Published in final edited form as:
Hist J. 2007 June ; 50(2): 377–395. doi:10.1017/S0018246X07006115.

THE ESTABLISHMENT OF CIVIL REGISTRATION IN SCOTLAND*

ANNE CAMERON
Centre for the History of Medicine, University of Glasgow

Abstract

An act for registering births, deaths, and marriages was passed for England and Wales in 1836. Scotland, despite evident support for the principle of civil registration there, did not obtain equivalent legislation until 1854 – a paradox that has yet to be fully explained. Eight unsuccessful bills preceded the Scottish act, and this article explores the reasons for their failure. Although the Scottish churches and municipal authorities broadly favoured vital registration, their objections to particular clauses concerning the nomination and payment of registrars, the imposition of fees for registration and penalties for non-registration, and the provision of new administrative facilities, repeatedly impeded the bills' progress through parliament. More importantly, four of the bills were linked to measures for reforming the marriage law, which were so offensive to Scottish sensibilities that the registration bills were damned by association. Only by altering these contentious clauses and eschewing any interference with the law of marriage did Lord Elcho's bill of 1854 succeed. The lengthy gestational period preceding the Scottish legislation did, however, result in the *compulsory* registration of births and deaths, unlike in England, and secured a greater breadth of detail in the Scottish registers.

I

Until well into the nineteenth century, Britain lagged behind certain other European states, notably Sweden and Prussia, in generating complete and accurate statistics of births, deaths, and marriages.1 Though the clergy had recorded baptisms, burials, and marriage banns since the middle decades of the sixteenth century, *civil* registration of vital events in England and Wales only commenced under the Registration and Marriage Acts of 1836.2 Historians have generally interpreted these statutes as a response to agitation from Nonconformists, who were aggrieved that only Church of England parochial records constituted proof of vital events in court and only Church of England marriage ceremonies were legally valid,3 and to lobbying by actuaries, medical practitioners, and representatives of the emerging statistical movement for proper vital data to serve their professional purposes.4 However, a new study by Edward Higgs has overturned both of these explanations.5 His analysis reveals that the Registration Act was not drawn up to mollify Nonconformists, for instead of granting Dissenting church registers the same legal status as those of the Church of England, it simply created a separate system of civil registration. Nor was the act introduced purely to satisfy medical men and actuaries, as it did not require the registration of stillbirths, the provision of information on morbidity, or, most importantly, the compulsory registration of births.

*I would like to thank Anne Crowther, Rosemary Elliot, Gayle Davis, and the *Historical Journal*'s anonymous referees for their valuable comments and suggestions for the improvement of certain aspects of this article. The research was undertaken with the support of the Wellcome Trust, grant 069811/Z/02/Z/AW/HH, and with the co-operation of the registrar general for Scotland.

Centre for the History of Medicine, University of Glasgow, Lilybank House, Bute Gardens, Glasgow G12 8RT a.cameron@arts.gla.ac.uk.

Europe PMC Funders Author Manuscripts

Higgs argues, convincingly, that the real impetus behind the Registration Act was the legal need for an accurate record of lines of descent. The necessity of protecting titles to property appealed to Anglicans and Nonconformists alike, and was of serious consequence by the early nineteenth century, when a general sense of insecurity pervaded the ownership and transfer of estates. This was exacerbated by deficiencies within the parochial registers, which not only excluded Nonconformists and those unable to pay the requisite fee to enter their details, but, as they merely recorded baptisms and burials, could not reliably prove anyone's date of birth or death. Thus, 'The animosity between Nonconformists and the Established Church, as well as a general reluctance of the poor to approach any religious denomination, led inevitably to the conclusion that only a civil system of registration could provide a proper underpinning for property rights.'6

The Registration and Marriage Acts of 1836 superseded the inadequate parochial system in England and Wales with civil registration under a General Register Office, but equivalent legislation for Scotland was not achieved until 1854, after no fewer than eight failed attempts. Registration bills for Scotland were brought into parliament in 1829, 1830, 1834, 1835, 1837, 1847, 1848, 1849, and 1854. Those of 1830, 1848, and 1849 were introduced and passed in the House of Lords, but failed in the Commons.7 Significantly, the bills of 1837, 1847, 1848, and 1849 were accompanied by measures for amending the Scots law of marriage. The lord advocate, who had effective charge of Scottish parliamentary business, participated in the preparation of each registration and marriage bill. While historians have noted the fact that Scotland was almost twenty years behind England in establishing civil registration, the reasons for this delay have received scant attention.8 The Scots' apparent reluctance to embrace civil registration, in spite of government support – and, indeed, the important role in the statistical movement of Scots such as James Cleland, whose sophisticated techniques for conducting a local census of Glasgow in 1819 and producing bills of mortality for the city between 1820 and 1834 were adopted for the British national censuses of 1821 and 18319 – is striking, and requires explanation. The surviving Scottish records are fuller than those for England, due partly to the fact that Scotland's different administrative structure facilitated more direct communication with the registrar general. This affords the researcher a clearer idea of the antecedent process to the Scottish Registration Act.

II

Before the mid-nineteenth century, Scotland, like England, had a system of parochial registration carried out by officers of the established church. The Church of Scotland's distinct administrative structure comprised four levels of ecclesiastical courts: the general assembly, the synod, the presbytery, and, at parish level, the kirk session. Chaired by the parish minister, the latter consisted of a number of male elders chosen by the congregation and charged with ensuring 'that the word of God was purely preached, the sacraments rightly administered, discipline imposed and ecclesiastical goods incorruptly distributed'.10 Among his other duties, the kirk session clerk was expected to enter baptisms, burials, and proclamations of marriage banns in the parish register, but the quality and regularity of the registers varied greatly from parish to parish and they were not always carefully preserved. Only 99 of the 850 Scottish parishes that returned information on baptisms, marriages and burials for the 1801 census possessed regular registers – the remainder either kept no register at all, or made only sporadic entries.11 The customary payments to session clerks for making these entries often deterred the lower classes from coming forward, but even when no fee was charged, as in the parish of Kirkpatrick-Durham in Kirkcudbrightshire, the minister lamented that 'unless I ascertain a child's birth when I baptize it, the parents never think it worth their while to give me a note of it'.12 The minister of Bunkle and Preston in Berwickshire observed that the poor seldom registered vital events because 'they have no

rich friends to leave them or their families money and property', and if a relative *did* unexpectedly leave an estate, 'the want of a registration is ... inconveniently felt'.13 Moreover, since the Church of Scotland kept the registers, other denominations frequently refused to enter their details on principle.14 In South Uist, for instance, the minister pointed out that 'Two-thirds of the population are Roman Catholics; and, without an Act of Parliament, it is impossible to keep a regular register of the whole population in a parish so circumstanced.'15 This problem was magnified by the Disruption of 1843, when almost forty percent of ministers in the Church of Scotland and possibly half of its lay membership left to found the Free Church.16 Though some Dissenting congregations instigated their own registers, these exhibited the same irregularities as the parochial ones.

