977 (“the 1977 Act”) confers functions on the Registrar General for Scotland (“the RGS”) in connection with the process by which certain categories of celebrants are authorised to solemnise marriages in Scotland. Where not performed in person by the RGS, those functions are performed on behalf of the RGS by National Records of Scotland (“NRS”). This document sets out the policy of the RGS and of NRS in relation to the performance of those functions, as well as providing guidance for Religious and Belief Bodies and celebrants.

The matters covered include:

- The different routes to authorisation (under sections 9 and 12 of the 1977 Act)
- The application process and criteria by which applications are assessed
- The conditions attaching to authorisation and the standards of conduct expected of authorised celebrants, and
- The process by which authorisation can be revoked.

This document will be subject to periodic review and updates. If you have comments or queries on the guidance, these may be directed to the NRS marriage section at [marriage@nrscotland.gov.uk](mailto:marriage@nrscotland.gov.uk).

### **2. Routes of Authorisation**

There are two routes to authorisation. These are:

- ‘Temporary’ Authorisation, in terms of Section 12 of the 1977 Act
- Authorisation in terms of Section 9 of the 1977 Act

In practice, individuals should not expect to be authorised under section 9 unless they have previously been authorised as a celebrant on a temporary basis under section 12 on a number of occasions over the course of at least two years. This is explained further in the section of this document on section 9 authorisation, below.

### **3. ‘Temporary’ Authorisation of Celebrants under Section 12 of the 1977 Act**

Under section 12 of the 1977 Act, the RGS may grant a member of a religious or belief body a temporary authorisation to solemnise marriages. A temporary authorisation allows a celebrant to solemnise one or more specified marriages (section 12(1)(a)), or to solemnise marriages during a specified period (section 12(1)(b)).

Temporary authorisations granted to individuals who have either no previous experience, or limited previous experience of solemnising marriages, will generally be granted for the purpose of solemnising specified marriages.

An authorisation to solemnise marriages during a specified period will state whether the celebrant is authorised to solemnise marriages between mixed sex couples, same sex couples, or both mixed and same sex couples. The granting of temporary authorisations to solemnise marriages between same sex couples are subject to the conditions set out in section 12(1C).

In general, and as far as applicable, NRS applies the procedures governing the authorisation of celebrants, and their removal from the register of celebrants (under sections 9 and 10 of the 1977 Act) to temporary authorisation under section 12. Consequently, in addition to reading this section, those considering applying for authorisation to solemnise marriages should familiarise themselves with the content of the section relating to authorisations under Section 9 as well.

### **Application Process**

An application for temporary authorisation can be made either by a religious or belief body on behalf of a member, or by the member directly.

In general, applications for authorisation should be made by e-mail to NRS Marriage section, at the address above, no earlier than three months prior to the proposed date of marriage. All applications for authorisation should be accompanied by, or state:

- The full name and address of the applicant member
- The designation the applicant member would use when signing the marriage schedule, e.g. Priest, Minister, Pastor and so on
- Letters from two office bearers of the religious/ belief body, on whose behalf the member would be conducting the ceremony/ceremonies, supporting his/her application
- A declaration by the religious/ belief body of the member's status within the body; and a declaration that the member is a fit and proper person (within the terms spelled out by this document)
- The proposed form of marriage ceremony.

Where the application relates to a specified marriage or marriages, this should also include:

- The full names of the parties to the marriage(s)
- The date and place of the intended marriage(s)

Where the application is for authorisation to solemnise marriages during a specified period, this should also include:

- The period in respect of which authorisation is sought, and
- Whether authorisation is sought to solemnise marriages between mixed sex couples, same sex couples, or both mixed sex and same sex couples.

In addition, applications where the proposed celebrant has not previously been granted temporary authorisation as a member of their current religious or belief body should be accompanied by:

- A declaration by the member that they have no intention of carrying on a business of solemnising marriages for profit or gain, and that they understand the legal duties of marriage celebrants under the 1977 Act
- Disclosure of any criminal convictions within four years of the application; any censure or disciplinary sanctions by the body within the last two years; and any live disciplinary proceedings
- Appropriate evidence of completion of any training provided by the body on solemnising marriages.

