

How did my Scottish ancestors get married? Was it a regular, irregular, church or civil ceremony?



Tahitia McCabe MLS, FRSA, QG

Head of the Strathclyde Institute for Genealogical Studies

tahitia.mccabe@strath.ac.uk

<https://www.strath.ac.uk/studywithus/centreforlifelonglearning/genealogy/>

This session will explore, from a genealogist's perspective: the different historical forms of Scottish marriage; their legality and validity and whether this might impact on whether any trace of a marriage can be found.

Scotland had distinctive marriage practices based on principles of mutual consent rather than religious ceremony. Both 'regular' and 'irregular' marriages were recognized by the law. We'll consider how irregular marriages were recorded once civil registration began in 1855 and look at the long road to the creation of civil marriage, which became possible in 1939 and allowed a ceremony in a registrar's office.

Sources for marriage records will be considered, both online and in physical archives. Tips and tricks for finding these and understanding the records will be shared.

Regular marriage

From the Scottish Reformation in 1560 until 1834 for marriage to be a regular marriage there were three essential conditions:

- Proclamation of the intended marriage ("banns") in the parish church or churches of the parties
- Celebration of the ceremony by a minister of the established Church of Scotland (and by Episcopalian clergy from 1712)
- Celebration in church and on a Sabbath (Sunday)

If either of the first two requirements was missing, the marriage was **clandestine** and illegal and thus the parties and the celebrant could be penalised. However, the marriage could still be **irregular** and thus **valid**. For example, the law always agreed that a Roman Catholic priest or a dissenting minister was capable of performing the marriage ceremony, but these had the status of *marriage by consent in the presence of witnesses*.

Irregular marriages

Basically, anything other than the form of marriage described above was considered “irregular” and even illegal at times, but these marriages could still be valid.

There were four distinct types:

- Betrothal followed by intercourse.
- Marriages by consent in the presence of witnesses.
- Marriages according to the forms of the Church of Scotland but without banns.
- Marriages by consent without witnesses (*by co-habitation and repute*)

Irregular marriages were frowned on by law and the churches, and couples who admitted to them were fined by the Kirk Session, but they had the same inheritance rights as regularly married couples and their children were legitimate.

Dates and events in the history of Scottish marriage

1503 - An Act recognising co-habitation and common repute as evidence of marriage was passed. Scotland is Catholic at this time.

1560 – The Reformation comes to Scotland and the Reformed Church of Scotland (“The Kirk”) is formed. This is Presbyterian, with no bishops (mostly...).

1641 and 1649 – Various marriage acts reflected Presbyterian supremacy.

1661 and 1672 – New marriage laws reflect Episcopalian supremacy after the restoration of the monarchy and Charles II’s imposition of bishops on the Kirk.

1690 – Presbyterianism is restored after the Catholic James VII and II is deposed by William and Mary in 1689.

1698 – More Presbyterian marriage acts, especially penalising those who refused to name witnesses.

1712 – The Toleration Act allowed Episcopalian clergy to solemnise marriages on certain conditions.

1753 – The Hardwicke Act for the Better Prevention of Clandestine Marriages passed into **English law**. All marriages in England had to be in a licensed place, which led to the popularity of Scottish Borders marriages at Gretna and other places.

1834 – The Marriage (Scotland) Act permitted marriage by dissenting clergy.

1856 – Brougham’s Marriage (Scotland) Act introduced a three-week residency requirement.

1929 - The Age of Marriage Act 1929 raised the minimum age for marriage to 16 for both sexes from the common law ages of 12 for girls and 14 for boys.

1939 – The Marriage (Scotland) Act 1939 ended two forms of irregular marriage (marriage by declaration of present consent and marriage by promise followed by sexual intercourse). The 1939 Act also introduced civil ceremonies for marriage, with such ceremonies carried out by authorised registrars.

1977 – Marriage (Scotland) Act consolidated marriage law in Scotland and made minor changes, such as ending the need for banns to be proclaimed in the Church of Scotland.

