
GENERAL NOTICES

NOTICE 35 OF 2008

DEPARTMENT OF HOME AFFAIRS MARRIAGE ACT, 1961 (ACT NO. 25 OF 1961)

PUBLICATION OF THE DRAFT MARRIAGE AMENDMENT BILL, 2008 FOR COMMENTS

The Department of Home Affairs ("DHA") invites public comments on the draft Marriage Amendment Bill of 2008.

Written submissions should reach the DHA **on or before 15 February 2008**. Submissions should be addressed to the Acting Chief Director: Legal Services and may be forwarded to the DHA in any of the following ways:

- (a) delivered by hand to the DHA, c/o Maggs and Petroleum Streets, Waltloo, Pretoria, 0186;
- (b) mailed to the DHA at Private Bag X114, Pretoria, 0001;
- (c) faxed to 0866 113 479 / (012) 810-7044; or
- (d) e-mailed to Tsietsi.Sebelemetja@dha.gov.za and Yolande.vanAswegen@dha.gov.za

Any enquiries should be directed to **Adv Tsietsi Sebelemetja** or **Adv Yolande van Aswegen** at **(012) 810-8007** or **(012) 810-8967**.

MARRIAGE AMENDMENT BILL, 2008

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the **Marriage Act, 1961**, so as to insert, amend and delete certain definitions; to provide for the designation of ministers of religion and other persons attached to religious denomination or organization as marriage officers; to align the provisions of the Act with other legislation; to provide for the repeal of certain sections; to effect certain technical corrections and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 25 of 1961

1. Section 1 of the Marriage Act, 1961 (Act No. 25 of 1961), hereinafter referred to as “the principal Act”, is hereby amended by—

- (a) the insertion before the definition of “**Commissioner**” of the following definition:

“**Children’s Act**” means the Children’s Act, 2005 (Act No. 38 of 2005);

- (b) the deletion of the definition of “**Commissioner**”;

- (c) the insertion after the definition of “**Commissioner**” of the following definitions:
- “**Civil Union Act**” means the Civil Union Act, 2006 (Act No. 17 of 2006);
- “**Identification Act**” means the Identification Act, 1997 (Act No. 68 of 1997);”;
- (d) the insertion after the definition of “**magistrate**” of the following definition:
- “**marriage**”, for the purpose of this Act, means a marriage concluded in terms of the provisions of this Act;”;
- (e) by the substitution for the definition of “**prescribed**” of the following definition:
- “**prescribed**” means prescribed by [this Act or by] regulation [made under this Act];”; and
- (f) the insertion after the definition of “**prior law**” of the following definition:
- “**Recognition of Customary Marriages Act**” means the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);”.

Substitution of section 2 of Act 25 of 1961

2. The following section is hereby substituted for section 2 of the principal Act:

“[Ex officio marriage] Marriage officers[,] by virtue of office and designation of persons in service of State as marriage officers

2. (1) Every magistrate[,] and every special justice of the peace [and every Commissioner] shall by virtue of his or her office and so long as he or she holds such office, be a marriage officer for the district or other area in respect of which he or she holds office.

(2) The Minister and any officer in the public service authorized thereto by him or her may designate any officer or employee in the public service or the diplomatic or consular service of the Republic to be, by virtue of his or her office and so long as he or she holds such

office, a marriage officer, either generally or for any specified class of persons, [or] country or area.”.

Substitution of section 3 of Act 25 of 1961

3. The following section is hereby substituted for section 3 of the principal Act:

“Designation of ministers of religion and other persons attached to religious denomination or organization as marriage officers

3. (1) Any religious denomination or organization may apply in writing to the Minister to be designated as a religious organization that may solemnize marriages in terms of this Act.

(2) The Minister may designate such a religious denomination or organization as a religious institution that may solemnize marriages under this Act and must, from time to time, publish particulars of all religious institutions so designated in the *Gazette*.

(3) The Minister may limit the authority of any religious denomination or organization designated in terms of subsection (2) to the solemnization of marriages—

(a) within a specified area; or

(b) for a specified period.

