



DEPARTMENT: HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

**SOLEMNIZATION AND REGISTRATION OF
MARRIAGES IN THE REPUBLIC OF SOUTH AFRICA**

**MANUAL
FOR
MARRIAGE OFFICERS**

Revised by the Department of Home Affairs, 2001

(This manual may not be sold and may not be reproduced without the consent of the Department)

PRINTED BY THE GOVERNMENT PRINTER, PRETORIA

**MANUAL IN CONNECTION WITH THE SOLEMNIZATION AND REGISTRATION OF
MARRIAGES IN THE REPUBLIC OF SOUTH AFRICA**

INDEX

Subject

Paragraph

Introduction.....	1-5
Marriage officers.....	6-13
Legal prerequisite for solemnization of a marriage.....	14
Marriage formula.....	15
Place for and presence of parties and witnesses at solemnization of marriage	16-19
Minors.....	20-23
Divorced persons.....	24-25
Widowers and widows.....	26-28
Prohibited degrees of relationship	29
Objections to marriage.....	30
Blessing of marriages.....	31
Procedure to be followed when administering an oath or affirmation.....	32
Directions for the completion of marriage registers.....	33-36
Solemnization and registration of a marriage	37-42
Ordering and disposal of forms.....	43-48
Issue of certificates.....	49-50
Assignment for the administration of the Marriage Act, 1961, to the Administration of South- West Africa.....	51
The Marriage Act, 1961 (Act 25 of 1961).....	Annexure A
Regulations in terms of Act 25 of 1961.....	Annexure B
Other Acts and regulations which are applicable	Annexure C
(i) Marriage certificate:	Form BI-27
(ii) Marriage register:	Form BI-30
(iii) Act 37 of 1953: Matrimonial Affairs Act, 1953	
The Immorality and Prohibition of Mixed Marriages Amendment Act, 1985 (Act 72 of 1985). Annexure D	

INSTRUCTIONS TO MARRIAGE OFFICERS

INTRODUCTION

1. The solemnization of marriages in the Republic of South Africa is governed by the Marriage Act, 1961 (Act 25 of 1961).
2. The provisions of this Act and the regulations made in terms thereof are applicable to all persons of all population groups who marry in the Republic of South Africa.
3. This manual comprises the Marriage Act, 1961 (as amended), the regulations made in terms of the aforementioned Act, other acts or extracts of acts which are applicable, and instructions to marriage officers.
4. (1) Marriage officers are required to study these acts, the regulations and the instructions carefully and to adhere strictly thereto. Non-compliance of legal requirements may result in a marriage being invalid.
(2) Attention is specially drawn to the legal prerequisites which must be complied with by all persons, and to the instructions pertaining to the solemnization and registration of a marriage.
(3) Any enquiries in this regard may be addressed to the regional or district representative of Home Affairs in whose area the marriage officer falls.
5. All previous manuals and circulars regarding the solemnization and registration of marriages in the Republic of South Africa are hereby withdrawn.

MARRIAGE OFFICERS

6. A marriage may be solemnized only by a duly authorised marriage officer.
7. (1) A magistrate, additional magistrate, assistant magistrate, shall by virtue of his office and as long as he holds such office be a marriage officer for the district or area in respect of which he holds such office.
(2) If such marriage officer wishes to solemnize a marriage outside the district or area in respect of which he holds office, a designation as marriage officer in terms of section 2 (2) of the Marriage Act must be obtained.
(3) An officer in the public services who is not an *ex officio* marriage officer may solemnize marriages only if he has, in terms of section 2 (2) of the Marriage Act, been designated a marriage officer.
8. A minister of religion of, or a person holding a responsible position in, a religious denomination or organisation, may solemnize marriages only if he has, in terms of section 3 of the Marriage Act, been designated a marriage officer by means of a written instrument.
9. (1) An application for designation as marriage officer in terms of section 2 (2) or 3 of the Marriage Act shall be addressed as follows:

