

CHAPTER 5:11

MARRIAGE ACT

Acts 81/1964, 6/1967 (s. 15), 35/1967.(s. 32), 20/1968, 42/1971 (s. 5), 37/1972, 21/1973 (s. 66), 41/1978 (s. 4), 17/1979 (s. 7), 29/1981 (s. 59), 15/1982 (s. 3), 18/1989.(s. 37), 22/2001 (s. 4); 23/2004 (s. 282); S.I's 213/1982, 666/1983.

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AN ACT to consolidate and amend the laws relating to the solemnization of marriages and matters incidental thereto.

[Date of commencement: 1st March, 1965.]

PART I
PRELIMINARY

1 Short title

This Act may be cited as the Marriage Act [*Chapter 5:11*].

2 Interpretation

In this Act—

“magistrate” means any magistrate appointed in terms of the Magistrates Court Act [*Chapter 7:10*];

“marriage” means a marriage under this Act;

“marriage licence” means a licence to marry issued in terms of section *sixteen*;

“marriage officer” means any person who is a marriage officer by virtue of this Act;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“minister of religion” means a person designated and registered as a marriage officer in terms of section *four*;

“prior law” means the Marriage Act [*Chapter 177 of 1963*] or the Validation of Marriages Act [*Chapter 180 of 1963*];

“Registrar” means the Registrar of Marriages referred to in section *thirty*.

PART II
MARRIAGE OFFICERS

3 Magistrate to be marriage officer for district

Every magistrate shall, by virtue of his office and so long as he holds such office, be a marriage officer for the district in which he holds office.

4 Designation of ministers of religion and other persons as marriage officers

(1) The Minister may, at the request of the authority governing any religious denomination or organization, designate any person holding a responsible position in any such religious denomination or organization to be a marriage officer for the purpose of solemnizing marriages according to Christian, Jewish, Islamic or Hindoo rites or the rites of any religion, and such person shall, for the purposes of this Act, be known as a minister of religion.

(2) The Registrar shall keep a register in the prescribed manner of all persons designated by the Minister in terms of subsection (1) as marriage officers.

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

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

(2) Any marriage solemnized during such period by any person who is in terms of a direction under subsection (1) deemed to have been a marriage officer in respect thereof, shall, if such marriage was in every other respect solemnized in accordance with this Act or a 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 a marriage officer in respect of such period.

(3) Nothing in subsection (1) 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.

6 Change of name of religious denomination or organization and amalgamation of religious denominations or organizations

(1) A change in the name of a religious denomination or organization or the amalgamation of a religious denomination or organization with any other religious denomination or organization shall not affect the designation as a marriage officer of any person who was so designated by virtue of his occupying any post or holding any position in any such religious denomination or organization.

(2) If a religious denomination or organization in such circumstances as are contemplated in subsection (1) changes the name whereby it was known or amalgamates with any other religious denomination or organization, it shall immediately inform the Minister thereof.

7 Revocation of designation as marriage officer

(1) The Minister may, on the ground of misconduct or for any other good cause, and where possible after consultation with the authority governing the religious denomination or organization concerned, revoke in writing the designation of any person as a marriage officer.

(2) Where a minister of religion severs his connection with any religious denomination or organization in respect of which he was appointed a marriage officer, he shall forthwith cease to be a marriage officer.

PART III

SOLEMNIZATION OF MARRIAGE

8 Unauthorized solemnization of marriage ceremonies forbidden

(1) A marriage may be solemnized by a marriage officer only.

(2) Any person, not being a marriage officer, who purports to solemnize a marriage shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

9 Publication of banns or notice of intention to marry or issue of marriage licence before marriage

(1) Subject to subsection (2), no marriage officer shall solemnize any marriage unless in respect thereof and in terms of this Act or a prior law—

- (a) each of the parties has caused banns of marriage to be published; or
- (b) each of the parties has caused a notice of intention to marry to be published; or
- (c) one of the parties has caused banns of marriage to be published and other has caused a notice of intention to marry to be published; or
- (d) a marriage licence has been issued.