(4) The Minister may, on request of any designated religious institution referred to in subsection (2), revoke the designation under that subsection and must publish such revocation in the *Gazette*.

(5) The Minister and any officer in the public service authorised thereto by him or her may, upon receiving a written request from any minister of religion or any person holding a responsible position in any designated religious institution, designate such person to be, as long as he or she is such a minister or occupies such position, a marriage officer for the purpose of solemnizing marriages in accordance with this Act and according to the rites of that religion.

(6) Every designation of a person as a marriage officer under subsection (4) shall be by written instrument and the date as from which it shall have effect and any limitation to which it is subject shall be specified in such instrument.

(7) The Minister and any officer in the public service authorised thereto by him or her may, upon receiving a written request from a person designated as a marriage officer under subsection (5), revoke, in writing, the designation of such person as a marriage officer for purposes of solemnizing marriages under this Act.”.

Substitution of section 6 of Act 25 of 1961

4. The following section is hereby substituted for section 6 of the principal Act:

“Certain persons may in certain circumstances be deemed to have been marriage officers

6. (1) Whenever any person has acted as a marriage officer during any period or within any area in respect of which he or she was not a marriage officer under this Act or any prior law, and the Minister or any officer in the public service authorized thereto by the Minister is satisfied that such person did so under the *bona fide* belief that he or she was a marriage officer during that period or within that area, **[he]** the Minister may direct in writing that such person shall for all purposes be deemed to have been a marriage officer during such period or within such area, duly designated as such under this Act or such law, as the case may be.

(2) Whenever any person has acted as a marriage officer during any period or within any area in respect of which he or she was not a marriage officer under this Act or any prior law, and the Minister or any officer in the public service authorized thereto by the Minister is satisfied that such person did so under the *bona fide* belief that he or she was a marriage officer during that period or within that area, **[he]** the Minister may direct in writing that such person shall for all purposes be deemed to have been a marriage officer during such period or within such area, duly designated as such under this Act or such law, as the case may be.

(3) Any marriage solemnized by any person who is in terms of this section **[to be]** deemed to have been duly designated as a marriage officer shall, provided such marriage was in every other

respect solemnized in accordance with the provisions of this Act or any prior law, as the case may be, and there was no lawful impediment thereto, be as valid and binding as it would have been if such person had been duly designated as a marriage officer.

(4) Nothing contained in this section **[contained]** shall be construed as relieving any person in respect of whom a direction has been issued thereunder, from the liability to prosecution for any offence committed by him or her.”.

Repeal of section 7 of Act 25 of 1961

5. Section 7 of the principal Act is hereby repealed.

Substitution of section 10 of Act 25 of 1961

6. The following section is hereby substituted for section 10 of the principal Act:

“Solemnization of marriages in country outside **[the Union] Republic**

10. (1) Any person who is under the provisions of this Act authorized to solemnize any marriages in any country outside the **[Union]** Republic—

- (a) may so solemnize any such marriage only if the parties thereto are both **[South African]** citizens or permanent residents domiciled in the **[Union]** Republic; and
- (b) shall solemnize any such marriage in accordance with the provisions of this Act.

(2) Any marriage so solemnized shall for all purposes be deemed to have been solemnized in the province of the **[Union]** Republic in which **[the male party]** either one of the parties thereto is domiciled: Provided that both parties shall agree on the province of domicile the marriage shall be deemed to have been solemnized in.

Repeal of section 11 of Act 25 of 1961

7. Section 11 of the principal Act is hereby repealed.

Amendment of section 12 of Act 25 of 1961

8. Section 12 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) each of the parties in question produces to the marriage officer his or her identity document issued under the provisions of the Identification Act[, 1986 (Act No. 72 of 1986);[or]”.

Insertion of section 12A in Act 25 of 1961

9. The following section is hereby inserted in the principal Act after section 12:

“Requirements for solemnization of marriage

12A. (1) A person may only be a spouse in one marriage at any given time.