Applications where no member of the body of which the proposed celebrant is a member has previously been authorised as a marriage celebrant should also be accompanied by:

- A copy of the religious/belief body's constitution, including the aims and beliefs of the body, and details of the body's office bearers
- Details of the membership of the religious/belief body and how often it meets for worship/upholding its beliefs. (Further information about religious and belief bodies is set out below in regard to section 9 authorisation.)

Grants of temporary authorisation will be communicated by letter addressed to the body or the individual that submitted the application, and will generally be made subject to the terms and conditions specified in the Annex to this document.

A refusal to grant temporary authorisation will also be communicated by letter addressed to the body or individual that submitted the application, and provide the reason or reasons for the refusal.

### **The fit and proper person test**

The RGS will only grant a temporary authorisation when satisfied that the individual concerned is a fit and proper person to solemnise marriages.

In assessing whether a potential celebrant is a fit and proper person to solemnise marriages, the RGS considers whether a person commands the formal support of their religious or belief body, and takes account of available information relevant to the celebrant's competence and personal integrity in relation to character, behaviour and standards of conduct.

This process will take into account the need to maintain public confidence in the process for solemnisation of marriages, as well as the celebrants authorised to carry them out. (Further detail on this is available in the guidance on section 9 authorisation.)

### **Carrying on a marriage business for profit and gain**

Applicants for temporary authorisation must declare as part of the application that they have no intention of carrying on a business of solemnising marriages for profit or gain, and the terms and conditions imposed by the RGS under section 12(1) of the 1977 Act will generally make it a condition of temporary authorisation that the celebrant does not act in such a way. (Detail of conduct is explained below in regard to section 9 authorisation.)

### **Review of a decision not to grant authorisation**

Given that under section 9 of the 1977 Act, an appeal process operates for celebrants whose nomination by a body is rejected, the RGS considers it appropriate also to allow persons/bodies whose application for temporary authorisation is rejected under section 12 the right to have their case reviewed administratively.

Where an application for temporary authorisation has been refused, the individual or body that submitted the original application may apply within seven days of receipt of the letter communicating this decision to have the decision reviewed by the Deputy Registrar General. An application for review should be made by e-mail addressed to NRS Marriage Section and marked for the attention of the Deputy Registrar General. The email should state why the applicant disagrees with the decision to refuse the original application.

The review will be undertaken as soon as possible and the outcome will be communicated by letter addressed to the body or individual that submitted the original application.

### **Removal of temporary authorisation**

The RGS reserves the right to revoke a person's temporary authorisation where:

- The person has requested temporary authorisation be removed
- The body the person is a member of no longer wishes that person to be temporarily authorised
- The person has, while temporarily authorised, been convicted of an offence under the 1977 Act
- The person is, in the view of the RGS, no longer a fit and proper person to solemnise marriages, or has failed to comply with any of the conditions of authorisation listed in the Annex to this document
- The marriage ceremony used by the body is no longer of an appropriate form.

Where the person has requested temporary authorisation be removed, the body no longer desires that person should be temporarily authorised, or the marriage ceremony is no longer of an appropriate form, the celebrant's authorisation will be revoked with immediate effect.

Where the RGS proposes to revoke a person's authorisation for any other reason, he will give the person at least 14 days written notice of his intention, and will specify in the notice the grounds on which he proposes to revoke the authorisation. The RGS may also suspend the effect of the authorisation.

Within the period specified in the notice, the person may make representations to the RGS as to why the temporary authorisation should not be revoked. On the expiry of the period specified, the RGS will:

- Consider any representations received
- Either proceed to revoke the temporary authorisation, or lift any suspension, and
- Give the person written notice of this decision.

#### **4. Authorisation under Section 9 of the 1977 Act**

Under section 9 of the 1977 Act, a religious or belief body may nominate to NRS any of its members to solemnise marriages. Where a nomination is accepted, the name of the nominated celebrant will be entered in the register of celebrants and the celebrant authorised to solemnise marriages, normally for a period of three years, after which they will be eligible to be nominated again.