Medical practitioners, municipal authorities, and others concerned with population statistics further emphasized the deficiencies of the parochial registers, arguing that the registration of baptisms rather than births, and burials rather than deaths, did not constitute an accurate record of the numbers born and dying in a parish. Like the London Statistical Society, the British Association for the Advancement of Science wished to see a registration act for Scotland, and appointed a committee to consider the vital statistics of Scotland's large towns in 1840. The committee's report of 1843 deplored 'the utter inefficiency of the present mode of registering births', and urged 'the necessity ... for some legislative measure being obtained to remedy this great national defect'.17 Dr James Stark of Edinburgh similarly branded the baptism registers 'positively worthless for any statistical information they contain', since those for Edinburgh, Glasgow, Aberdeen, Perth, and Dundee 'never registered annually more than a third of the total Births' that occurred.18

Nor did the registration of marriage banns – in other words, of the intention to marry – represent the actual number of marriages. If a man lived in a different parish to that of his prospective wife, the banns required to be proclaimed in both parishes, and were thus recorded twice; but the marriage would only be celebrated in one parish or, if the couple changed their minds, might not take place at all. Clergymen could advise couples to register their union after the ceremony but there was no legal compulsion to do so. Consequently, Stark found that only 250 of the 478 entries of proclamations of banns in Edinburgh for 1845 were recorded as having been followed by marriage.19 During the 1830s and forties, the Royal Colleges of Physicians and Surgeons of Edinburgh, which dominated the Scottish medical scene, repeatedly called for legislation to procure accurate data regarding the number and causes of deaths.20 Indeed, in 1846, Stark, who was one of the most dynamic members of the former body, prepared on his own initiative and 'with the assistance of a legal friend, the draft of a bill for the better registration of births, &c., in Scotland'. Though approved by the lord advocate, Stark's bill was not brought into parliament owing to a change in government.21

Legal practitioners, like the medical men, town councils and statisticians, also claimed that the lack of a proper system of civil registration left Scotland far behind the rest of civilized Europe. The Aberdeen Society of Advocates complained of 'great difficulties in tracing pedigrees and otherwise ascertaining questions of succession to both real and personal estates, in consequence of the Registers ... not having hitherto been kept on a complete, regular and uniform plan'.22 Yet it would seem that Higgs' strong argument for the protection of property rights as the major impulse behind the English Registration Act does not fit the Scottish case so neatly. Here, the need to secure inheritances was one of many constituent factors rather than the single most important one, underscored by the fact that relatively few of the petitions submitted to parliament on the subject of Scottish registration came from lawyers. The managers of the life assurance offices of Scotland collectively petitioned for the extension of the English registration system to Scotland,23 but Scottish

actuaries, too, were generally less vociferous than their English counterparts, possibly because assurance companies were a more recent development north of the Border.24

The chain of eight unsuccessful parliamentary bills for the improvement of vital registration in Scotland, and the ninth bill which ultimately became the Registration (Scotland) Act of 1854, emanated from a proposal advanced in 1810 by Thomas Thomson, the deputy clerk register for Scotland, who was responsible for the national records. In May of that year, Thomson approached the Church of Scotland with a 'plan which has occurred to me as necessary to the accurate formation and safe Custody' of the parochial registers. He suggested that legislation be sought to compel session clerks to record every birth, marriage, and death for a fee from the parties concerned, to fine anyone who failed to register a vital event or pay the requisite fee, to standardize the format of the registers and require their annual inspection by the minister and kirk session, and to provide for the creation of duplicate registers and the transmission of the originals to the presbyteries for safekeeping. 25 In his annual report of 1810, Thomson added that 'to establish an efficient control over those scattered Registers, and at the same time to derive from them the greatest utility to the public and to individuals, the whole ought to be connected together into one system; of which the most proper centre would be His Majesty's General Register House', the depository for the property deeds of Scotland. Every ten years the original copies of the registers should be transferred to General Register House 'to remain among the other Records of the Kingdom', while each kirk session should submit an annual abstract of the number of births, deaths, and marriages in the parish, which would furnish the government with important statistical information.26 It is noteworthy that many of Thomson's suggestions, including standardizing the format of the registers and providing for the creation and preservation of duplicates, were echoed in George Rose's bill for the improvement of parish registers in England, which was introduced to parliament in the 1810-11 session.27

The general assembly of the Church of Scotland approved of Thomson's plan and appointed a committee on the matter, which in turn nominated a sub-committee 'to communicate with His Majesty's Commissioners of Public Records, and to take any further steps in this business which may appear to them proper for promoting the object in view'.28 Nothing was achieved at that time, but six years later, when the want of registers for certain parishes and the defective state of others was hampering numerous claims to the property of soldiers killed in the Napoleonic Wars, the general assembly was persuaded to reconsider the issue. 29 On 27 May 1816, its committee on parochial registers recommended that presbyteries be instructed 'to secure the keeping of three separate Registers [of births, marriages, and deaths] in every Parish'.30 The assembly charged the committee with taking steps to procure an act of parliament to this effect, and renewed its appointment every year thereafter.31 In December 1820 Thomson pressed the assembly upon the committee's progress, having received a letter from Lord Binning urging that the baptismal registers be placed under statutory control and accusing the clergy of 'tardiness' in this regard.32 Thomson's intervention seemed to have some effect, for ten months later another of his correspondents, J. H. Forbes, remarked 'that it is in contemplation, with a view to financial objects, to get a more accurate & comprehensive Obituary established in Scotland than we have at present', and expressed the hope that Thomson's scheme of 1810 might be resurrected.33 Yet Thomson's surviving correspondence files contain no further reference to the subject, and it was not until 1829 that a bill was brought into the House of Lords 'for the better Regulation of Parochial Registers in Scotland'. Consideration of that measure was postponed for the session, and although a second bill was introduced and passed by the Lords in the following year, it was subsequently buried in the Commons.34

Thomson's original proposals formed the core of both bills. That of 1829 adopted his suggestions for separate registers of births, marriages, and deaths, each conforming to a prescribed format, kept by the session clerk, and verified annually by the kirk session and heritors (landed proprietors who paid parochial rates). It also required yearly summaries of the numbers of births and deaths in each parish from which the lord clerk register could tabulate all the returns for Scotland, and the transmission of the registers every ten years for safekeeping, albeit to the county sheriff clerks rather than the presbyteries. It did not, however, propose duplicating the registers or charging fees for recording births and deaths, instead requiring the officiating minister to intimate baptisms (births), the kirk officer or gravedigger to notify burials (deaths), and Dissenting ministers to transmit records of any baptisms they performed for inclusion in the parish register. Owing, apparently, to the clergy's reluctance to bear such responsibilities,35 the bill of 1830 stipulated that births should rather be intimated by the parents, that no baptism be performed until the minister had seen a certificate of birth registration, and, similarly, that no corpse be buried until the kirk officer or gravedigger had received a certificate of death registration. Another clause stated that couples proclaimed for marriage should obtain a certificate from the session clerk, to be signed by the officiating minister after the marriage ceremony and then returned so that the details could be copied into the marriage register. The bill also proposed that the present parochial register-keepers should continue in that capacity, even if they did not happen to be session clerks.