(2) A person in a marriage may not conclude a marriage or civil partnership, as the case may be, under the Civil Union Act or a marriage under the Recognition of Customary Marriages Act.

(3) A person who has registered a civil union under the Civil Union Act or who is married under the Recognition of Customary Marriages Act, may not conclude a marriage under this Act.

(4) A prospective spouse who has previously been—

(a) registered as a spouse in a marriage or a partner in a civil partnership, as the case may be, under the Civil Union Act;

(b) married under the Recognition of Customary Marriages Act; or

(c) married under this Act,

must present a certified copy of the divorce order, or death certificate of the former spouse or partner, as the case may be, to the marriage officer as proof that the previous civil union or marriage has been terminated.

(5) The marriage officer may not proceed with the solemnization of the marriage unless in possession of the relevant documentation referred to in subsection (4).”

Repeal of section 22 of Act 25 of 1961

10. Section 22 of the principal Act is hereby repealed.

Amendment of section 23 of Act 23 of 1961

11. Section 23 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) Upon receipt of any such objection the marriage officer concerned shall inquire into the grounds of the objection and if he or she is satisfied that there is no lawful impediment to the proposed marriage, **[he] the marriage officer** may solemnize the marriage **[in accordance with the provisions of this Act]**.

(3) If **[he] the marriage officer** is not so satisfied, he or she shall refuse to solemnize the marriage and record the reasons for such refusal in writing.”

Amendment of section 24 of Act 25 of 1961

12. Section 24 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of subsection (1), a minor does not include a person who is under the age of **[twenty-one] eighteen** years and

who previously contracted a valid marriage which has been dissolved by death or divorce.”.

Substitution of section 24A of Act 25 of 1961

13. The following section is hereby substituted for section 24A of the principal Act: is hereby amended by—

“Consequences and dissolution of marriage for want of consent of parents or guardian

24A. (1) Notwithstanding anything to the contrary contained in any law or the common law a marriage between persons of whom one or both are minors shall not be void merely because the parents or guardian of the minor, or a **[commissioner of child welfare]** presiding officer whose consent is by law required for the entering into of a marriage, did not consent to the marriage, but may be dissolved by a competent court on the ground of want of consent if application for the dissolution of the marriage is made—

- (a) by a parent or guardian of the minor before **[he]** that minor attains majority and within six weeks of the date on which the parent or guardian becomes aware of the existence of the marriage; or
- (b) by the minor before he or she attains majority or within three months thereafter.

(2) A court shall not grant an application in terms of subsection (1) unless it is satisfied that the dissolution of the marriage is in the interest of the minor or minors, as the case may be.”.

Substitution of section 25 of Act 25 of 1961

14. The following section is hereby substituted for section 25 of the principal Act:

“When consent of parents or guardian of minor cannot be obtained

25. (1) If **[a commissioner of child welfare]** the presiding officer of a children's court defined in section 1 of the **[Child Care Act, 1983,]** Children's Act is after proper inquiry satisfied that a minor who is resident in the district or area in respect of which he or she holds office has no parent or guardian or is for any good reason unable to obtain the consent of his or her parents or guardian to enter into a marriage, such **[commissioner of child welfare]** presiding officer may in his or her discretion grant written consent to such minor to marry a specified person, but such **[commissioner of child welfare]** presiding officer shall not grant his or her consent if one or other parent of the minor whose consent is required by law or his or her guardian refuses to grant consent to the marriage.

(2) **[A commissioner of child welfare]** The presiding officer of a children's court shall, before granting his or her consent to a marriage under subsection (1), enquire whether it is in the interests of the minor in question that the parties to the proposed marriage should enter into an antenuptial contract, and if he or she is satisfied that such is the case, he or she shall not grant his or her consent to the proposed marriage before such contract has been entered into, and shall assist the said minor in the execution of the said contract.

(3) A contract so entered into shall be deemed to have been entered into with the assistance of the parent or guardian of the said minor.