(2) A party to a proposed marriage within Zimbabwe may, if the law of the country in which he is ordinarily resident does not require the publication of banns of marriage or of notice of intention to marry, lodge with the marriage officer concerned a certificate issued by an appropriate authority in that country to the effect that there is no impediment to the proposed marriage, and such certificate shall be accepted by the marriage officer in lieu of a certificate or notice of intention to marry if the marriage officer is satisfied that publication of such banns or notice of intention is not required by the laws of that country.

10 Application for publication and acceptance of banns

(1) Any party who desires to cause banns of marriage to be published shall deliver or cause to be delivered to any minister of religion at least two days prior to the intended publication or at any time prior to such publication, which such minister of religion may in his discretion allow, a written application to publish such banns:

Provided that no such application to publish such banns shall be accepted by a minister of religion unless the party concerned has resided in the area in which such minister of religion holds office for a period of at least fourteen days immediately preceding the date of the receipt of such application.

(2) An application referred to in subsection (1) shall—

- (a) state the full names, age, condition and residential address of each of the parties; and
- (b) bear the signature of each of the parties and be dated by either of them.

(3) Nothing in this Act contained shall be construed as compelling any minister of religion to accept and publish any banns of marriage.

11 How publication of banns of marriage to be made

(1) Any minister of religion or any person authorized by the authority governing the religious denomination or organization concerned may publish banns of marriage.

(2) Such banns of marriage shall specify the full names and residential address of each of the persons to be married and publication thereof shall, subject to subsection (3), be made either—

- (a) in an audible manner, some time during public divine service, on three Sundays preceding the solemnization of the marriage, in the face of the congregation before whom such minister of religion or other authorized person officiates; or
- (b) by posting the banns, for an unbroken period covering three successive Sundays preceding the solemnization of the marriage, in a conspicuous place in or in the immediate vicinity of the ordinary place of worship of the congregation concerned.

(3) If the principal public divine service of a denomination or organization is held weekly on a day other than a Sunday, publication of banns in terms of paragraph (a) of subsection (2) may be made during such a service on such day instead of on a Sunday.

12 Certificate of publication of banns

(1) Subject to section *nineteen*, a minister of religion shall, on the application of either of the persons desiring to marry and after banns of marriage have been published in terms of section *eleven*, issue to such person or persons a certificate to the effect that the banns have been so published.

(2) A certificate in terms of subsection (1) shall state the full names, age, condition and residential address of each of the parties concerned and the dates on which or period during which publication of the banns was made, and may contain such further particulars as such minister of religion may think fit.

13 Publication outside Zimbabwe of banns or notice of intention to marry

(1) Banns of marriage or a notice of intention to marry, as the case may be, published in a country outside Zimbabwe shall, for the purposes of this Act, be regarded as having been published in Zimbabwe, but a marriage officer shall not solemnize any marriage in pursuance thereof unless there is produced to him proof that publication of such banns or such notice, as the case may be, was duly made according to the law of such country.

(2) Section *seventeen* shall apply, *mutatis mutandis*, with reference to any banns or notice referred to in subsection (1).

14 Notice of intention to marry

(1) Any party who desires the publication of a notice of intention to marry shall apply in the manner prescribed to a magistrate to publish such notice.

(2) An application in terms of subsection (1) shall—

- (a) state the full names, age, condition and residential address of each of the parties; and
- (b) bear the signature of each of the parties and be dated by either of them.

(3) If the magistrate to whom such application is made is satisfied that the applicant has resided in the district in respect of which the magistrate holds office, for a period of at least fourteen days immediately preceding the date of the receipt of the application, he shall publish such notice by posting it in a conspicuous place in or in the immediate vicinity of his office for a continuous period of fifteen days.