This form of authorisation is not applicable in the case of the Church of Scotland, or any other religious or belief bodies prescribed by regulations made under section 8 of the 1977 Act, as it is for those bodies alone to determine which of their members should solemnise marriages. (<http://www.legislation.gov.uk/ukpga/1977/15/section/8>.)

Authorisation to solemnise the marriage of mixed sex couples and same sex couples are distinct forms of authorisation. Consequently, the nomination must specify whether the individual is being nominated to solemnise:

- Only mixed sex marriages
- Only same sex marriages, or
- Both mixed sex and same sex marriages.

A nomination for authorisation will be rejected if, in the opinion of the RGS:

- The nominating body is not a religious or belief body
- The marriage ceremony used by the nominating body is not of an appropriate form
- The nominee is not a fit and proper person to solemnise a marriage, or
- Sufficient members of the nominating body are already registered to meet the needs of the body in relation to the solemnisation of marriages in Scotland.

However, the RGS is not limited to rejecting nominations on these grounds. In particular, the RGS considers that authorisation under section 9 is only appropriate where the nominated individual has previously been authorised on a number of occasions over the course of at least two years as a celebrant on a temporary basis under section 12 of the 1977 Act. This level of previous experience ensures celebrants have the opportunity to develop the proficiency expected of a registered celebrant, and provides NRS with the means to make a more informed assessment of nominees' suitability for the status of registered celebrant.

#### **Religious or belief body**

A religious or belief body is defined in the 1977 Act as:

- “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”.

It is a pre-requisite of authorisation under either section 9 or 12 of the 1977 Act that the RGS must be satisfied the candidate for authorisation is a member of a body that meets this

definition. On the first occasion that the RGS requires to satisfy himself as to a body's status, the body will be required to produce the following materials:

- A copy of the body's constitution or statement of faith, containing the aims and beliefs of the group, together with details of the body's office bearers
- The number of the body's members, both in Scotland and within the UK (if applicable)
- Details of how often the group meets for religious worship or to uphold and promote its philosophical beliefs, such as meeting dates, calendars of events, minutes of meetings and so on, as well as details of how members are given notice of these meeting and events.

This will generally arise in the context of an application for temporary authorisation under section 12 of the 1977 Act. If the RGS is unable to satisfy himself on the basis of those materials as to whether or not a body is a religious or belief body, further information and materials may be requested.

Once the RGS is satisfied that a body is a religious or belief body for the purpose of a particular application or nomination, it is usual practice to accept it as such for the purpose of subsequent applications or nominations. This is provided that an authorised signatory has certified the body continues to conform to the statutory definition, and that there have been no material changes affecting the body other than any that have already been disclosed.

However, notwithstanding that a body may previously have been treated as a religious or belief body, the RGS reserves the right to require it to provide fresh or additional evidence of its status for the purpose of any subsequent application or nomination. The RGS also reserves the right to call upon any body with members who are authorised to solemnise marriages to provide such evidence at any time. Compliance with such a request will generally be a condition of a celebrant's authorisation.

Any change affecting a body that might affect the RGS's assessment of the body's status as a religious or belief body must be reported to NRS within 21 days of its occurrence.

### **Form of Marriage Ceremony**

Sections 9(3) and (3A) of the 1977 Act set out the conditions with which marriage ceremonies must comply in order to be considered to be of an appropriate form, and in its initial request for authorisation materials (as well as periodically), NRS will ask to see a body's current form of marriage ceremony.

Any significant change in the proposed form of marriage ceremony to be used by a body's celebrants must be notified to NRS within 21 days of its adoption.

### **Fit and Proper Person**

In assessing whether a person is a fit and proper person to solemnise marriages, the RGS considers whether a person commands the formal support of their sponsoring body, and takes account of any information relevant to the person's competence and personal integrity in relation to character, behaviour and standards of conduct.

