



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 697

7

July
Julie

2023

No. 48914

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

ISSN 1682-5845



9 771682 584003



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE:

THE GOVERNMENT PRINTING WORKS WILL NOT BE HELD RESPONSIBLE FOR ANY ERRORS THAT MIGHT OCCUR DUE TO THE SUBMISSION OF INCOMPLETE / INCORRECT / ILLEGIBLE COPY.

No FUTURE QUERIES WILL BE HANDLED IN CONNECTION WITH THE ABOVE.

Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
	GENERAL NOTICES • ALGEMENE KENNISGEWINGS		
	Home Affairs, Department of / Binnelandse Sake, Departement van		
3648	Publication of the Marriage Bill, 2022: Invitation for public comments on the draft Marriage Bill.....	48914	3

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF HOME AFFAIRS

NO. 3648

7 July 2023

PUBLICATION OF THE MARRIAGE BILL, 2022

The Department of Home Affairs (the "DHA") invites public comments on the draft Marriage Bill, 2022.

Written submissions should reach the DHA on or before **31 August 2023**. Submissions should be addressed to the Chief Director: Legal Services and may be forwarded to the DHA in any of the following manners:

- (a) delivered by hand to the Department of Home Affairs, 230 Johannes Ramokhoase Street, Hallmark Building (c/o old Proes and Andries Street), Pretoria, 0001, for attention of Adv Moses Malakate (Tel.: (012) 406 4273) or Ms Agnes Molefe (Tel.: (012) 406 4275);
- (b) mailed to the DHA at Private Bag X114, Pretoria, 0001;
- (c) faxed to 0865 769 025; or
- (d) e-mailed to Moses.Malakate@dha.gov.za and Agnes.Molefe@dha.gov.za.

Any enquiries should be directed to Adv Moses Malakate at 076 481 4716 or Ms Agnes Molefe at 082 801 6354.



DR P.A. MOTSOLEDI, MP
MINISTER OF HOME AFFAIRS
DATE: 9/7/2023

REPUBLIC OF SOUTH AFRICA

MARRIAGE BILL

(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill published in Gazette No. 48914 of 7 July 2023)
(The English text is the official text of the Bill)

(MINISTER OF HOME AFFAIRS)

[B - 2022]

BILL

To rationalise the marriage laws pertaining to various types of marriages; to provide for the recognition of marriages entered into by spouses regardless of the religious, cultural, sex, gender, sexual orientation or any other belief of the spouses; to provide for the requirements for entering into a marriage; to provide for registration of marriages; to provide for the legal consequences of a marriage; to provide for consent to enter into a marriage; to provide for age determination; to provide for equal legal status and capacity of spouses to a marriage; to provide for the designation of marriage officers; to provide for solemnisation of marriages; to provide for the dissolution of marriages; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 7(2) of the Constitution places a responsibility on the state to respect, protect, promote and fulfil the rights in the Bill of Rights;

WHEREAS section 9(1) of the Constitution of the Republic of South Africa, 1996, provides that everyone is equal before the law and has the right to equal protection and benefit of the law;

WHEREAS section 9(2) of the Constitution allows legislative measures to be taken to achieve equality for previously disadvantaged persons or categories of persons;

WHEREAS section 9(3) of the Constitution provides that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;

WHEREAS section 10 of the Constitution provides that everyone has inherent dignity and the right to have their dignity respected and protected;

WHEREAS section 15(1) of the Constitution provides that everyone has the right to freedom of conscience, religion, thought, belief and opinion;

WHEREAS section 15(3)(a) of the Constitution provides the opportunity for legislative recognition of marriages concluded under any tradition, or a system of religious, personal or family law consistent with section 15 and other provisions of the Constitution;

WHEREAS the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom;

NOTING that existing family law has developed in a fragmented manner by way of the Marriage Act, 1961 (Act No. 25 of 1961), the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) and the Civil Union Act, 2006 (Act No. 17 of 2006), and that legislative benefits should be extended to all marriages, to ensure a fair outcome to the spouses to a marriage whenever disputes arise;

NOTING that the Republic of South Africa has international obligations to take appropriate and reasonable measures to eradicate discrimination against women in marriages; and

NOTING that the Republic of South Africa has international obligations to take appropriate and reasonable measures to prevent child marriages;