(4) If only one of the parties concerned has so resided in such district it shall, for the purposes of section *nine*, be deemed that only such party caused such notice to be published.

(5) Every notice referred to in subsection (3) shall state the full names, condition and residential address of each of the parties desiring to marry.

15 Certificate of publication of notice of intention to marry

(1) Subject to section *nineteen*, any magistrate who has in terms of section *fourteen* published a notice of intention to marry shall, on the application of either of the persons desiring to marry and on payment to him of the prescribed fee, if any, issue to such person a certificate to the effect that such notice was so published.

(2) A certificate in terms of subsection (1) shall state the full names, age, condition and residential address of each of the parties as well as the period during which such notice was published.

16 Marriage licence

(1) Parties desiring to marry without the publication of banns or notice of intention to marry may personally apply to a magistrate for a licence to marry without the publication of banns or notice to marry.

(2) The magistrate to whom an application in terms of subsection (1) is made shall require each of the parties to furnish him with their full names, age, condition and residential address and may put to each of them such questions as he may deem necessary to determine whether any lawful impediment exists to the proposed marriage.

(3) If the magistrate to whom an application in terms of subsection (1) is made is not satisfied that the proposed marriage may be legally solemnized, he shall, in order to determine whether there is any lawful impediment to the marriage, interrogate each of the parties, demand the production of relevant documents and institute such other inquiries as he may think necessary.

(4) For the purpose of any interrogation in terms of subsection (3), the magistrate may administer an oath to each such party.

(5) If the magistrate is satisfied, whether or not after any interrogation and inquiries in terms of this section, that there is no lawful impediment to the proposed marriage, he shall, upon completion by each of the parties of a solemn declaration to the effect that there is no lawful impediment to the proposed marriage and upon payment of the prescribed fee, if any, issue to them a marriage licence in the prescribed form.

(6) If the magistrate is not satisfied in terms of subsection (5), he shall refuse to issue a marriage licence.

17 Period of validity of banns, notice of intention to marry and marriage licence

(1) Unless a marriage is solemnized in pursuance of banns of marriage or notice of intention to marry published, or a marriage licence issued, under this Act within three months of the first date of publication of such banns or notice or the date of issue of such licence, such banns or notice or licence, as the case may be, shall lapse and no marriage shall be solemnized in pursuance thereof.

(2) No person shall be entitled to a refund of any fee paid in respect of a certificate or licence which has lapsed by virtue of subsection (1).

18 Informalities in publication of banns or notice of intention to marry or in issue of marriage licence

Where in the case of any marriage solemnized after the 1st March, 1965, the provisions of this Act relating to the publication of banns or notice of intention to marry or to the issue of a marriage licence, or the applicable provisions of any law of a country outside Zimbabwe relating to the publication of banns or notice of intention to marry, have not been strictly complied with by reason of an error, omission or oversight on the part of any person responsible for such publication or such issue, that marriage shall, if there was no other lawful impediment thereto, be as valid as it would have been if those provisions had been strictly complied with.

19 Objections to marriage

(1) Any person desiring to raise any objection to any proposed marriage shall lodge such objection in writing with—

(a) the person who makes publication of the relevant banns of marriage or notice of intention to marry:

Provided that, in the case of banns published in terms of paragraph (a) of subsection (2) of section *eleven*, any person desiring to raise any objection may do so orally, and such objector shall, if so required by the person making the publication, confirm such objection in writing; or

(b) the magistrate who issues a marriage licence in respect of such proposed marriage; or

(c) the marriage officer who is to solemnize such marriage.

(2) If any such objection is brought to the notice of—

(a) the marriage officer who—

(i) is required to issue a certificate in terms of section *twelve* or *fifteen*; or

(ii) is to solemnize the marriage; or

(b) the magistrate who has issued a marriage licence in terms of section *sixteen*;

such marriage officer or magistrate, as the case may be, shall inquire into the ground of objection and, if satisfied that there is no lawful impediment to the proposed marriage, such marriage officer may issue the relevant certificate or solemnize the marriage, as the case may be, and such magistrate need take no further action.