The Director-General
Department of Home Affairs
Private Bag X114
PRETORIA
0001

- (2) An application for the designation of a church marriage officer shall be made in writing by the controlling body of the religious denomination or organisation to which such person belongs.
10. The attention of church marriage officers is drawn to the fact that their designation as marriage officer—
 - (a) is valid only in the Republic of South Africa;
 - (b) lapses if they are suspended or expelled by the religious denomination or organisation for which they were designated marriage officer or if they are deprived of their status as minister of religion or if they resign from the denomination or organisation or join another denomination or organisation;
 - (c) is not transferable from one religious denomination or organisation to another

11. A church marriage officer whose designation is limited to the solemnization of marriages within a specified area or between persons belonging to a specified group may apply through the controlling body of his religious denomination or organisation to the Department of Home Affairs, as the case may be, for a new designation without any limitation.
12. (1) Church marriage officers shall, without delay, notify the controlling body of their religious denomination or organisation of any change of address.
(2) Church marriage officers who expect to be absent from the Republic of South Africa for a period exceeding 12 months or who, after their departure find that their absence exceeds 12 months shall, without delay, notify the controlling body of their religious denomination or organisation accordingly.
13. The controlling body of a religious denomination or organisation is responsible for advising, without delay, the Department of Home Affairs, of the change of address, retirement, resignation, suspension, expulsion or death of any marriage officer belonging to its religious denomination or organisation.

LEGAL PREREQUISITE FOR SOLEMNIZATION OF A MARRIAGE

14. (1) Attention is drawn to the fact that no marriage may be solemnized unless each of the parties to the marriage has complied with the provisions of section 12 of the Marriage Act, 1961.
(2) Section 12 provides that—
 - (a) each of the parties in question shall produce to the marriage officer his or her identity document issued under the Identification Act, 1997 (Act No. 68 of 1997);
 - (b) each of such parties shall furnish to the marriage officer the prescribed affidavit (declaration for the purpose of a marriage—form BI-31); or
 - (c) one of such parties shall produce his or her identity document to the marriage officer and the other shall furnish to the marriage officer the prescribed affidavit (form BI-31).
(3) The attention of marriage officers is drawn to the fact that only an identity document issued in the Republic of South Africa may be accepted for the purposes of section 12. Persons who do not possess such an identity document, e.g. visitors to the Republic of South Africa, or a person who is unable to produce his or her identity document, shall submit the prescribed declaration for the purpose of a marriage (form BI-31).

MARRIAGE FORMULA

15. (1) The marriage formula to be followed at the solemnization of a marriage is prescribed by section 30 of the Marriage Act.
(2) A church marriage officer may follow the marriage formula usually observed by his religious denomination or organisation if such marriage formula has been approved by the Minister of Home Affairs.

If it has not been approved, the marriage officer shall put the questions as prescribed by section 30 to each of the parties separately and, after each of them has replied thereto in the affirmative, and they have given each other the right hand, the marriage officer shall declare the parties lawfully married.

Remarks:

The putting of the questions and the making of the statement by the marriage officer as prescribed by section 30 may be done at any time during or immediately after the marriage ceremony, but it shall be done in the presence of all those present and before the marriage register is signed by the spouses, the witnesses and the marriage officer.

- (3) *Ex officio* marriage officers and marriage officers designated in terms of section 2 (2) of the Marriage Act shall use the marriage formula prescribed by section 30.

(4) The relevant provisions of section 30 (1) are quoted hereunder:

"In solemnizing any marriage, the marriage officer concerned shall put the following questions to each of the parties separately, each of whom shall reply thereto in the affirmative:

'Do you A.B., declare that as far as you know there is no lawful impediment to your proposed marriage with C.D. here present, and that you call all here present to witness that you take C.D. as your lawful wife (or husband)?'

and thereupon the parties shall give each other the right hand and the marriage officer concerned shall declare the marriage solemnized in the following words:

'I declare that A.B. and C.D. here present have been lawfully married'."

PLACE FOR AND PRESENCE OF PARTIES AND WITNESSES AT SOLEMNIZATION OF MARRIAGE

16. (1) In terms of section 29 (2) of the Marriage Act a marriage officer shall solemnize any marriage in a church or other building used for religious services or in a public office (i.e. a Government Office) or in a private dwelling/house.