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

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS, OBJECTS AND APPLICATION OF ACT

1. Definitions
2. Objects of Act
3. Application of Act

CHAPTER 2

RECOGNITION OF MARRIAGE, AGE DETERMINATION AND CONSENT

4. Recognition of marriage
5. Age determination
6. Consent
7. Age of majority

CHAPTER 3

REQUIREMENTS OF VALID MONOGAMOUS AND POLYGAMOUS MARRIAGE

8. Requirements for validity monogamous marriage
9. Requirements for validity of polygamous marriage

CHAPTER 4

DESIGNATION OF MARRIAGE OFFICERS

10. *Ex officio* marriage officers and designation of persons in service of State as marriage officers
11. Designation of other persons as marriage officers
12. How designation as marriage officer to be made
13. Certain persons may in certain circumstances be deemed to have been marriage officers
14. Revocation and suspension of designation as marriage officer

CHAPTER 5
SOLEMNISATION AND REGISTRATION OF MARRIAGE

15. Solemnisation of marriage
16. Prohibition of solemnisation of marriage without production of identity document or prescribed declaration
17. Objections to marriage
18. Registration of marriage

CHAPTER 6
PROPRIETARY CONSEQUENCES AND DISSOLUTION OF MARRIAGE

19. Equal legal status and capacity of spouses
20. Proprietary consequences of marriage and contractual capacity of spouses
21. Dissolution of marriage

CHAPTER 7
OFFENCES AND PENALTIES

22. Offences and Penalties

CHAPTER 8
MISCELLANEOUS

23. Regulations
24. Amendment of laws
25. Repeal of laws

CHAPTER 9
TRANSITIONAL PROVISIONS

26. Existing marriage
27. Existing marriage officers

CHAPTER 10
SHORT TITLE AND COMMENCEMENT

28. Short title and commencement

SCHEDULES

Schedule 1 - Laws amended

Schedule 2 - Laws Repealed

Definitions

1. In this Act unless the context otherwise indicates—

“**birth certificate**” means the birth certificate contemplated in the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

“**Civil Union Act**” means the Civil Union Act, 2006 (Act No. 17 of 2006);

“**court**” means any division of a High Court of the Republic of South Africa contemplated in section 6(1) of the Superior Courts Act, 2013 (Act No. 10 of 2013) or a court for a regional division contemplated in section 29(1B) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“**Criminal Law (Sexual Offences and Related Matters) Amendment Act**” means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);

“**customary marriage**” means a marriage entered into in terms of the Recognition of Customary Marriages Act, before the commencement of this Act;

“**Director-General**” means the Director-General of the Department of Home Affairs;

“**dowry**” means the money, property or anything of value, including benefits which are payable by the husband to the wife and “**dower**” shall have the same meaning;

“**identity card**” means the identity card or document referred to in section 14 of the Identification Act, 1997 (Act No. 68 of 1997);

“**lobolo**” means the property in cash or in kind, whether known as *lobolo*, *bogadi*, *bohali*, *xuma*, *lumalo*, *thaka*, *ikhazi*, *magadi*, *emabheka* or by any other name, which a prospective spouse or the head of the family undertakes to give to the head of the prospective spouse’s family in consideration of a marriage;

“**magistrate**” has a similar meaning ascribed to it in section 1 of the Magistrates Act, 1993 (Act No. 90 of 1993);

“**marriage**” means—

- (a) any subsisting marriage concluded in terms of the Marriage Act before the commencement of this Act;
- (b) any subsisting civil union or civil partnership concluded in terms of the Civil Union Act before the commencement of this Act;
- (c) any subsisting customary marriage concluded in terms of the Recognition of Customary Marriages Act; or
- (d) any subsisting monogamous or polygamous marriage concluded before or after commencement of this Act;

- “Marriage Act”** means the Marriage Act, 1961 (Act No. 25 of 1961);
- “marriage officer”** means any person who is designated as a marriage officer in accordance with Chapter 4 of this Act;
- “Matrimonial Property Act”** means the Matrimonial Property Act, 1984 (Act No. 88 of 1984);
- “Minister”** means the Minister responsible for Home Affairs;
- “monogamous marriage”** means marriage where a person is legally married to only one spouse at a time;
- “polygamous marriage”** means a marriage in which a male spouse has more than one spouse at the same time;
- “population register”** means the population register contemplated in section 5 of the Identification Act, 1997 (Act No. 68 of 1997);
- “prescribed”** means prescribed by regulations;
- “Recognition of Customary Marriages Act”** means the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);
- “registration of marriage”** means capturing of marriage particulars of prospective spouses in the population register;
- “spouse”** means a person’s partner in marriage;
- “traditional council”** has a similar meaning ascribed to it in section 1 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), as well as section 1 of the Traditional Khoi-San Leadership Act, 2019 (Act No. 3 of 2019); and
- “this Act”** includes the regulations.