(3) If such marriage officer or magistrate is not satisfied in terms of subsection (2), he shall refuse to issue the relevant certificate or solemnize the marriage, as the case may be, and such magistrate shall take steps to cancel the marriage licence.

20 Marriage of minors

(1) For the purposes of this section and section *twenty-one*—

“legal guardian” includes the mother of a minor where she and the father of such minor—

(a) are living together lawfully as husband and wife; or

(b) are divorced or are living apart and the sole guardianship of such minor has not been granted to either of them by order of the High Court or a judge thereof.

(2) The marriage of a minor shall not be solemnized without the consent in writing of the persons who are, at the time of the proposed marriage, the legal guardians of such minor or, where a minor has only one legal guardian, without the consent in writing of such legal guardian:

Provided that—

(i) if the consent of any legal guardian cannot be obtained by reason of absence or inaccessibility or by reason of his being under any disability, a judge of the High Court may grant consent to the marriage, and the consent of the judge so given shall have the same effect as if it had been given by the legal guardian whose consent cannot be obtained;

(ii) if any legal guardian refuses his consent, a judge of the High Court may grant consent to the marriage, and the consent of the judge so given shall have the same effect as if it had been given by the legal guardian whose consent is refused.

(3) Where the marriage of a minor is intended to be solemnized after the publication of banns or after the publication of a notice of intention to marry, then, if any legal guardian whose consent to the marriage is required under this section forbids the marriage and gives notice thereof to the marriage officer before he solemnizes the same, the publication of banns or of any notice of intention to marry shall be void unless the consent of a judge of the High Court to the marriage is granted.

(4) This section shall not apply to a person who is under the age of eighteen years and who previously contracted a valid marriage which has been dissolved by death or divorce.

21 Marriage of minors without consent voidable but not void

(1) Where a marriage of a minor which requires the consent of his legal guardian or legal guardians or the consent of a judge under section *twenty* is contracted without such consent, the marriage shall not by reason of that fact be void, but may be set aside and declared to be void by the High Court in its discretion if his legal guardian or legal guardians, whose consent was required but not obtained, makes application therefor within a period of six weeks, calculated from the date on which he or they first had notice of such marriage, or within such further period as the court may allow:

Provided that no such application shall be made against the wishes of the minor if, since the date of the marriage, he has attained the age of eighteen years.

(2) Where the marriage of a minor which requires the consent of his legal guardian or legal guardians or the consent of a judge under section *twenty* is contracted without such consent and is not set aside in terms of subsection (1), the marriage shall have effect in all respects as if it were a marriage contracted between persons both of whom were of full age.

22 Prohibition of marriage of persons under certain ages

(1) No boy under the age of eighteen years and no girl under the age of sixteen years shall be capable of contracting a valid marriage except with the written permission of the Minister, which he may grant in any particular case in which he considers such marriage desirable:

Provided that—

- (i) such permission shall not relieve the parties to the proposed marriage from the obligation to comply with all other requirements of this Act;
- (ii) such permission shall not be necessary if by reason of any such other requirement the consent of a judge is necessary and has been granted.

(2) If any person referred to in subsection (1) who was not capable of contracting a valid marriage without the written permission of the Minister in terms of this Act, contracted a marriage without such permission and the Minister considers such marriage to be desirable and in the interests of the parties concerned, he may, if such marriage was in every other respect solemnized in accordance with this Act and there was no other lawful impediment thereto, direct in writing that it shall for all purposes be a valid marriage.

(3) If the Minister so directs, it shall be deemed that he granted written permission to such marriage prior to the solemnization thereof.

23 Proof of age of parties to proposed marriage

If parties appear before a marriage officer for the purpose of contracting a marriage with each other and such marriage officer suspects that either of them is of an age which debars him or her from contracting a valid marriage, he shall refuse to solemnize a marriage between them unless he is furnished, to his satisfaction, with proof of age of the party concerned and with such other requirement as may be necessary under section *twenty* or *twenty-two*.