The six subsequent bills of the mid-1830s and 1840s all embodied the principles of Thomson's scheme, including the production of a duplicate set of registers and the transmission of one set to a central office. They projected a system of civil registration for Scotland modelled on that of England, but with several essential differences. The 1836 act had divided England into superintendent registrars' districts based upon the newly established Poor Law unions, and appointed the clerk to the board of guardians as superintendent registrar in each district. These large units were further divided into sub-districts, each with a local registrar appointed by the superintendent.36 However, as there were no unions in Scotland, where the Poor Law still operated on a parochial level, the Scottish proposals required that the counties form the larger registration districts, the sheriffs or sheriff clerks serve as superintendent registrars, and the parishes or large towns form the sub-districts.37

The Scottish bills were more ambitious than the English act in several respects. The English measure did not make birth registration compulsory, though it did prescribe fines for failure to register a death.38 Conversely, every Scottish bill apart from that of 1837 – which, of all the failed Scottish measures, most closely resembled the English act – made both birth and death registration obligatory, with penalties for non-compliance.39 It may be noted, however, that both the English legislation and the Scottish bills of the 1830s and forties (though not the act of 1854) allowed the old ecclesiastical system of recording baptisms, burials, and the proclamation of banns to carry on alongside the new civil system of registration.

The bills of 1847, 1848, and 1849 further aimed to record more particulars about individual births, deaths, and marriages than the English registers, and, at the desire of the Royal College of Physicians of Edinburgh (RCPE), to state the cause of death in a different format from the English practice. The RCPE believed that the English death schedule, which had only one column for noting the cause of death, was fundamentally flawed and facilitated imprecision. Although the English registrars were instructed to take information about the cause of death from the deceased's medical attendant whenever possible,40 the RCPE emphasized that in many cases there would be no medical attendant, and to achieve the most

accurate record it was essential to distinguish the *precise* details provided by doctors, from the more *general* information given by friends or relatives of the deceased.41

On perceiving that the death schedule in the Scottish bill presented to parliament on 22 February 1847 contained the English single column for stating the name and duration of the fatal disease, representatives from the RCPE met with the lord advocate to express their concerns, and convinced him to alter the schedule in accordance with their wishes.42 The amended version, submitted to parliament on 26 April, had two distinct columns: one for the precise, 'ascertained' cause of death, and another for the 'conjectured' cause, appropriate to cases where the deceased had had no medical attendant and the information was instead supplied by a friend or family member.43 The RCPE's support for the bills of 1848 and 1849 was similarly dependent on the incorporation of this mode of recording the cause of death,44 and they also recommended that the Scottish system should employ a more simplified list of disease classifications than that used in England.45 The medical input into the Scottish bills is certainly more noticeable than in the English legislation, reflecting the fact that the RCPE had easier access to the Scottish administration than its English counterpart. Yet, despite the physicians' influence having prevailed in the 1840s, the death schedule adopted under the Registration (Scotland) Act followed the English format of having only one column for the cause of death.46

When preparing his bill of 1847, the lord advocate benefited from observing the workings of the English act, and sought the opinion of the registrar general for England, George Graham. 47 Graham pinpointed twelve deficiencies in the English system, including the fact that not every birth and death was registered, that medical practitioners were not compelled to provide a written statement of cause of death, and that the schedules for recording births, deaths, and marriages did not contain sufficient particulars for statistical or inheritance purposes. He was anxious that such defects should not mar the lord advocate's bill, which presented an opportunity to 'make experiment in Scotland of ... more stringent enactments, which afterwards, if they are found to answer, I should hope to see introduced throughout Great Britain and Ireland'.48 Graham even produced a few modified copies of the Scottish bill showing two extra clauses and some additional columns in the schedules, which he hoped would be incorporated when the bill was discussed in the House of Commons committee. These private copies were distributed to the lord advocate, the home secretary, the prime minister, and three or four gentlemen in the General Register Office for England, but may later have been destroyed, as they have not yet come to light.49

III

If, as the evidence suggests, significant Scottish opinion was broadly in favour of compulsory registration of births, deaths, and marriages, why, to quote *The Scotsman* newspaper, were the initial attempts of 1829 and 1830 and the six subsequent measures of the mid-1830s and 1840s 'smothered in the birth'?50 Martin rightly argues that the RCPE's insistence upon revising the Scottish death schedule to their specifications in the 1840s may have delayed matters to some degree, but this was hardly a significant factor in the bills' failure because the lord advocate readily addressed the physicians' concerns in order to receive their wholehearted support for the measures.51 The explanation rather lies in the objections raised by other sections of the community to particular clauses in the bills, which foundered on substantially the same grounds each time. These included the expense and complexity of the administrative machinery, the question of fees for registration and penalties for non-registration, the methods for appointing local registrars, and the proposal to pay them from a parochial rate. Above all, the fact that four of the bills were linked to measures for altering the Scots law of marriage figured particularly largely in their failure.

Each bill subsequent to that of 1830 provided for the creation of a General Register Office in Edinburgh, staffed by a registrar general, a secretary, and various clerks, and for the appointment of a superintendent registrar for each county. As in England, the treasury agreed to pay these officers' salaries and office expenses. The bills also required a registrar for each parish, to be paid either from the registration fees or from a parochial rate. However, the Church of Scotland insisted that such a vast and expensive administration was unnecessary: all that was needed was to make the existing system of parochial registration under the session clerks compulsory and uniform, 'and to appoint a Registrar-General in Edinburgh, to whom copies of the district registries should be transmitted'.52 Debating the 1848 bill in the House of Lords, the earl of Eglinton likewise objected to 'the great number of officers to be appointed under it ... which could scarcely be calculated at less than 2,000 ... [when] the present machinery, with the addition of a clerk here and there, would be quite sufficient for the purpose'.53 Political opponents maintained that the creation of so many new offices would give the government too much patronage. Others, such as the Reverend Bisset of Aberdeenshire, feared that the cumulative expense would greatly exceed that estimated by the lord advocate: 'All the oil for keeping in motion this great central machine, and the 44 county and burgh machines, and the 12 or 1500 parochial machines, is to cost, says the Lord Advocate, £10,000 a-year. Multiplying the sum tenfold, others think, will be under the truth.'54 Bisset's comments reveal the vague conception of the total number of parishes in Scotland: '12 or 1500' in his estimation, but 900 or 1,000 according to the lord advocate and Lord Campbell.55

The bills of 1834 and 1835 caused additional consternation by specifying that parties requiring the registration of any birth, marriage, or death be charged a fee, from which monies the registrars would be paid.56 That this clause should meet with hostility was hardly surprising, given the perception that existing dues for recording baptisms, burials, and banns of marriage had led the poor to neglect vital registration. Though the four subsequent bills made no mention of charges to register births or deaths, they still prescribed a fee for recording marriages.