CHAPTER 1 OBJECTS AND APPLICATION OF ACT

Objects of Act

2. The objects of this Act are to—

- (a) rationalise the marriage laws pertaining to various types of marriages;
- (b) prescribe the validity requirements of marriages;
- (c) provide for the solemnisation of marriages; and
- (d) provide for the registration of marriages.

Application of Act

3. (1) Whenever legislation or the common law attaches consequences to marriages, the marriages, as defined in this Act, are deemed to be referred to regardless of whether they have been registered in terms of this Act, the Marriage Act, the Civil Union Act or the Recognition of Customary Marriages Act.

(2) The spouses to a marriage cannot exclude the application of this Act to their marriage.

CHAPTER 2**RECOGNITION OF MARRIAGE, AGE DETERMINATION AND CONSENT****Recognition of marriage**

4. (1) A marriage which is a valid marriage in terms of the Marriage Act, the Civil Union Act or the Recognition of Customary Marriages Act and any other monogamous or polygamous marriage, existing at the commencement of this Act, is for all purposes recognised as a marriage under this Act.

(2) A marriage entered into after the commencement of this Act, which complies with the requirements of this Act, is for all purposes recognised as a marriage.

Age determination

5. (1) The age of any of the prospective spouses to a marriage must be determined—

- (a) by means of a birth certificate, an identity card or identity document;
- (b) in the event where prospective spouses are not in possession of a birth certificate, an identity card or identity document, by a prescribed affidavit of the parents or legal guardians; or
- (c) in the case where one or both spouses are foreigners, by means of a passport or a prescribed affidavit of the parents or legal guardians, as the case may be.

(2) If there is uncertainty about the age of a prospective spouse, and that person's age is relevant for purposes of this Act, the Director-General may, in the prescribed manner, submit the matter to a magistrates' court, in terms of section 48(2) of the Children's Act, 2005 (Act No. 38 of 2005), which must determine the person's age and issue the prescribed certificate in regard thereto, which constitutes proof of the person's age.

Consent

6. (1) The marriage officer must obtain the consent to the marriage from the prospective spouses in the prescribed form and manner.

(2) When registering a marriage that was not solemnised by a marriage officer, the Director-General must determine if all the spouses consented to the marriage in the prescribed manner.

(3) In an application on the ground of lack of compliance with this section, a court may make such order with regard to the division of the marital property of the spouses to the marriage as it may deem just.

Age of majority

7. For purposes of this Act, any person who wishes to enter into a marriage must be 18 years of age or older.

CHAPTER 3**REQUIREMENTS OF VALID MONOGAMOUS AND POLYGAMOUS MARRIAGE****Requirements for validity of monogamous marriage**

8. (1) For a monogamous marriage entered into after the commencement of this Act to be valid, the prospective spouses—

- (a) must both be above the age of 18 years on the date of entering into a marriage;
- (b) must give free and informed consent to enter into a marriage; and
- (c) must have legal capacity to enter into a marriage.

(2) For a marriage entered into in accordance with custom or religion, but after the commencement of this Act, to be valid, such a marriage must, in addition to the requirements referred to in subsection (1), be negotiated and entered into or celebrated in accordance with respective custom or religion.

(3) Save as provided in section 8(2), no spouse in a marriage shall be competent to enter into a further marriage under this Act during the subsistence of such marriage.

(4) Any foreigner intending to enter into a marriage in the Republic must provide a letter of non-impediment from the country of his or her origin.

(5) A marriage entered into after the commencement of this Act that does not comply with the requirements of this section will be null and void.

(6) Nothing in this section shall render invalid any marriage entered into prior to the commencement of this Act.