1986: The Law Reform (Parent and Child) (Scotland) Act 1986 abolished the practical effect of illegitimacy, making it irrelevant for a person whether his/her parents were married.

2004. The Civil Partnership Act (Scotland) allowed same sex couples to form legally recognised partnerships.

2006 - Family Law Scotland Act abolished marriage by cohabitation with habit & repute and formally removed the status of illegitimacy from Scots law, other than in relation to the reserved area of hereditary titles and arms.

2014 - Marriage and Civil Partnership (Scotland) Act permits marriage between same sex couples.

2021 – Mixed sex civil partnership was introduced in Scotland in June 2021.

Further reading on Scottish marriage and records

Seton, George. (1854) *Sketch of the history and imperfect condition of the parochial records of births, death, and marriages in Scotland*. Edinburgh: Thomas Constable.

<http://archive.org/details/sketchofhistoryi00setouoft> : accessed 03 December 2025.

Thomson, J. Maitland. (1922) *The public records of Scotland*. Glasgow: Maclehose, Jackson and Co. [particularly chapter 4: the notary public and chapter 5: ecclesiastical records]

<http://archive.org/details/publicrecordsofs00thomuoft> : accessed 03 December 2025.

University of Glasgow's Centre for the History of Medicine. *Scottish way of Life and Death: Marriage*.

<https://www.gla.ac.uk/schools/socialpolitical/research/research-projects/scottishwayofbirthanddeath/marriage/> : accessed 03 December 2025.

Sources for marriage records

FamilySearch, Ancestry and FindMyPast all have some Scottish marriage information available, most of this is transcribed but some images are now being provided so it's worth checking in their list of records available to see updates. A notable example is FindMyPast's collection of Scottish

Catholic parish marriages, which includes images of the registers (these appear to be the records also found on ScotlandsPeople).

National Records of Scotland. *Irregular border and runaway Scottish marriages*, 8th ed.

<https://webarchive.nrscotland.gov.uk/20240326182509/https://www.nrscotland.gov.uk/research/guides/birth-death-and-marriage-records/irregular-border-marriage-registers> : 03 December 2025.

[Provides a link to a list of custodians and owners of all the known and existing records of Scottish irregular and runaway marriages]

ScotlandsPeople. <https://www.scotlandspeople.gov.uk/> : accessed 03 December 2025. [Provides access to Church of Scotland, Catholic and non-conformist records as well as civil marriage records. Also includes Kirk Session records for many parishes. For a list of the parishes that are covered, see <https://www.scotlandspeople.gov.uk/guides/churchregisters>. For information on Kirk Sessions, see

<https://webarchive.nrscotland.gov.uk/20220615133059/https://www.scotlandspeople.gov.uk/guides/kirk-session-records>]

Scottish Indexes. *Non Old Parish Record Birth/Marriage/Death indexes*.

<https://www.scottishindexes.com/coveragebmd.aspx> : accessed 03 December 2025. [An index to Kirk Session material (Church of Scotland), other Presbyterian churches, and the registers of the Quakers. These cannot be found on ScotlandsPeople.]

Scottish Records Society. *Old Series Publications*.

<http://www.scottishrecordsociety.org.uk/publications/old-series/> : accessed 03 December 2025.

[Freely downloadable transcribed records such as parish registers, registers of testaments (wills) and more. Includes quite a few sets of marriage registers from around Scotland.]

Records held at archives or by churches

Many non-conformist church records are held at archives around Scotland. You will need go in person to the archive that holds the register you want to look at to arrange access or hire a local genealogist to take down the information for you. The church itself might also still hold marriage registers so it's worthwhile contacting the headquarters of that denomination in Scotland for further information.

The *Scottish Archive Network (SCAN)* has an online catalogue of archive collections that you can search for information on what archive(s) might hold records for the area or church of interest.

Scottish Archive Network. *Online catalogue*.

<http://catalogue.nrscotland.gov.uk/scancatalogue/welcome.aspx> : accessed 03 December 2025.