The proposed financial penalties for failing to register vital events provoked further objections to the Scottish registration measures. Opponents claimed that these fines were unreasonably high, that people would suffer when they had not intended to offend,57 and that the obligation upon clergymen officiating at marriages and medical men present at a birth or death to notify the registrar of these events under penalty would expose them 'to much unnecessary annoyance, and even to vexatious prosecutions'.58 It was also felt that by making several individuals jointly responsible for registering a particular event, rather than placing sole responsibility on one informant, the bills would actually increase the likelihood of registrations being omitted.59 A birth, for instance, had not only to be intimated by the parents, but by the medical man or midwife in attendance, the householder, and anyone else present at the event. As the Reverend Bisset pointed out, 'the Doctor may trust to the Midwife, and the Midwife to the Parent, and the Parent or Parents to the Occupier of the house, or he may say there are plenty of others to do this besides me, and thus, what is every one's business comes to be no one's business'.60 If none of these people gave notification of the birth, all of them would be fined, prompting Bisset to predict that 'if this Bill pass, we shall all, clergy and laity, be daily walking amidst the snares and pitfalls of law ... as the burden of working the Bill must unquestionably be borne by every one who burns a fire, so may its penalties come to every man's door'.61

Instead of charging fees to the individuals requiring registrations and using these to pay the registrars, the bills of 1837 and 1847 stipulated that parochial boards should give the registrars 2s. 6d. for each of the first twenty births or deaths, and 1s. for every subsequent birth or death registered in any given year 'out of the monies in their hands' – in other

words, from the parish assessment for the support of the poor. Understandably, this was not received warmly.62 Many local authorities worried that it would create a precedent for diverting the poor's money to other purposes,63 while the commissioners of supply for the county of Banff considered the clause 'most objectionable ... as it would entail a heavy expense upon Property which is already highly taxed'.64 Even *The Scotsman*, one of the staunchest supporters of the registration bills, concluded that 'To throw upon the Poor-rates any charge which does not exclusively refer to the maintenance of the poor, is defensible or even explainable on no other ground than that it is an easy escape from a difficulty.'65

In answer to these criticisms, the lord advocate explained to parliament that the clause had been misconstrued, and that he actually intended to have a *separate* rate for the payment of the registrars, which would be raised in the same manner as the poor rate but kept distinct from it. His speech, in which he projected the total amount of local taxation required for the working of the measure at £9,500 – 'somewhat less than 4 per cent on the average amount of our present poor assessment' – convinced *The Scotsman* that

> this can scarcely be called a high price to pay for being on a par with our English neighbours in the possession of a great body of national statistics, and we will venture to say that a far greater sum is expended annually on litigations regarding questions of marriage or descent, which a good system of registration would have obviated.66

The clause was subsequently re-worded to stress the distinction between the poor rate and that for the remuneration of registrars.67 However, the lord advocate's claim that the latter assessment would not be overly burdensome failed to appease municipal authorities such as the commissioners of supply for the county of Edinburgh, who maintained that the registration system was a public measure, not a parochial one, and ought therefore to be funded entirely by the government.68

The Church of Scotland's opposition to the registration bills hinged upon the selection of local registrars, as its kirk session clerks were determined to protect their vested rights to the income from recording vital events.69 The bills of 1834 and 1835 specified that the parochial schoolmasters should serve as registrars,70 reflecting the difficulty of finding candidates of suitable education in small communities. This was perfectly acceptable in rural parishes, where the shortage of qualified men meant that the parochial teacher often doubled as the session clerk, but in the towns the two offices were generally kept separate, and the presbytery of Edinburgh resented any prospect of 'taking the duty of registration from the Session Clerks, and giving it to parochial schoolmasters'.71 The 1837 bill softened this clause by empowering the registrar general to nominate the registrars, but that of 1847 transferred the power of appointment to the parochial boards, and would have rendered schoolmasters ineligible for the post of registrar because the then lord advocate believed they were already heavily burdened and that the task of keeping the registers would 'withdraw them from school'.72

Predictably, the exclusion clause provoked a flood of petitions from every level of the Church of Scotland, as well as from the session clerks and schoolmasters themselves. The session clerks of Scotland sent a collective petition in March 1847, and in the following month a deputation of parochial schoolmasters met with the lord advocate.73 The deputation claimed that, outside the large towns in which the offices of session clerk and schoolmaster were distinct, there were on average 17 marriages, 69 births and 47 deaths per year in each parish, producing an annual mean of 133 registrations – hardly enough, they insisted, to interfere with teaching duties. Emphasizing their dependence upon the income from registrations, they offered to drop their protest against the bill in return for an increase in their salaries, but the lord advocate refused to entertain this suggestion.74 The parish

schoolmasters and session clerks of the presbytery of Dundee also sent a memorial to the lord advocate, pointing out that in rural areas the schoolmaster was often the only person capable of acting as registrar.75 Virtually every petition reiterated that in country parishes, well-qualified men could only afford to accept the position of schoolmaster because it was associated with the more remunerative office of session clerk.76 Although the bills left in place the old ecclesiastical system of registering baptisms, burials, and marriage banns with the session clerks, the latter argued that no one would still pay to register under a voluntary system if they were also compelled to register births and deaths under the new arrangements, and consequently 'the [old] parochial registers would soon become useless, to the great loss of their present keepers'.77

In the face of such opposition, the contentious clause was removed when the bill went into committee.78 The next two measures of 1848 and 1849 reverted to appointing the session clerks as registrars, but only if they were individually approved by the registrar general. Still dissatisfied, the Church of Scotland protested that this would leave the session clerks 'dependent on the will of a single individual ... who under any pretext, or without any pretext; might, even without the sanction of the Home Secretary deprive these respectable and meritorious individuals of all the emoluments of their offices'.79

Unfortunately for the lord advocate, the registration bills of the 1840s were introduced at a particularly turbulent time in the history of the Scottish churches, leaving him beset by warring factions. Dissenting congregations had seen no reason why Church of Scotland schoolmasters-cum-session clerks should be automatically appointed registrars under the bills of 1834 and 1835, and objected to the measures of 1848 and 1849 on the same grounds. One enraged Free Presbyterian of Edinburgh exclaimed that such preferment 'savoured a little of the spirit of the test and corporation acts' and would unfairly enhance the session clerks' salaries, while another called it 'a manifest act of injustice, and an insult to the whole Dissenters of Scotland, being two-thirds of the inhabitants of the kingdom'.80

The furore over who should serve as registrars undoubtedly helped to stifle the bills of 1847, 1848, and 1849. In the opinion of Dr George Bell, who subsequently became a district examiner for the General Register Office of Scotland,

> The public feeling of Scotland would have thoroughly gone along with the Lord Advocate, had he kept the nomination of this office open for the election of the party best qualified ... Why peril the passage of a Bill so much required ... by attaching to it a clause which tampers with the rights, violates the convictions, and wounds some of the deepest feelings of two-thirds of the whole Scottish community?81

Tellingly, the lord advocate himself suspected that were he 'to give up that principle [of making the session clerks registrars], which he could not do in justice to the session clerks ... there was not one of the dissenting body, whether of the clergy or the laity, but would support the measures under discussion'.82