(2) Provision is made for the solemnization of a marriage in a place other than the aforementioned places in the case of serious or protracted illness of, or grave bodily injuries to, one of or both the parties to the marriage. A marriage officer shall satisfy himself that the illness or bodily injuries are of such a nature that the marriage must necessarily be solemnized in such other place (e.g. a nursing home).

17. A marriage, which has been solemnized in a place other than one of the prescribed places, is invalid.

18. A marriage shall be solemnized in the presence of the parties themselves and at least two competent witnesses.

19. No person is capable of contracting a valid marriage through any other person acting as his representative. Marriages by proxy may therefore not be solemnized in the Republic of South Africa.

MINORS

20. No marriage between parties of whom one or both are minors may be solemnized unless the consent, which is legally required, has been granted and submitted to the marriage officer in writing.

21. (1) The consent of both parents is required. Where one of the parents is deceased, the surviving parent shall give consent. If the parents are divorced and sole guardianship has not been awarded to one parent, the consent of both parents shall be obtained. (Care, custody, supervision and control is not sole guardianship). If the decree of divorce or any other order of court does not expressly state that sole guardianship has been awarded to the parent concerned, the consent of both parents is legally required.

(2) A guardian or stepparent can give consent only if appointed legal guardian of the minor testamentarily or by a competent court.

(3) Form BI-32 shall be used for the consent of the parents or guardian.

(4) A minor who has no parent or guardian or for any sound reason is unable to obtain the consent of his parents or guardian shall apply for the consent of a commissioner of child welfare, who may in his discretion grant consent. Application shall be made at the commissioner of child welfare of the district in which the minor resides.

(5) Form BI-34, which must be used for this purpose, is obtainable from the commissioner of child welfare.

(6) A commissioner of child welfare has no authority to grant consent to the marriage of a minor if one or both parents or the guardian of a minor refuses consent. In such a case and in the case of a commissioner of child welfare's refusing to grant consent to the marriage of a minor, such minor may in terms of section 25 (4) of the Marriage Act apply for the consent of a judge of the High Court of South Africa.

22. (1) No boy under the age of 18 years and no girl under the age of 15 years shall be capable of contracting a valid marriage except with the written permission of the Minister of Home Affairs.

(2) Application for such consent shall be made at any regional or district office of Home Affairs.

The following are required:

- (a) a written application by either of the parents of the minor concerned;
- (b) the written consent of both parents of the minor concerned as well as the written consent of both parents of the other party to the marriage, if such party is a minor;
- (c) a medical certificate, in the case of a pregnancy.

23. For the purposes of the Marriage Act, 1961, a minor does not include a person who is under the age of 21 years and who has previously contracted a valid marriage, which has been dissolved by death or divorce.

DIVORCED PERSONS

24. (1) Marriage officers shall satisfy themselves that a person is legally divorced by demanding the production of the final decree of divorce. The decree of divorce shall not be submitted with the marriage register, but the name of the court, the date of divorce and the case number shall be stated at the item "Remarks" on the marriage register.

(2) If for any sound reason a person is unable to produce a decree of divorce or if a person was divorced in a foreign country and cannot obtain a decree of divorce an affidavit by the person concerned is required to the effect that he/she is legally divorced, and stating the name of the court which granted the divorce and the date on which it was granted. The affidavit shall be attached to the marriage register.

25. A judicial separation (from bed and board) is not a divorce.

WIDOWERS AND WIDOWS

26. (1) Before the marriage of a widower or widow is solemnized the marriage officer shall satisfy himself of the demise of the deceased spouse by insisting on the submission of a death certificate. The death certificate shall not be retained, but the name of the deceased spouse and the date of decease shall be entered at item 18 of the marriage register.

(2) If a death certificate is not available the person concerned is required to submit an affidavit confirming the death of the deceased spouse and stating the name of the deceased and the date of death. The affidavit shall be attached to the marriage register.