(4) If the parent, guardian or **[commissioner of child welfare]** presiding officer in question refuses to consent to a marriage of a minor, such consent may on application be granted by a judge of the **[Supreme Court of South Africa]** High Court of South Africa: Provided that such a judge shall not grant such consent unless he or she is of the opinion that such refusal of consent by the parent, guardian or **[commissioner of child welfare]** presiding officer is without adequate reason and contrary to the interests of such minor.”.

Amendment of section 26 of Act 25 of 1961

15. Section 26 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No **[boy under the age of 18 years and no girl under the age of 15 years]** person who is 12 years or older, but under the age of 16 years, shall be capable of contracting a valid marriage except with the written permission of the Minister or any officer in the public service authorized thereto by him or her, which he or she may grant in any particular case in which he or she considers such marriage desirable: Provided that such permission shall not relieve the parties to the proposed marriage from the obligation to comply with all other requirements prescribed by law: Provided further that such permission shall not be necessary if by reason of any such other requirement the consent of a judge or court having jurisdiction in the matter is necessary and has been granted.”.

Substitution of section 27 of Act 25 of 1961

16. The following section is hereby substituted for section 27 of the principal Act:

“Proof of age of parties to proposed marriage

27. If parties appear before a marriage officer for the purpose of contracting a marriage with each other and such marriage officer reasonably suspects that either of them is of an age which debars him or her from contracting a valid marriage without the consent or permission of some other person, **[he]** that marriage officer may refuse to solemnize a marriage between them unless he or she is furnished with such consent or permission in writing or with satisfactory proof showing that the party in question is entitled to contract a marriage without such consent or permission.”.

Amendment of section 28 of Act 25 of 1961

17. Section 28 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"[Any legal provision to the contrary notwithstanding] It shall be lawful for—"

Amendment of section 29 of Act 25 of 1961

18. Section 29 of the principal Act is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

"(2) A marriage officer [shall] may solemnize any marriage in a church or other building used for religious service, or in a public office or private dwelling-house, with open doors, or in any place outside thereof: Provided that the parties themselves and at least two competent witnesses are present in such place [and in the presence of the parties themselves and at least two competent witnesses, but the foregoing provisions of this subsection shall not be construed as prohibiting a marriage officer from solemnizing a marriage in any place other than a place mentioned therein if the marriage must be solemnized in such other place by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties]."; and

(b) the repeal of subsection (3).

Amendment of section 29A of Act 25 of 1961

19. Section 29A of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The marriage officer shall **[forthwith]** transmit the marriage register and records concerned, as the case may be, to a regional or district representative designated as such under section 21(1) of the Identification Act[, 1986 (Act No. 72 of 1986)].”.

Amendment of section 30 of Act 25 of 1961

20. Section 30 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If the provisions of this section or any former law relating to the questions to be put to each of the parties separately or to the declaration whereby the marriage shall be declared to be solemnized or to the requirement that the parties shall give each other the right hand, have not **[been]** strictly been complied with owing to an error, omission or oversight committed in good faith —

- (a) **[an error, omission or oversight committed in good faith]** by the marriage officer; **[or]**
- (b) **[an error, omission or oversight committed in good faith]** by the parties; or **[owing to the physical disability of one or both of the parties]**
- (c) owing to the physical disability of one or both of the parties,

but such marriage has in every other respect been solemnized in accordance with the provisions of this Act or, as the case may be, a former law, that marriage shall, provided there was no other lawful impediment thereto **[and provided further that such marriage, if it was solemnized before the commencement of the Marriage Amendment Act, 1970 (Act No. 51 of 1970), has not been dissolved or declared invalid by a competent court and neither of the parties to such marriage has after such marriage and during the life of the other, already lawfully married another]**, be as valid and binding as it would have been if the said provisions had been strictly complied with.”.

Substitution of section 31 of Act 25 of 1961

21. The following section is hereby substituted for section 31 of the principal Act:

“Certain marriage officers may refuse to solemnize certain marriages

31. Nothing contained in this Act [**contained**] shall be construed so as to compel a marriage officer who is a minister of religion or a person holding a responsible position in a religious denomination or organization to solemnize a marriage which would not conform to the rites, formularies, tenets, doctrines or discipline of his or her religious denomination or organization.”.