The overwhelming obstacle against the Scottish registration bills, however, was their association from 1837 with attempts to tighten up the law of marriage. Until the mid-eighteenth century, the sole requirement for marriage under both English and Scottish common law was the consent of the two parties involved.83 *Irregular* marriage, established by a verbal expression of consent or a promise of marriage followed by sexual intercourse, was as legally binding as *regular* marriage, celebrated by a clergyman after the publication of banns in the parish church. In England, Hardwicke's Act of 1783 rendered irregular marriage invalid and stipulated that only weddings conducted publicly in church and preceded either by the publication of banns or the purchase of a licence would now be

recognized.84 But marriage in Scotland remained constituted solely by the mutual exchange of consent, and unions forged by a private written promise and subsequent copulation, or by a couple's verbal acknowledgement of each other before witnesses as husband and wife, or by their habitually behaving and living together as man and wife, retained legal status.85

Andrew Rutherfurd, the lord advocate of Scotland who framed the three registration and marriage bills of the 1840s, believed that a registration act would be futile without a parallel reform of the marriage law to ensure that all marriages – regular or irregular – were properly recorded.86 According to Lord Brougham and others, the Scots marriage law was in any case 'a disgrace to any semi-barbarous nation',87 for it permitted males aged fourteen and females aged twelve to marry irregularly by mutual consent at any time, in any place, and without parental approval or prior residence in the parish.88 Lord Campbell, who brought Rutherfurd's bills into the House of Lords, declared that the existing law facilitated clandestine, hasty, ill-assorted, and bigamous unions, especially at the infamous Gretna Green; that it encouraged the seduction of women,89 and was altogether such that 'nobody who had lived a short time in Scotland could know whether he was married or not'.90 Most importantly, the lack of written evidence for irregular marriages made them extremely difficult to prove for inheritance purposes. Rutherfurd concluded that 'A looser marriage law ... was not known in any civilised country, and it was a reproach to Scotland that such uncertainty should exist.'91 His marriage bills aimed to remove this 'uncertainty' and to assimilate the Scots law to that of England by permitting only two modes of marriage: regular marriage celebrated by a clergyman following the publication of banns, with the union afterwards registered according to the registration bill, and irregular marriage constituted by appearing before the registrar and signing the marriage register. No other form of irregular marriage would henceforth be recognized.

Both clergy and laity vigorously protested that to sanction irregular marriage under statute law, as opposed to common law, would place it on an equal footing with the ecclesiastical ceremony. People feared that this would devalue the sacrament of marriage and render it obsolete, as couples would come to prefer the registrar to the minister.92 Objections from the Scottish legal profession were voiced by the Dean of Faculty, who stressed that the proposals would alter the fundamental principle of Scots marriage law, with consent no longer constituting marriage unless 'given in presence of a clergyman, or by signing the register'.93 Many commentators urged that there was no need to change the law, for clandestine, hasty, and bigamous unions were actually 'of very rare occurrence – no persons in Scotland, of any credit or character, would conceive themselves properly married unless they were married by a clergyman', and 'the stigma that attaches to [irregular marriages], *both in law and in fact*, deters all but the licentious from resorting to them'.94 Accordingly, *Blackwood's Edinburgh Magazine* warned that sanctioning irregular unions under statute law and appointing the registrar as a marrying officer would de-stigmatize such marriages and establish 'a popular Gretna-green in every parish'.95

It was similarly asserted that the Scots law was a bulwark against, rather than an incitement to, the ruination of women, because anyone using a promise of marriage to seduce a female in Scotland had to abide by that promise. Cases of seduction in fact appeared to be far more prevalent in England, while most of those who married at Gretna Green, Lamberton Toll, and the other 'temples of Hymen' in the Borders had crossed over from the north of England to evade the strictures of the English marriage law.96 Opponents of the bills urged that this ought to be stopped by passing a measure requiring English parties to reside in Scotland for a certain period before they could marry there, rather than by altering Scottish law. Calls to curb the rising numbers of English couples crossing the Border to marry were eventually answered by Lord Brougham's Marriage Act of 1856, which required one of the parties to

have lived in Scotland for at least twenty-one consecutive days prior to marriage, but did not otherwise interfere with Scottish irregular marriage.97

Ultimately, the vehement opposition to the marriage bills had unfortunate consequences for the associated registration bills. Since these measures were publicly viewed as indivisible, to oppose one was to oppose the other,98 and, to quote *Blackwood's*, the registration bill of 1849 'might very possibly have been carried had it stood alone'.99

IV

In 1854, Lord Elcho finally succeeded in framing an acceptable registration act for Scotland after a gestational period of twenty years, or forty-four years if one follows the trail of abortive measures back to Thomas Thomson's scheme of 1810. Having carefully observed the fates of the eight preceding bills, Elcho deliberately tailored his measure to avoid the major pitfalls and placate key interest groups. Rutherfurd's bills of the 1840s had been attacked for their complex and expensive administrative machinery, therefore Elcho and the new lord advocate, James Moncrieff, sought to 'combine the utmost degree of efficiency with the utmost degree of economy' by utilising the existing administrative structure as far as possible.100 Rather than build an expensive new facility, they proposed to locate the General Register Office within the existing Register House, and to appoint its deputy clerk register as registrar general. This reverts neatly back to Thomas Thomson's earlier proposals, which had envisaged storing the parish registers at Register House – fittingly, had Thomson still been in post in 1854, he would have become the registrar general for Scotland. Elcho made further economies by not paying the sheriffs anything extra for serving as superintendent registrars, arguing that the treasury had only recently increased the sheriffs' salaries and that their duties under the registration bill would not be onerous.101

In like manner, Elcho tried not to re-ignite ecclesiastical and scholarly passions over the appointment of local registrars. His bill provided that all session clerks holding office when the Registration (Scotland) Act took effect on 1 January 1855 would, if deemed competent, be appointed registrars during their lifetime. However, they would have no vested rights in the office, could be dismissed for misconduct, and on their death or removal the parochial board would appoint a successor, subject to the approval of the registrar general and sheriff. 102 The bill originally required the appointment of a successor within six days, but the government heeded a request from the general assembly of the Church of Scotland to extend this to four months so that if the former registrar had been the parish schoolmaster, there would be time to appoint a replacement teacher who could then be considered for the registrar's post. The act thus appeased the schoolmasters, and additionally entitled any deposed register-keepers who were *not* session clerks to request compensation for loss of earnings.103

In order that registration should be compulsory, Elcho was obliged to prescribe penalties for parties who failed to register births or deaths and for medical attendants who failed to transmit death certificates to the registrar. Nor could he avoid introducing a parochial rate for the payment of registrars, but his bill did not require informants to pay any fees for registering a birth or death, unless the former were registered beyond the statutory period of three months, or for registering a marriage, unless the couple requested the registrar to attend the ceremony for this purpose.104 Finally, and perhaps decisively, Elcho made no parallel attempt to alter the marriage law, having learned from Rutherfurd's experience that 'the people of Scotland regarded with jealousy and suspicion any attempt to interfere with a law to which they were so wedded'.105