27. (1) In the case of a Black, attention is drawn to regulation 8 (1) of the regulations published under Government Notice No. R. 20 of 6 February 1987, which reads as follows:

"8. (1) Whenever any Black who is the parent of a minor child entitled to claim from the Black any inheritance from the estate of that Black's deceased spouse, being an estate which has been administered under the supervision and control of a magistrate under the provisions of these regulations, wishes to contract a marriage again, that Black shall obtain a certificate under the hand of such magistrate to the effect that arrangements have been made to his satisfaction for the preservation and protection of the inheritance of such minor."

(2) The certificate issued by the magistrate under the aforementioned regulation shall be handed to the marriage officer before he solemnizes the marriage. The certificate shall be attached to the marriage register.

(3) If the estate was not administered under the supervision of a magistrate, the marriage officer shall obtain an affidavit to that effect from the person concerned and attach same to the marriage register.

28. The requirements contained in paragraphs 26 and 27 are not applicable to estates, which were administered outside the Republic of South Africa. In such cases the marriage officer shall request the person concerned to submit an affidavit stating the full names of the deceased party, the date

and place of death and the country in which the estate was administered. The affidavit shall be submitted with the marriage register and the following endorsement shall be made at "Remarks" on the register: "Estate administered outside the Republic of South Africa."

PROHIBITED DEGREES OF RELATIONSHIP

29. (1) Attention is drawn to the fact—
 (a) that a man may marry the sister or any female relative of his deceased or divorced wife, except an ancestor or descendant of such wife; and
 (b) that a woman may marry the brother or any male relative of her deceased or divorced husband, except an ancestor or descendant of such husband.
 (2) As a guide it may be mentioned that it is not lawful for a man to marry any person mentioned

(1)	(2)
Mother	Father
Daughter	Son
Father's mother	Father's father
Mother's mother	Mother's father
Son's daughter	Son's son
Daughter's daughter	Daughter's son
Sister	Brother
Wife's mother	Husband's father
Wife's daughter	Husband's son
Father's wife	Mother's husband
Son's wife	Daughter's husband
Father's father's wife	Father's mother's husband
Mother's father's wife	Mother's mother's husband
Wife's father's mother	Husband's father's father
Wife's mother's mother	Husband's mother's father
Wife's son's daughter	Husband's son's son
Wife's daughter's daughter	Husband's daughter's son
Son's son's wife	Son's daughter's husband
Daughter's son's wife	Daughter's daughter's husband
Father's sister	Father's brother
Mother's sister	Mother's brother
Brother's daughter	Brother's son
Brother's daughter's daughter	Brother's son's son
Brother's son's daughter	Brother's daughter's son
Sister's daughter	Sister's son
Sister's daughter's daughter	Sister's son's son
Sister's son's daughter	Sister's daughter's son

in column (1) or for a woman to marry any person mentioned in column (2).

OBJECTIONS TO MARRIAGE

30. (1) Any person who wishes to raise an objection to a proposed marriage shall lodge such objection in writing with the marriage officer who is to solemnize the marriage.
 (2) The marriage officer concerned shall on receipt of such objections inquire into the grounds of the objection and if he is satisfy that there is no lawful impediment to the proposed marriage, he may solemnize the marriage. If he is not so satisfied he shall refuse to solemnize the marriage.
 (3) The marriage officer shall file the written objection and shall keep a record of his inquiry and of his decision in the matter.

BLESSING OF MARRIAGES

31. A minister of religion or a person who holds a responsible position in a religious denomination or organisation may, in accordance with the rites of his religious denomination or organisation, bless any marriage which has been solemnized by any marriage officer, but no marriage register may be completed in respect of such blessing and no certificate which may serve as a marriage certificate may be issued in respect thereof.