Requirements for validity of polygamous marriage

9. (1) For a polygamous marriage entered into after the commencement of this Act to be valid, the prospective spouses—

- (a) must both be above the age of 18 years on the date of entering into a marriage;
- (b) must give free and informed consent to enter into a marriage; and
- (c) must have legal capacity to enter into a marriage.

(2) A husband in a marriage who wishes to enter into a further marriage after the commencement of this Act, must—

- (a) obtain consent from the first wife or wives, as the case may be; and
- (b) make an application to the court to approve a written contract which will regulate the future matrimonial property system of his marriages.

(3) When considering the application in terms of subsection (2)(b)—

- (a) the court must—
 - (i) in the case of a marriage which is in community of property or which is subject to the accrual system, —
 - (aa) terminate the matrimonial property system which is applicable to the marriage; and
 - (bb) effect a division of the matrimonial property;
 - (ii) ensure an equitable distribution of the property; and
 - (iii) take into account all the relevant circumstances of the family groups which would be affected if the application is granted;
- (b) the court may—
 - (i) allow further amendments to the terms of the contract;
 - (ii) grant the order subject to any condition it may deem just; or
 - (iii) refuse the application if in its opinion the interests of any of the parties involved would not be sufficiently safeguarded by means of the proposed contract.

(4) All persons having a sufficient interest in the matter, and in particular the applicant's existing spouse or spouses and his prospective spouse, must be joined in the proceedings instituted in terms of subsection (2)(b).

(5) If a court grants an application contemplated in subsection (2)(b) or (3), the registrar or clerk of the court, as the case may be, must—

- (a) furnish each spouse with an order of the court including a certified copy of such contract; and

- (b) cause such order and a certified copy of such contract to be sent to each registrar of deeds of the area in which the court is situated.

CHAPTER 4 DESIGNATION OF MARRIAGE OFFICERS

***Ex officio* marriage officers and designation of persons in service of State as marriage officers**

10. (1) Every magistrate 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 or any employee in the public service authorized thereto by him or her may designate any 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.

Designation of other persons as marriage officers

11. (1) The Minister or any employee in the public service authorized thereto by him or her may designate any person holding a responsible position in any religious denomination, traditional council or secular organization, as the case may be, so long as he or she occupies such position, to be a marriage officer for the purpose of solemnizing marriages.

(2) A designation under subsection (1) may limit the authority of any such person to the solemnization of marriages—

- (a) within a specified area;
- (b) for a specified period; and
- (c) for a specific religion or custom or non-religious or other beliefs.

How designation as marriage officer to be made

12. (1) Any person who wishes to be designated as a marriage officer must—

- (a) be a South African citizen;
- (b) be a fit and proper person to act as a marriage officer;
- (c) be of a sound mind;

- (d) have successfully completed the prescribed training to be designated as a marriage officer;
 - (e) not have been convicted, in the Republic or elsewhere, and imprisoned without an option of a fine for an offence involving theft, fraud, forgery, perjury, misrepresentation or dishonesty;
 - (f) not have been convicted of any other serious offence and sentenced to more than 12 months' imprisonment without an option of a fine;
 - (g) not be an unrehabilitated insolvent; or
 - (h) must not have been removed from any office on account of gross misconduct involving dishonesty.
- (2) The application for designation as a marriage officer must be in such form as the Minister may prescribe.
- (3) Every designation of a person as a marriage officer must be by written instrument.
- (4) The written instrument referred to in subsection (3) must specify the date from which it comes into effect and any limitation as contemplated in section 11(2) of this Act.

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

13. (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, and the Minister or any employee 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 or she may, in writing, direct that such person was for all purposes deemed to have been a marriage officer during such period or within such area and duly designated as such under this Act, as the case may be.

(2) Whenever any person acted as a marriage officer in respect of any marriage while he or she was not a marriage officer and any or both parties to that marriage *bona fide* believed that such person was a marriage officer, the Minister or any employee in the public service authorized thereto by him or her may, after having conducted such inquiry as he or she may deem fit, in writing, direct that such person be deemed to have been duly designated as a marriage officer in respect of that marriage.

(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) The deeming of a person as marriage officer in terms of this Act does not relieve any person from liability to prosecution contemplated in section 15(4) of this Act.

Revocation and suspension of designation as marriage officer

14. (1) The Minister or any employee in the public service authorized thereto by him or her may, in writing and on the ground of misconduct or for any other good cause, revoke or suspend the designation of any person as a marriage officer.