Repeal of section 32 of Act 25 of 1961

22. Section 32 of the principal Act is hereby repealed.

Substitution of section 34 of Act 25 of 1961

23. The following section is hereby substituted for section 34 of the principal Act:

“Religious rules and regulations

34. Nothing contained in this Act [**contained**] shall prevent—

- (a) the making by any religious denomination or organization of such rules or regulations in connection with the religious blessing of marriages as may be in conformity with the religious views of such denomination or organization or the exercise of church discipline in any such case; [**or**]
- (b) the acceptance by [**a person**] a minister of religion or a person holding a responsible position in a religious denomination or organization of a fee ordinarily charged by such religious denomination or organization in terms of the rules and regulations of such religious denomination or organization, for the blessing of any marriage or by

reason of any such thing done by him in terms of a prior law[,]:

[provided] Provided the exercise of such authority is not in conflict with the civil rights and duties of any person.”.

Insertion of section 34A in Act 25 of 1961

24. The following section is hereby inserted in the principal Act after section 34:

“Offences and penalties

34A. (1) Any marriage officer who purports to solemnize a marriage which he or she is not authorised under this Act to solemnize or which to his or her knowledge is legally prohibited, and any person not being a marriage officer who purports to solemnize a marriage, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

(2) Any marriage officer, except a marriage officer who is a minister of religion or any person holding a responsible position in any designated religious denomination or organization designated in terms of section 3(5) of this Act, who demands or receives any fee, gift or reward for or by reason of anything done by him or her as marriage officer in terms of this Act, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

(3) Any marriage officer who knowingly solemnizes a marriage in contravention of the provisions of this Act, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

(4) Any person who, for the purposes of this Act, makes any false representation or false statement knowing it to be false, shall be guilty of an offence and liable, upon conviction, to the penalties prescribed by law for perjury.

(5) If any person contravenes any provision of this Act in any country outside the Republic, the Minister of Justice and Constitutional Development shall determine which court in the Republic shall prosecute such person for the offence committed, and such court shall thereupon be competent to prosecute such person, and for all purposes incidental to or consequential on the trial of such person, the offence shall be deemed to have been committed within the area of jurisdiction of such court."

Repeal of sections 35, 36, and 37 of Act 25 of 1961

25. Sections 35, 36 and 37 of the principal Act are hereby repealed.

Substitution of section 38 of Act 25 of 1961

26. The following section is hereby substituted for section 38 of the principal Act:

“Regulations

38. (1) The Minister may make regulations relating to—
- (a) the form and content of certificates, notices, affidavits and declarations for the purposes of this Act;
 - (b) the fees payable for any certificate issued or any other act performed in terms of this Act; and
 - (c) generally, any matter which by this Act is required or permitted to be prescribed or which he or she considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved or that the provisions of this Act may be effectively administered.
- (2) Such regulations may prescribe penalties for a contravention thereof—
- (a) of a fine not exceeding the amount that, in terms of the Adjustment of Fines Act, 1991 (Act No. 101

of 1991), may be imposed as an alternative to imprisonment for a period of 12 months; or

(b) *in lieu* of payment of a fine referred to in paragraph (a), of imprisonment for a period not exceeding 12 months."

Substitution of words

27. The principal Act is hereby amended by the substitution for the words "he", "him", "his" and "Union" wherever they occur of the words "he or she", "him or her", "his or her" and "Republic" respectively.

Transitional provisions

28. (1) The provisions of this Act shall not affect anything done or omitted in terms of the principal Act before the date of commencement of this Act.

(2) Anything done under the provisions of the principal Act prior to the commencement of this Act, which can be done under the principal Act as amended by this Act, shall be deemed to have been done under the principal Act as amended by this Act.

Short title and commencement

29. This Act is called the Marriage Amendment Act, 2007, and comes into operation on a date determined by the President by proclamation in the *Gazette*.