In contrast to the English legislation, the Registration (Scotland) Act of 1854 established the *compulsory* registration of births and deaths. It also required the registration of regular

Europe PMC Funders Author Manuscripts

marriages. This could not be achieved for all *irregular* marriages because the marriage law remained unaltered, but as Scottish couples rarely married irregularly at this time, most unions were in fact recorded.106 The new Scottish registers contained more particulars about individual births, deaths, and marriages than their English counterparts, although certain categories of information proved so problematic and cumbersome that they were dropped after the first year of operation. The birth register, for example, initially required the ages and birthplaces of the child's father and mother, and the number of other children of the parents, whether living or deceased,107 which was simply too much work for the registrars. Contrary to Lord Elcho's assertion, the duty of checking and certifying the registers of births, marriages, and deaths for each parish in their district also proved objectionable to the sheriffs, whose hands were already full.108 Before the Registration Act had even come into force, the sheriffs persuaded Lord Advocate Moncrieff that it was impracticable for them to fulfil this additional function, and he began making plans to introduce salaried district examiners who would visit each parish annually to inspect the registers. This he achieved under an amending act of June 1855.109 A few years later, it was similarly necessary to provide the General Register Office for Scotland with a purpose-built home, New Register House, which was completed in 1864.110 In practice, the schoolmasters-cum-session clerks continued to act as registrars in rural districts and when a representative from the General Register Office for England came to evaluate the Scottish system in 1871, he found that many of those appointed in 1855 were still in office: 'the great majority of the Scottish Registrars in country places are the parochial schoolmasters; men for the most part of excellent education, and so far as I have seen them of a decidedly superior stamp as compared with the generality of country registrars in England'.111

This article has offered a comprehensive analysis of the antecedent processes to the Registration (Scotland) Act and the key factors in the failure of the various bills introduced to parliament between 1829 and 1849. These measures undoubtedly suffered for their unfortunate timing – the Disruption of 1843 and the consequent animosity between the Church of Scotland and the new Free Church meant that any proposal appearing to give either body an advantage (in this case, the nomination or exclusion of Church of Scotland session clerks as registrars) was bound to be unpalatable to the other. Yet the nascent Scottish system of general registration was the better for its long gestation, as the twenty-five-year interval between the first bill of 1829 and the act of 1854 allowed successive lords advocate to observe and learn from the positive and negative features of the English act, and to iron out most of the contentious aspects of their own proposals for Scotland. Indeed, one could argue that the General Register Office for England also profited from this process, for, just as Scotland had learned from the English experience in the 1830s and 1840s, so the registrar general for England was subsequently able to weigh up the pros and cons of the Scottish system.112 The existence of compulsory registration in Scotland was certainly used to lobby for its implementation in England, though, as Higgs points out, English anxieties over the concealment of infanticide and the activities of the Anti-Vaccination League were more important factors.113 Compulsion was finally achieved in England under the Registration Act of 1874 – no less than twenty years after its introduction in Scotland.

References

1. See Peter Sköld, 'The birth of population statistics in Sweden', *History of the Family*, 9 (2004), pp. 5-21; Jürgen Wilke, 'From parish register to the "historical table": the Prussian population statistics in the 17th and 18th centuries', ibid., pp. 63-79; Parliamentary Papers (PP) 1833 (669) XIV, *Report from the select committee on parochial registration*, p. 559.
2. The broader background to state information gathering in England is outlined in Edward Higgs, *The information state in England: the central collection of information on citizens since 1500* (Hampshire, 2004). For the establishment of civil registration in England and the functions of the

General Register Office, see, in particular, Edward Higgs, *Life, death and statistics: civil registration, censuses and the work of the General Register Office, 1836-1952* (Hertfordshire, 2004), especially pp. 3-17; M. J. Cullen, *The statistical movement in early Victorian Britain: the foundations of empirical social research* (New York, 1975), pp. 29-43; Idem, 'The making of the civil registration act of 1836', *Journal of Ecclesiastical History*, 25 (1974), pp. 39-59; John M. Eyler, *Victorian social medicine: the ideas and methods of William Farr* (Baltimore and London, 1979); and the collection of articles in *Social History of Medicine*, 4 (1991), special issue: *The General Register Office of England and Wales and the public health movement 1837-1914, a comparative perspective*.

3. For this view, see especially Cullen, 'The making of the civil registration act of 1836', pp. 39-59.
4. Eyler, *Victorian social medicine*, pp. 39, 42-3; Cullen, *The statistical movement in early Victorian Britain*, pp. 29-43; Idem, 'The making of the civil registration act of 1836', pp. 39-59.
5. Higgs, *Life, death and statistics*, pp. 3-18.
6. Ibid, p. 13.
7. There were also several failed attempts to pass a registration act for England in the 1820s and early 1830s. Ibid., pp. 4, 10.
8. This issue is discussed very briefly in Cecil Sinclair, *Jock Tamson's bairns: a history of the records of the General Register Office for Scotland* (Edinburgh, 2000), pp. 34-6, while Sheonagh Martin's analysis of the Edinburgh physicians' influence upon the Scottish registration bills neglects to mention some important factors in the bills' failure, particularly the resistance to altering the marriage law. Sheonagh M. K. Martin, 'William Pulteney Alison: activist, philanthropist and pioneer of social medicine' (unpublished PhD thesis, St Andrews, 1997), pp. 297-319.
9. For Cleland's career, see Stana Nenadic, 'Cleland, James (1770-1840)', in H. C. G. Matthew and Brian Harrison, eds., *Oxford dictionary of national biography: from the earliest times to the year 2000* (61 vols., Oxford, 2004), XII, pp. 14-15.
10. A. Gordon, *Candie for the foundling* (Edinburgh,1992), pp. 1, 3, 301.
11. PP 1801-2 (112) VII, *Abstract of answers and returns under act for taking account of population of Great Britain (parish register abstract)*, p. 461.
12. William B. Turnbull, *Scottish parochial registers: memoranda of the state of the parochial registers of Scotland, whereby is clearly shown the imperative necessity for a national system of regular registration* (Edinburgh, 1849), p. 99.
13. Ibid., pp. 33-4.
14. George Seton, *Sketch of the history and imperfect condition of the parochial records of births, deaths, and marriages in Scotland, in illustration of the important advantages which would be derived from the introduction of a system of compulsory registration* (Edinburgh, 1854), pp. 48-9.
15. Turnbull, *Scottish parochial registers*, p. 93.
16. Stewart J. Brown, 'The ten years' conflict and the Disruption of 1843' in Stewart J. Brown and Michael Fry, eds., *Scotland in the age of the Disruption* (Edinburgh, 1993), p. 21.
17. 'Report of a committee of the British Association for the Advancement of Science ... on the vital statistics of large towns in Scotland', *Journal of the Statistical Society of London*, 6 (1843), pp. 150-66, at p. 154.
18. James Stark to James Martin, 20 May 1847, National Archives of Scotland (NAS), AD58/126.
19. Ibid.
20. See, for example, Royal College of Physicians of Edinburgh (RCPE), Minutes 1834-43 [typed transcript], pp. 3329-30, 3356; RCPE, Minutes 1843-51 [typed transcript], pp. 3607-16.
21. *Scotsman*, 2 June 1852, p. 4.
22. 'Memorial of the president and society of advocates in Aberdeen', 29 Jan. 1847, NAS, AD58/126.
23. 'Petition of the managers of the life assurance offices of Scotland', 1847, NAS, AD56/301.
24. Marguerite W. Dupree, 'Other than healing: medical practitioners and the business of life assurance during the nineteenth and early twentieth centuries', *Social History of Medicine*, 10 (1997), pp. 79-103, at p. 83.
25. Thomas Thomson to John Connell, procurator for the Church of Scotland [draft letter], 23 May 1810, NAS, SRO8/17.