(2) (a) Any person affected by the decision contemplated in subsection (1), if not taken by the Minister, may appeal to the Minister.

(b) The Minister may, after considering an appeal referred to in paragraph (a), confirm, set aside or vary any decision or take any other appropriate decision he or she deems fit.

CHAPTER 5

SOLEMNISATION AND REGISTRATION OF MARRIAGE

Solemnisation of marriage

15. (1) A marriage officer may solemnise a marriage at any place within the Republic and at any time in accordance with any mode of solemnisation or in accordance with any religious, secular or customary practice.

(2) A marriage officer may not solemnise a marriage where the prospective spouses and two witnesses are not present during the solemnisation of the marriage.

(3) A marriage officer must not solemnise a marriage unless the marriage officer is satisfied that the prospective spouses have the legal capacity to understand that they are entering into a marriage and the consequences of that marriage.

(4) A marriage officer may not solemnise a marriage which does not comply with the requirements referred to in section 8 or 9 and must enquire from the prospective spouses whether—

- (a) the prospective spouses freely consent to the solemnisation of the intended marriage;
 - (b) there are no lawful impediments to the solemnisation of the intended marriage; and
 - (c) the prospective spouses are not related to each other on account of consanguinity, affinity or an adoptive relationship as referred to in section 12 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).
- (5) The prescribed marriage register must, immediately after the solemnisation of a marriage, be signed by the spouses, marriage officer and the two witnesses, in each other's presence.
- (6) Any person who wishes to enter into a marriage at any country outside the Republic, he or she must do so at any mission or embassy of the Republic: Provided that one or both of the prospective spouses is a South African citizen and such marriage must be solemnised in accordance with the provisions of this Act.
- (7) Any marriage solemnised in terms of subsection (6) shall, for all purposes, be deemed to have been solemnised in the Republic.

Prohibition of solemnization of marriage without production of identity document or prescribed declaration

16. No marriage officer shall solemnize any marriage unless—

- (a) each of the prospective spouses produces to the marriage officer—
 - (i) his or her identity document issued under the provisions of the Identification Act, 1986 (Act No. 72 of 1986); or
 - (ii) valid passport, visa or permit; or
- (b) in the event where either of the prospective spouses is unable to produce the documents referred to in paragraph (a), the prospective spouse must provide to a marriage officer with a temporary identity certificate or the prescribed affidavit.

Objections to marriage

17. (1) Any person desiring to raise any objection to any proposed marriage may, in writing or orally, lodge such objection with the marriage officer who is to solemnize such marriage.

(2) Upon receipt of any such objection, the marriage officer must 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 or she may solemnize the marriage in accordance with the provisions of this Act.

(3) If he or she is not so satisfied he or she shall refuse to solemnize the marriage.

Registration of marriage

18. (1) The spouses have a duty to ensure that their marriage is registered.

(2) Marriage officers must keep a record of all marriages conducted by them.

(3) A marriage officer must, within 14 days of solemnisation of a marriage, submit the prescribed marriage register and all other records to the Director-General for registration of a marriage.

(4) A marriage officer must issue a copy of the marriage register to the spouses once the marriage is solemnised.

(5) The Director-General must register the marriage and include the marriage particulars concerned in the population register.

(6) A marriage—

(a) entered into before the commencement of this Act, and which is not registered in terms of any other law, must be registered within a period of 12 months after commencement of this Act or within such longer period as the Minister may from time to time prescribe by notice in the *Gazette*; or

(b) entered into after the commencement of this Act, must be registered within a period of 14 days after the conclusion of the marriage or within such longer period as the Minister may from time to time prescribe by notice in the *Gazette*.

(7) (a) The Director-General must, if satisfied that the spouses concluded a valid marriage, register the marriage by recording the identity of the spouses, the date of the marriage, any *lobola* or dowry agreed to and any other particulars prescribed.

(b) The Director-General must issue to the spouses a marriage certificate, bearing the prescribed particulars.

(8) (a) If for any reason a marriage is not registered, any person who satisfies a marriage officer that he or she has interest in the matter may apply to the marriage officer in the prescribed manner to enquire into the existence of the marriage.