24 Legality of marriages between persons within certain degrees of affinity or consanguinity

(1) For the avoidance of doubt it is declared that, on and after the date of commencement of the Criminal Law Code—

- (a) no persons who are related to each other in any degree of relationship specified in subsection (2) of section 75 of the Criminal Law Code shall be capable of contracting a valid marriage, unless, in the case of persons who are related to each other as first or second cousins, they satisfy the marriage officer that they belong to a community referred to in subsection (3) of section 75 of the Criminal Law Code;
- (b) persons who are related to each other by affinity shall be capable of contracting a valid marriage if the affinity relationship between them is not one described in paragraph (b) or (j) of subsection (2) of section 75 of the Criminal Law Code.

(2) If, on or after the date of commencement of the Criminal Law Code, a marriage is contracted or purports to be contracted between parties who are related to each other as first or second cousins without belonging to a community referred to in subsection (3) of section 75 of the Criminal Law Code, and at the time of the solemnisation of the marriage—

- (a) the parties knew or realised that there was a real risk or possibility that they were related to each other as first or second cousins, such marriage shall be void;
- (b) one of the parties knew or realised that there was a real risk or possibility that they were related to each other as first or second cousins, such marriage shall be voidable at the instance of the party who was not so aware within twelve months from the time when he or she became so aware;
- (c) the parties did not know or realise that there was a real risk or possibility that they were related to each other as first or second cousins, such marriage shall not be void or voidable.

(3) For the avoidance of doubt it is declared that a marriage between persons who are related to each other as first or second cousins shall not be void or voidable if such marriage was contracted before the date of commencement of the Criminal Law Code.

[Section substituted by section 282 of Act 23 of 2004.]

25 Time and place for, and presence of parties and witnesses at, solemnization of marriage

(1) A marriage may be solemnized at any time.

(2) A marriage officer shall solemnize any marriage in a church or other building used for religious service, or in a public office or private dwelling-house or other place approved by such marriage officer, in the presence of the parties themselves and at least two witnesses of or above the age of eighteen years.

(3) No person shall, under this Act, be capable of contracting a valid marriage through any other person acting as his representative.

26 Marriage formula

In solemnizing any marriage the marriage officer, if he is a minister of religion, may follow the rites usually observed by his religious denomination or organization, but if he is any other marriage officer he shall cause each of the parties in some part of the proceedings to make the following declaration—

“I do solemnly declare that I know not of any lawful impediment why, I, A.B., may not be joined in matrimony to C.D., here present.”

and each of the parties shall say to the other—

“I call upon these persons here present to witness that I, A.B., do take C.D. to be my lawful wedded wife (or husband).”

27 Certain marriage officers may refuse to solemnize certain marriages

Nothing contained in this Act shall be construed as compelling a marriage officer who is—

- (a) a minister of religion, to solemnize a marriage which would not conform to the rites or discipline of his religious denomination or organization; or
- (b) a magistrate, to solemnize a marriage outside the ordinary hours of attendance observed at offices of the State.

28 Payments to marriage officers

(1) It shall not be lawful for any marriage officer, other than a minister of religion, to demand or receive any gift or reward for or by reason of anything done or to be done by him as a marriage officer in terms of this Act.

(2) A marriage officer, other than a magistrate, may receive such remuneration ordinarily paid to a minister of religion in terms of the rules and regulations of his religious denomination or organization for or by reason of anything done or to be done by him in terms of this Act.

29 Blessing of a marriage

Nothing in this Part shall be construed as precluding a minister of religion or a person holding a responsible position in a religious denomination or organization from—

- (a) blessing, according to the rites of his religious denomination or organization, any marriage contracted within Zimbabwe in accordance with this Act or outside Zimbabwe; or
- (b) making such entries and issuing such documents as may be required by rules or regulations made by his religious denomination or organization in connection with the religious blessing of marriages, if such entry or document does not purport to have been made or issued in terms of this Act.