PROCEDURE TO BE FOLLOWED WHEN ADMINISTERING AN OATH OR AFFIRMATION

- 32.** (1) In terms of Government Notice No. R. 2477 of 16 November 1984 published in terms of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963), a church marriage officer, by virtue of his designation as marriage officer, shall be a commissioner of oaths for the area for which he has been designated a marriage officer.
- (2) Under the regulations made in terms of the aforementioned Act the following procedure shall be followed when administering an oath or affirmation:
- (a) An oath is administered by causing the deponent to utter the following words: "I swear that the contents of this declaration are true, so help me God."
 - (b) An affirmation is administered by causing the deponent to utter the following words: "I truly affirm that the contents of this declaration are true."
 - (c) (i) Before a commissioner of oaths administers to any person the oath or affirmation he shall ask the deponent—
 - (aa) whether he knows and understands the contents of the declaration;
 - (bb) whether he has any objection to taking the prescribed oath; and
 - (cc) whether he considers the prescribed oath to be binding on his conscience.
 - (ii) If the deponent acknowledges that he knows and understands the contents of the declaration and informs the commissioner of oaths that he does not have any objection to taking the oath and that he considers it to be binding on his conscience the commissioner of oaths shall administer the oath.
 - (iii) If the deponent acknowledges that he knows and understands the contents of the declaration but objects to taking the oath or informs the commissioner of oaths that he does not consider the oath to be binding on his conscience the commissioner of oaths shall administer the affirmation.
 - (iv) The deponent shall sign the declaration in the presence of the commissioner of oaths.
 - (v) If the deponent cannot write he shall in the presence of the commissioner of oaths affix his mark at the foot of the declaration: Provided that if the commissioner of oaths has any doubt as to the deponent's inability to write he shall require such inability to be certified at the foot of the declaration by some other trustworthy person.
 - (vi) Below the deponent's signature or mark, the commissioner of oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of taking the declaration.
 - (vii) The commissioner of oaths shall—
 - (aa) sign the declaration and print his full name and business address below his signature; and
 - (bb) state his designation and the area for which he holds his appointment.
- (3) A church marriage officer must state his designation as "Marriage Officer" and the area for which he has been designated a marriage officer as indicated on his letter of designation, e.g. "Republic of South Africa".

DIRECTIONS FOR THE COMPLETION OF MARRIAGE REGISTERS (FORM BI-30)

- 33.** Form BI-30 shall be used for the registration of all marriages solemnized in terms of the Marriage Act, 1961, in the Republic of South Africa.
- 34.** The marriage register shall be completed in triplicate by using a black ball-point pen and carbon paper. The Register shall be filled in neatly and legibly. Particulars may also be typed.

35. (1) Errors shall be corrected by drawing a horizontal line through the erroneous word, letter or figure and inserting the correct word, letter or figure above it. Each amendment must be initialed by the marriage officer and both spouses. If the error is of such a nature that the register has been spoilt, the original and both copies of the register shall be cancelled.

(2) If a marriage register has been completed but the marriage has not been solemnized, the original and both copies of the register shall be cancelled and the reason for the cancellation stated briefly on the original register. The register shall be clearly endorsed "CANCELLED" and kept in the book of marriage registers for checking purposes.

36. (1) Items 1 and 7 (of form BI-30)

The identity number of the husband and the wife shall be filled in as recorded in their respective identity documents. Only identity documents of the Republic of South Africa are applicable. If a person cannot produce an identity document the relevant item shall be left blank. Passport numbers or any other number shall not be furnished.

(2) Items 3, 4, 9, 10 and 11

(a) The surname and forenames of the husband and wife shall be filled in as recorded in their respective identity documents. The maiden name of the wife (item 10) shall at all times be filled in.

(b) Item 9 shall be completed only if the wife—

(i) was previously legally married and her married surname is her present legitimate surname;

(ii) (aa) concluded a marriage according to the rites of Islam or any Indian religion without a valid marriage having been contracted; or

(bb) concluded a customary marriage; and

assumed the surname of the man with whom she concluded such marriage. In the case of (ii) (aa) and (bb) above the following entry shall be made at "Remarks":

Wife assumed the surname of the man after Islamic/customary marriage."

(c) Furthermore, a divorcee or a widow may reassume any surname she bore previously. The surname she has thus assumed shall be stated at Item E.

(3) Items 2 and 8

The date of birth of the husband and the wife shall be written in figures, e.g. 27-01-1956.

(4) Items 6 and 13

Fill in the country of birth of the husband and wife respectively.

(5) Items 5 and 12

Write "bachelor", "spinster", "widower", "widow" or "divorcee", as the case may be. Persons not previously legally married, must be described as "bachelor" or "spinster".