(b) If the Director-General is satisfied that a valid marriage exists or existed between the spouses, he or she must register the marriage and issue a certificate of registration as contemplated in subsection (7)(b).

(9) If the Director-General is not satisfied that a valid marriage was entered into by the spouses, he or she must refuse to register the marriage.

(10) A court may, upon application made to that court and upon investigation instituted by that court, order—

- (a) the registration of any marriage; or
- (b) the cancellation or rectification of any registration of a marriage effected by the Director-General.

(11) A certificate of registration of marriage issued under this section or any other law providing for the registration of marriages constitutes *prima facie* proof of the existence of the marriage and of the particulars contained in the certificate.

CHAPTER 6

PROPRIETARY CONSEQUENCES AND DISSOLUTION OF MARRIAGE

Equal legal status and capacity of spouses

19. All spouses in a marriage have, on the basis of equality and subject to the matrimonial property system governing the marriage, full status and capacity, including the capacity to acquire assets and to dispose of them, to enter into contracts and to litigate, in addition to any rights and powers that he or she might have under any other law.

Proprietary consequences of marriage and contractual capacity of spouses

20. (1) The proprietary consequences of a polygamous marriage entered into before the commencement of this Act, which was not registered in terms of the Recognition of Customary Marriages Act or any other law, and where the spouses do not intend to enter into further marriages, continue to be governed by law applicable to such marriage or the agreement concluded between the spouses.

(2) The prospective spouses to a marriage must, prior to solemnisation of the marriage, voluntarily choose the matrimonial property system that will apply to their marriage.

(3) Where the matrimonial property system chosen by the prospective spouses is out of community of property, profit and loss, the spouses must, prior to the registration of

their marriage, conclude the prescribed antenuptial contract and register the contract as contemplated in Chapter VII of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(4) Chapter III and sections 18, 19, 20 and 24 of Chapter IV of the Matrimonial Property Act, 1984, apply in respect of any marriage which is in community of property as contemplated in subsection (2).

(5) (a) Spouses in a marriage entered into before the commencement of this Act may apply to a court jointly for leave to change the matrimonial property system which applies to their marriage or marriages and the court may, if satisfied that—

- (i) there are sound reasons for the proposed change;
- (ii) sufficient written notice of the proposed change has been given to all creditors of the spouses for amounts exceeding R500 or such amount as may be determined by the Minister of Justice by notice in the *Gazette*; and
- (iii) no other person will be prejudiced by the proposed change,

order that the matrimonial property system applicable to such marriage or marriages will no longer apply and authorise the parties to such marriage or marriages to enter into a written contract in terms of which the future matrimonial property system of their marriage or marriages will be regulated on conditions determined by the court.

(b) In the case of a husband who is a spouse in more than one marriage, all persons having a sufficient interest in the matter, and in particular the applicant's existing spouse or spouses, must be joined in the proceedings.

(6) Section 21 of the Matrimonial Property Act, 1984 is applicable to a marriage entered into after the commencement of this Act in which the husband does not have more than one spouse.

Dissolution of marriage

21. (1) A marriage may only be dissolved by death of one or both spouses or by a decree of divorce on the ground of the irretrievable breakdown of the marriage or mental illness or continuous unconsciousness of one of the spouses.

(2) A court may grant a decree of divorce on the ground of the irretrievable breakdown of a marriage if it is satisfied that the marriage relationship between the spouses to the marriage has reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them.

(3) The Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987) and section 6 of the Divorce Act, 1979 (Act No. 70 of 1979), apply to the dissolution of a marriage.

(4) A court granting a decree for the dissolution of a marriage—

- (a) has the powers contemplated in the Divorce Act, 1979 (Act No. 70 of 1979) and of the Matrimonial Property Act, 1984;
- (b) must, in the case of a husband who is a spouse in more than one marriage, take into consideration all relevant factors including any contract, agreement or order made and must make any equitable order that it deems just;
- (c) may order that any person who in the court's opinion has a sufficient interest in the matter be joined in the proceedings;
- (d) may make an order with regard to the custody or guardianship of any minor child of the marriage; and
- (e) may, when making an order for the payment of maintenance, take into account any provision or arrangement made in accordance with any law.