26. Thomas Thomson, 'Fourth annual report', in *Five annual reports of the deputy clerk register of Scotland: 1807-1811* (Edinburgh, 1812), pp. 47-48.
27. Rose's bill was passed, in a much-emaciated form, in July 1812. See S. Basten, 'From Rose's bill to Rose's act: a reappraisal of the 1812 Parish Register Act', *Local Population Studies*, 76 (2006), pp. 43-62.
28. Thomson, 'Fourth annual report', pp. 75-6.
29. Rev. Dr Meiklejohn to earl of Haddington, 3 Mar. 1823, quoted in *Hansard's Parliamentary Debates*, new series, vol. 24, col. 425 (5 May 1830).
30. 'Overture concerning parochial registers', quoted in *Hansard*, new series, vol. 24, cols. 424-5 (5 May 1830).
31. Meiklejohn to earl of Haddington, 3 Mar. 1823, quoted in ibid., col. 425 (5 May 1830).
32. Lord Binning to Thomas Thomson, 31 Dec. 1820, NAS, SRO8/37/2.
33. J. H. Forbes to Thomas Thomson, 21 Oct. 1821, NAS, SRO8/38/4.
34. PP 1829 (23) CCXLII, *A bill intituled an act for the better regulation of parochial registers in Scotland, and for the general recording of such registrations in the office of the lord clerk register in Edinburgh*; PP 1830 (68) CCLXIII, *A bill intituled an act for the better regulation of parochial registers in Scotland, and for the general recording of such registrations in the office of the lord clerk register in Edinburgh*; *Journal of the House of Lords*, vol. 61 (1829), pp. 401, 406, 413; ibid. vol. 62 (1830), pp. 202, 332, 461, 759, 771; *Journal of the House of Commons*, vol. 85 (1830), pp. 601, 639.
35. *Hansard*, new series, vol. 24, col. 425 (5 May 1830).
36. Eyler, *Victorian social medicine*, p. 43; Higgs, *Life, death and statistics*, p. 2.
37. The Scottish Poor Law administration remained parochial until the Local Government Act (Scotland) of 1929.
38. Eyler, *Victorian social medicine*, p. 44.
39. The bill of 1837 merely stated that intimation *may* be given to the registrar of any birth or death occurring in the parish within a set period, and prescribed no penalty for failure to register. PP 1837 (244) I, *A bill for registering births, deaths and marriages in Scotland*, clause 17.
40. PP 1842 (423) XIX, *Fourth annual report of the registrar-general of births, deaths, and marriages in England*, p. 124. This instruction appeared in the regulations for registrars issued by the registrar general, rather than in the original act.
41. Martin, 'William Pulteney Alison', p. 309.
42. RCPE, Minutes 1843-1851 [typed transcript], pp. 3667-8.
43. PP 1847 (95) III, *A bill for registering births, deaths, and marriages in Scotland*, schedule B; 1836, 6 & 7 Gulielmi IV, c. 86, *An Act for registering Births, Deaths, and Marriages in England*, schedule B; PP 1847 (314) III, *A bill [as amended by the committee] for registering births, deaths, and marriages in Scotland*, schedule B.
44. Martin, 'William Pulteney Alison', pp. 311-12.
45. For a detailed discussion of the RCPE's views and its ensuing dispute with William Farr of the General Register Office for England, see ibid., pp. 304-15.
46. Ibid., p. 318.
47. George Graham to lord advocate, 25 Feb. 1847, NAS, AD58/126.
48. George Graham to lord advocate, 20 Mar. 1846 [sic: 1847], NAS, AD58/126.
49. Ibid.
50. *Scotsman*, 27 Mar. 1847, p. 3.
51. Martin, 'William Pulteney Alison', p. 317.
52. *Scotsman*, 13 Mar. 1847, p. 3.
53. *Hansard's Parliamentary Debates*, 3rd series, vol. 99, cols. 571-2 (9 June 1848).
54. J. Bisset, *Speech on the Scotch marriage and registration bills, presently before parliament, delivered in the synod of Aberdeen* (Aberdeen, 1849), pp. 8-9.
55. *Hansard*, 3rd series, vol. 99, col. 569 (9 June 1848); ibid., vol. 93, col. 232 (7 June 1847); ibid., vol. 107, col. 17 (9 July 1849). 938 parishes are listed in Sir John Sinclair, ed., *New statistical*

account of Scotland (15 vols., Edinburgh, 1845), while the act of 1854 created 1027 registration districts. PP 1861 (2814) XVIII, *First detailed annual report of the registrar-general of births, deaths, and marriages in Scotland*, p. 267.