This assessment will take into account the need to maintain public confidence in the process for solemnisation of marriages, as well as in the celebrants authorised to carry them out. This will include consideration of any offences for which a person has been convicted and which have a bearing on a person's integrity, and the likely impact that knowledge of such a conviction (taking each case on its own merits) may have on public confidence in the institution of marriage.

### **Nomination form**

Nominating bodies should use the appropriate version of Form M13(R) to nominate a member. There is one version for use when nominating a member to solemnise mixed sex marriages, and another for use when nominating a member to solemnise same sex marriages.

The nomination form contains declarations that require to be signed both on behalf of the nominating body and by the nominee.

### **Rejection of nominations**

Where the RGS rejects a nomination, this decision and the reasons for rejection will be confirmed in writing to the nominating body.

The nominating body may, within 28 days of receiving notice of rejection, appeal to Scottish Ministers, who may either direct the RGS to accept the nomination or confirm the rejection.

If a reason given for confirming the rejection of a nomination is that the nominated body is not a religious or belief body, that body may within 42 days of receiving notice of the confirmation, appeal to the Court of Session to seek determination on this question. If the Court determines that the body is in fact a religious or belief body, the RGS must accept the nomination, if that was the sole reason for confirming the rejection.

### **Conditions of registration**

Where a nomination is accepted, the RGS will determine what period the registration shall last for – being a period of not more than 3 years (the prescribed maximum) – and may in addition determine that the nominee may only solemnise marriages in a certain area. He may also make his acceptance of a nomination subject to such conditions as he thinks appropriate. The conditions imposed will generally include those set out in the Annex to this document.

### **Removal of a celebrant's name from the register**

Section 10 of the 1977 Act allows the RGS to remove a celebrant's name from the register of celebrants on any of the following grounds:

- (a) the celebrant has requested that his or her name should be removed from the register;
- (b) the body which nominated the celebrant no longer wishes him or her to be registered;
- (c) the marriage ceremony used by the nominating body is no longer of an appropriate form;

(d) the celebrant—

(i) has, while registered as an approved celebrant, been convicted of an offence under the 1977 Act;

(ii) has, for the purpose of profit or gain, been carrying on a business of solemnising marriages;

(iii) is not a fit and proper person to solemnise marriages; or

(iv) for any other reason, should not be registered.

The RGS's policy in relation to the interpretation and application of a number of these grounds is outlined below.

Where a celebrant has asked for his or her name to be removed from the register, the nominating body no longer wishes the celebrant to be registered or the marriage ceremony is no longer of an appropriate form, the celebrant's name will generally be removed from the register with immediate effect.

Where the RGS proposes to remove the name of a celebrant from the register on any of the grounds mentioned in (d) above, NRS will notify the celebrant of its intention to do so and specify the grounds of removal. Following receipt of such a notice, the celebrant must not solemnise any further marriages until either the RGS decides not to remove their name from the register, or their name is restored to the register as the result of a successful appeal.

On receipt of such a notice, the celebrant has 21 days in which to make representations to the RGS to show cause why their name should not be removed from the register. The RGS must consider any representations made before reaching his decision.

If a celebrant's name is removed from the register on a ground mentioned in (c) or (d) above, either the celebrant or the celebrant's nominating body may appeal against the decision. The appeal is to Scottish Ministers and must be made within 28 days of receipt of the notice of removal.

### **Carrying on a business of solemnising marriages for profit or gain**

Ground (d)(ii) provides for a celebrant's name to be removed from the register where the celebrant has been carrying on a business of solemnising marriages for profit or gain. The 1977 Act does not specify what patterns of activity or what types and levels of charges would amount to carrying on a business of solemnising marriages for profit or gain. The purpose of this section of the guidance is therefore to set out the RGS's policy in relation to his interpretation and application of this provision.

The RGS recognises that the legislation does not preclude a celebrant from charging an appropriate fee for solemnising a marriage, or from accepting an appropriate gratuitous payment offered in recognition of that service. That will not be considered to be carrying on a business of solemnising marriages for profit or gain, where the charges simply serve as a



means to enable the celebrant to continue to enact his or her religious or philosophical beliefs in the solemnisation of marriages.