PART IV

REGISTRATION OF MARRIAGES

30 Registrar of Marriages

For the purpose of performing the functions assigned to him by this Act, there shall be a Registrar of Marriages whose office shall be a public office and shall form part of the Public Service.

31 Register of marriages

(1) Immediately after the solemnization of a marriage, the marriage officer shall make an entry thereof in the marriage register book to be kept for that purpose and shall complete two duplicate original registers of that entry, inserting therein the same particulars as appear in the entry.

(2) Every such marriage register book and the duplicate originals thereof shall be in the form prescribed and every entry therein shall include all the particulars required by that form.

(3) Every such entry shall be signed by the marriage officer and by the parties married and shall be attested by at least two witnesses of or above the age of eighteen years and each of the duplicate original registers of such entry shall be signed and attested by the same persons.

(4) One duplicate original register of the entry shall be delivered to the parties and the other shall, as soon as possible but not later than thirty days after the date of the marriage, be transmitted to the Registrar, together with any declaration, proof of consent, certificate or other document required by this Act or any other law to be delivered to the marriage officer in respect of the marriage.

(5) Every marriage officer shall at all reasonable times, upon payment of the prescribed fee, if any, allow searches to be made in the marriage register books in his custody.

32 Registration of marriages by Registrar

(1) The Registrar shall file in his office all duplicate original registers and other documents transmitted to him in terms of this Act and shall forthwith register, in a book to be kept in his office for that purpose and to be called the Marriage Registration Book, such particulars as may be prescribed of every duplicate original register filed by him.

(2) Upon payment of the prescribed fee, the Registrar shall—

- (a) on application made in writing, cause a search to be made in the Marriage Registration Book and of duplicate original registers filed by him;
 - (b) subject to subsection (3), issue certified copies of a duplicate original register filed by him.
- (3) The Registrar may—
- (a) refuse to issue a certified copy of any duplicate original register referred to in paragraph (b) of subsection (2) where he is not satisfied that such copy is being required for a purpose which, in his opinion, is a lawful or proper one or for any other reason;
 - (b) issue a limited number only of certified copies of any duplicate original register referred to in paragraph (b) of subsection (2) to any one applicant therefor.

33 Correction of errors

(1) The Registrar may correct any clerical error or error of fact or substance in any duplicate original register filed in his office or in possession of the parties to the marriage if there is produced to him such evidence as he may require, stating the nature of the error and the true facts of the matter, and he is satisfied that an error has been made.

(2) If the Registrar makes any correction in terms of subsection (1), he shall direct the marriage officer having the custody of the marriage register book in which the marriage in question is entered to make a like correction to the entry in that book.

PART V

OFFENCES AND PENALTIES

34 Penalty for failure to comply with section 31

Any marriage officer who knowingly fails to comply with section *thirty-one* shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

35 Penalties for solemnizing marriage contrary to this Act and for false representation or statement

Any marriage officer who knowingly solemnizes a marriage in contravention of this Act or any person who makes, for any of the purposes of this Act, any false representation or false statement knowing it to be false, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

PART VI

MISCELLANEOUS

36 Regulations

(1) The Minister may make such regulations as he may think necessary for carrying into effect the purposes of this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) prescribing anything which in terms of this Act is to be prescribed;
- (b) the form and content of certificates, notices, affidavits, declarations, marriage register books and the Marriage Registration Book for the purposes of this Act;
- (c) the custody and disposal of marriage register books;
- (d) the fees payable for any certificate issued or any other act performed in terms of this Act.

37 Savings

Any marriage which is validated by or is valid in terms of a prior law shall not be affected by the repeal of that law and anything done under any provision of that law shall be deemed to have been done under the corresponding provision of this Act, if any.