56. *Hansard*, 3rd series, vol. 26, col. 887 (12 Mar. 1835).
57. 'Petition of the general kirk session of the town and parish of Dundee', [1847], NAS, AD58/126.
58. 'Petition of the ministers and elders of the city of Glasgow', 18 Mar. 1847, NAS, AD58/126.
59. 'Petition of the general kirk session of the town and parish of Dundee' [1847], NAS, AD58/126.
60. Bisset, *Speech*, p. 9.
61. Ibid., p. 11.
62. PP 1837 (244) I, *A bill for registering births, deaths and marriages in Scotland*, clause 26; PP 1847 (95) III, *A bill for registering births, deaths, and marriages in Scotland*, clause 34.
63. See, for example, the 'Petition of the parochial board of St. Cuthbert against the passage of the bill for registering births, deaths and marriages in Scotland in its present form', 1847, NAS, AD58/126.
64. 'Extract from the minutes of the annual general meeting of the commissioners of supply and landholders of the county of Banff', 30 Apr. 1847, NAS, AD58/126.
65. *Scotsman*, 22 May 1847, p. 2.
66. Ibid., 12 June 1847, p. 2.
67. PP 1847-8 (100) VI, *A bill intituled an act for registering births, deaths, and marriages in Scotland*, clause 37.
68. *Scotsman*, 28 Mar. 1849, p. 3. Objections were also raised to the English parish registers bill of 1812 on the grounds of cost to the taxpayer. See Basten, 'Rose's bill', p. 53.
69. English clergymen likewise feared that the parish registers bill of 1812 would adversely affect their income. Basten, 'Rose's bill', p. 52.
70. PP 1834 (369) III, *A bill to establish in Scotland a uniform and efficient system of registration of births, marriages and deaths*, clause 3; PP 1835 (79) IV, *A bill to establish in Scotland an uniform and efficient system of registration of births, marriages and deaths*, clause 3.
71. *Scotsman*, 2 May 1835, p. 4.
72. PP 1837 (244) I, *A bill for registering births, deaths and marriages in Scotland*, clause 7; PP 1847 (95) III, *A bill for registering births, deaths, and marriages in Scotland*, clauses 10 and 12; *Hansard*, 3rd series, vol. 93, col. 234 (7 June 1847); A. M. to Fox Maule, 25 Mar. 1847, NAS, GD45/14/667.
73. 'Minutes of meeting of the session-clerks of Scotland, held at Edinburgh on the 11th day of March 1847', NAS, AD58/126; *Scotsman*, 17 Apr. 1847, p. 2.
74. *Scotsman*, 17 Apr. 1847, p. 2.
75. 'Memorial to the lord advocate of Scotland in reference to "An Act for Regulating the Registration of Births, Deaths and Marriages" from the parish schoolmasters and session clerks resident within the presbytery of Dundee', [1847], NAS, AD58/126.
76. James A. MacIvor to George Traill, 13 Mar. 1847, NAS, AD58/126; *Journal of the House of Lords*, vol. 80 (1848), p. 464.
77. *Scotsman*, 13 Mar. 1847, p. 3.
78. *Hansard*, 3rd series, vol. 91, col. 1364 (26 Apr. 1847).
79. '[Copy of] Revised report by the committee of the presbytery of Glasgow appointed on the 6th day of September 1848 to consider the marriage and registration bills in the form in which they passed the second reading in the House of Commons and to make such suggestions to the presbytery thereanent as they shall see meet', NAS, AD58/126; see, also, Bisset, *Speech*, p. 5.
80. *Scotsman*, 24 Mar. 1849, p. 3.
81. G. Bell, 'The registration bill' [reprinted from the *North British Review*, May 1849], p. 18.
82. *Hansard*, 3rd series, vol. 107, col. 17 (9 July 1849).
83. Provided, of course, that they had attained the age of twelve for females and fourteen for males, and that they 'were not within the forbidden degrees of kinship, and were free of any other

marriage'. Leah Leneman, 'The Scottish case that led to Hardwicke's Marriage Act', *Law and History Review*, 17 (1999), pp. 161-9, at p. 162.

84. David Lemmings, 'Marriage and the law in the eighteenth century: Hardwicke's Marriage Act of 1753', *Historical Journal*, 39 (1996), pp. 339-60, at p. 345.
85. J. MacKenzie to lord advocate, 12 Apr. 1847, NAS, AD58/126. For a more detailed assessment of Scottish marriage, see L. Leneman, *Promises, promises: marriage litigation in Scotland 1698-1830* (Edinburgh, 2003); T.C. Smout, 'Scottish marriage, regular and irregular 1500-1940', in R.B. Outhwaite, ed., *Marriage and society: studies in the social history of marriage* (London, 1981), pp. 204-36.
86. *Hansard*, 3rd series, vol. 100, col. 1165 (7 Aug. 1848).
87. Ibid., vol. 107, col. 5 (9 July 1849).
88. *Scotsman*, 21 Mar. 1849, p. 2.
89. *Hansard*, 3rd series, vol. 99, col. 570 (9 June 1848).
90. Ibid., vol. 102, col. 857 (19 Feb. 1849).
91. Ibid., vol. 100, col. 1165 (7 Aug. 1848).
92. See, for example, ibid., vol. 100, col. 782 (25 July 1848); *Scotsman*, 28 Mar. 1849, p. 3. Most of the opposition to the English Marriage Act of 1836 likewise concerned 'the possible secularisation of marriage and name-giving the new system entailed'. Higgs, *Life, death and statistics*, p. 15.
93. [W. E. Aytoun], 'The Scottish marriage and registration bills', *Blackwood's Edinburgh Magazine*, 66 (1849), pp. 263-76, at p. 271.
94. *Hansard*, 3rd series, vol. 107, col. 5 (9 July 1849).
95. [C. Neaves], 'The Scotch marriage bill', *Blackwood's Edinburgh Magazine*, 61 (1847), pp. 646-52, at p. 649.
96. *Hansard*, 3rd series, vol. 107, cols. 7-8 (9 July 1849).
97. [Aytoun], 'The Scottish marriage and registration bills', p. 269; '[Copy of] Revised report by the committee of the presbytery of Glasgow', NAS, AD58/126; Smout, 'Scottish marriage', pp. 209-10.
98. See, for example, *Scotsman*, 3 Mar. 1849, p. 3; *Hansard*, 3rd series, vol. 107, col. 22 (9 July 1849).
99. [Aytoun], 'The Scottish marriage and registration bills', p. 268.
100. *Hansard*, 3rd series, vol. 132, col. 572 (6 Apr. 1854).
101. Ibid., cols. 573-4.
102. PP 1854 (66) VI, *A bill to provide for the better registration of births, deaths, and marriages in Scotland*, clauses 8, 9 and 15.
103. *Scotsman*, 31 May 1854, p. 3; PP 1854 (126) VI, *A bill [as amended in committee] to provide for the better registration of births, deaths, and marriages in Scotland*, clause 9; 1854, 17 & 18 Vict., c. 80, *An Act to Provide for the Better Registration of Births, Deaths, and Marriages in Scotland*, clause 75.
104. 1854, 17 & 18 Vict. c. 80, *An Act to Provide for the Better Registration of Births, Deaths, and Marriages in Scotland*, clauses 31 and 47.
105. *Hansard*, 3rd series, vol. 132, col. 575 (6 Apr. 1854).
106. Smout, 'Scottish marriage', p. 205. The act could only require those who were *convicted* before a magistrate or justice of the peace of having irregularly contracted a marriage, or who proved an irregular marriage in court by obtaining a decree of declarator, to register their union. 1854, 17 & 18 Vict. c. 80, *An Act to Provide for the Better Registration of Births, Deaths, and Marriages in Scotland*, clause 48.
107. Sinclair, *Jock Tamson's bairns*, pp. 40-1.
108. W. P. Dundas to lord advocate, 7 Dec. 1854, NAS, AD56/301; PP 1870 (C.64), XVIII, *Report of the commissioners appointed by the lords commissioners of her majesty's treasury to inquire into certain civil departments in Scotland*, p. 89.
109. 1855, 18 & 19 Vict. c. 29, *An Act to Make Further Provision for the Registration of Births, Deaths, and Marriages in Scotland*, clause 3.
110. Sinclair, *Jock Tamson's bairns*, p. 3.

111. Edward Whitaker, ‘1871 Report on registration in Scotland’, General Register Office for Scotland Library, 16-2.03, p. 8.
112. Whitaker, ‘1871 Report’, passim.
113. Higgs, *Life, death and statistics*, pp. 19, 86-7.

Europe PMC Funders Author Manuscripts