However, a celebrant will be considered to be carrying on a business of solemnising marriages for profit or gain when the interests of enacting, celebrating and promoting the celebrant's religious or philosophical beliefs are subordinated to commercial interests. (This could mean, for instance, reliable evidence that a celebrant was pursuing 'business interests' rather than promoting their philosophical beliefs through service to a couple who shared those beliefs and had requested a marriage ceremony which reflected them.)

The RGS recognises that this is inevitably a question of degree involving an exercise of judgment as to whether a celebrant is carrying on a business of solemnising marriages for profit or gain. The RGS also recognises that a celebrant's motivation must be a matter of inference from the available evidence. In this regard, the matters the RGS will have regard to the following as potential evidence:

- Websites, fliers, content on social media channels, other promotional materials and indications of business activity
- Any denigration of civil marriage, registrars, other religious or belief bodies or their authorised celebrants as a means of advancing business
- The level of income generated from solemnising marriages and associated services, as opposed to other activity undertaken to uphold the body's philosophical beliefs
- The number of marriages solemnised, beyond what might be considered reasonable
- Any services ancillary to the marriage ceremony provided by the celebrant, by any associate of the celebrant, or by any associated supplier of services in which the celebrant has an interest.

### **Other reasons**

Ground (d)(iv) provides for a celebrant's name to be removed from the register where, for any reason other than those listed above, he or she should not be registered. It is not practical to compile a comprehensive list of circumstances that would justify removal on this ground. However, the RGS considers that it would be a reason for removal of a celebrant's name from the register if he concluded that the body that had nominated the celebrant was not, or was no longer, a religious or belief body. It may also be a ground for removal that either the celebrant or the nominating body has failed to comply with any condition of authorisation imposed by the RGS under section 9(4) of the 1977 Act.

## **ANNEX – CONDITIONS OF AUTHORISATION**

The following are the conditions that will normally be prescribed by the RGS under sections 9(4) and 12(1) of the 1977 Act. They apply in respect of the authorisation of any person to solemnise marriages under sections 9 or 12 of the 1977 Act. Any person so authorised is referred to in the conditions as an authorised celebrant.

### **Religious or Belief Bodies**

A person is eligible for authorisation if he or she is a member of a religious or belief body (as defined in section 26(2) of the 1977 Act). NRS may on occasion ask an authorised person, or the body of which he or she is a member, to provide information for the purpose of establishing whether that body remains a religious or belief body.

Any authorised celebrant or body receiving such a request must comply with it.

Any religious or belief body that has an authorised celebrant as a member must notify NRS of any of the following events or changes (if practicable, within 21 days of their occurrence):

- The death of a such a member
- Any change in such a member's name, address or designation of such a member
- Such a member ceasing to be a member of the body, or otherwise ceasing to have the function of solemnising marriages on their behalf
- Any change in the name or the address of the body itself, or amalgamation with any other body
- Any change in the form of marriage ceremony used by the body's celebrants.

### **Form of marriage ceremony**

Authorised celebrants must only use the form of marriage ceremony adopted by the religious or belief body of which they are a member, as provided to NRS.

### **Commercial activities**

An authorised celebrant must not, either alone or with any other person or body, carry on a business of solemnising marriages for the purpose of profit or gain. Details of what this means are spelled out earlier in this document.

### **Fit and Proper Person**

An authorised celebrant must be, and remain throughout the period of authorisation, a fit and proper person to solemnise marriages in Scotland. Details are similarly spelled out earlier in this document. Any authorised celebrant convicted of an offence must notify NRS of that conviction within 21 days. In addition, religious or belief bodies must notify NRS as soon as possible of any circumstances which could call into question a celebrant's fitness to solemnise marriages.

### **Revocation or suspension of temporary authorisation**

An authorised celebrant who has been granted a temporary authorisation under section 12 of the 1977 Act must not solemnise a marriage in reliance on that authorisation at any time while the effect of the authorisation has been suspended by the RGS, or after the authorisation has been revoked by the RGS.