CHAPTER 7 OFFENCES AND PENALTIES

Offences and penalties

22. (1) Any person who enters into a marriage with a person who is not at least 18 years of age, or any person, other than a minor, who participates knowingly in such a marriage, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

(2) Any person or institution who knowingly provides consent for any person under the age of 18 years to enter into a marriage shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

(3) Any person who, for purposes of exercising a right or complying with a duty under this Act, makes any false representation or false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

(4) Any person who knowingly solemnises a marriage or registers a marriage or fails to register a marriage in contravention of the provisions of this Act, shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 5 years or both to such fine and such imprisonment.

(5) Any person who solemnise or register a marriage knowing, or has reason to suspect, that the capacity of a prospective spouse to freely consent to the marriage is impaired due to an intellectual disability or by being under the influence of alcohol or any other intoxicating substance, shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

(6) A prospective spouse who enters into a marriage knowing that the other prospective spouse is related to that prospective spouse on account of consanguinity, affinity or an adoptive relationship as referred to in section 12 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, shall be guilty of an offence and liable on conviction to a sentence which a court may impose, as provided for in section 276 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which that court considers appropriate and which is within that court's penal jurisdiction.

(7) A marriage officer who delegates his or her function of solemnizing a marriage to a person who has not been appointed a marriage officer or knowingly assists a person who is not appointed as a marriage officer to solemnise a marriage, shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

(8) Any person who knowingly, whilst not being designated as a marriage officer, solemnizes a marriage which he or she is not authorised, under this Act, to solemnize or solemnizes a marriage which, to his or her knowledge, is legally prohibited, shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 5 years or both to such fine or imprisonment.

CHAPTER 8 MISCELLANEOUS

Regulations

23. (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;
- (c) the form, content and procedure of an application for the registration of a marriage;
- (d) matters to be taken into account in determining whether to proceed with the registering of a marriage;
- (e) the form, content and procedure of an application submitted to the Minister, or any officer in the public service authorised thereto by the Minister, by any person or any officer in the public service authorised for the designation as a marriage officer;
- (f) matters to be taken into account in determining whether to designate a marriage officer with or without limitations;
- (g) the qualifications, awarded to such persons or institution as the Minister may consider appropriate;
- (h) the duration and renewal of a designation;
- (i) the conditions that shall or may be imposed on the grant or renewal of a designation;
- (j) the training of marriage officers;
- (k) the determination and charging of prescribed fees in respect of the grant of or renewal of a designation;
- (l) the charging of prescribed fees for the training of a person designated or to be designated as a marriage officer;
- (m) the circumstances in which a designation shall or may be granted, renewed, suspended or revoked;
- (n) an appeal of any decision to refuse to grant or renew a designation, impose a condition on the grant or renewal of a designation or suspend or revoke a designation; and
- (o) generally, any matter which by this Act is required or permitted to be prescribed or which the Minister considers necessary or expedient to prescribe for purposes of this Act to be achieved or that the provisions of this Act may be effectively administered.

(2) The regulations may prescribe penalties for a contravention of the provisions thereof for—

- (a) 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 six months; or
- (b) *in lieu* of payment of a fine referred to in paragraph (a), imprisonment for a period not exceeding six months.

(3) Any regulation made under subsection (1), which may result in financial expenditure for the State, must be made in consultation with the Minister of Finance.

(4) Any regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding one year.

Amendment of laws

24. The laws specified in the second column of Schedule 1 are hereby amended to the extent set out in the fourth column thereof.

Repeal of laws

25. The laws specified in Schedule 2 are repealed to the extent set out in the fourth column thereof.

CHAPTER 9 TRANSITIONAL PROVISION

Existing marriage

26. (1) Any marriage that was valid in terms of any prior law, shall not be affected by commencement of this Act and shall continue to be valid in terms of this Act.

Existing marriage officers

27. (1) Any person who, in terms of the previous Act, has been designated as marriage officer shall continue to be a marriage officer until his or her designation expires or is withdrawn, in terms of section 14(1), for any valid reason.

(2) Any designation referred to in subsection (1) may not be renewed in terms of this Act.

(3) Every magistrate who, in terms of the previous Act and by virtue of his or her office, was a marriage officer for the district or other area in respect of which he or she holds office, continues to be a marriage officer in terms of this Act.

CHAPTER 10 SHORT TITLE AND COMMENCEMENT

Short title and commencement

28. This Act is called the Marriages Act, 2022 and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065