(6) Item 14

Write in figures the day, month and year, e.g. 06-03-2001. This date shall correspond with the date at item 21.

(7) Item 15

(a) (i) State by whom consent was given, e.g. father, mother, parents, guardian, commissioner of child welfare, Minister of Home Affairs, judge of the High Court, as the case may be.

(ii) If one of the parents is deceased or if sole guardianship has, in terms of an order of court, been awarded to one parent this fact must be noted under "Remarks" on the letter of consent (form BI-32). (See the directions on the letter of consent—form BI-32.)

(b) In the case of a minor born out of wedlock, write "mother" and at "Remarks" on the letter of consent (form BI-32) write "born out of wedlock".

(c) Leave blank if the person is 21 years of age and over or is under 21 years of age but has previously been legally married.

(8) Item 16

State the name of the city or town where the marriage has been solemnized and the province. If the marriage has been solemnized in the district of a specific city or town, state the name of the relevant city or town

(9) Item 17

Furnish the address where the married couple will stay after the marriage.

(10) Item 18—Remarks:

(a) Marriage of widower/widow—state the name of the deceased spouse and the date of death, e.g. M. Pienaar— 28-10-1974.

(b) Marriage of divorced person—state the name of the court, the date of divorce and case number, e.g. Transvaal Provincial Division—Case No. 1111/2000 dated 01-11-2001.

(c) This space may be used for other remarks pertaining to the marriage. Personal remarks shall be furnished on a separate sheet of paper.

(11) Item 19

The husband shall sign the register in his usual signature and the wife in the name she bore immediately before the marriage. A person who cannot write shall make his mark and the marriage officer shall write the name of the signatory and the words "his/her mark", as the case may be, e.g. John Smith, X his mark.

(12) Item 20

Two witnesses who were present at the marriage shall likewise sign the marriage register in their usual signatures.

(13) Item 21

Write the day in figures, the name of the month in words and the year in figures. This date shall correspond with the date at item 14.

(14) Item 22

The marriage officer shall sign the register in his usual signature.

(15) Item 23

A church marriage officer shall furnish his designation number as a marriage officer.

(16) Item 24

The full names and surname of the marriage officer shall be stated.

(17) Item 25

(a) State the name of the religious denomination to which the marriage officer belongs; or

(b) affix the official date stamp in the case of an *ex officio* marriage officer.

(18) Item 26

Fill in the postal address in the case of a church marriage officer.

(19) Certificate by marriage officer

The marriage officer who solemnized the marriage shall sign the certificate.

SOLEMNIZATION AND REGISTRATION OF A MARRIAGE

- 37.** It must be emphasized that a marriage shall be solemnized in accordance with the provisions of the Marriage Act, 1961, and that only a duly authorised marriage officer may solemnize a marriage.
- 38.** A marriage officer shall, before he solemnizes a marriage, ensure that each of the parties to the marriage has complied with the relevant provisions and that he has been furnished with the required documents.
- 39.** After the marriage has been solemnized, the marriage officer, the parties to the marriage and two competent witnesses shall sign the marriage register (form BI-30) and two copies of the register of such marriage before they leave the premises where the marriage took place.
- 40.** (1) The marriage officer shall, after the marriage register has thus been signed, issue a marriage certificate (form BI-27) to the parties.
- (2) The marriage certificate shall be issued free of errors or alterations. If an error is made in completing the marriage certificate, it shall be cancelled and a new certificate issued instead. The cancelled certificate shall be destroyed.
- 41.** (1) The original marriage register and the duplicate of the marriage register as well as any documents pertaining to the marriage, if any, shall, as legally required, be transmitted to the regional or district representative of Home Affairs in whose area the marriage officer falls within THREE days from the date of the marriage.
- (2) The triplicate of the marriage register shall be retained in the book of marriage registers for checking purposes by the Department.
- 42.** (1) The following documents, where applicable, shall be submitted with the original marriage register and the duplicate of the marriage register:
- (a) The declaration for the purpose of a marriage—(form BI-31).
- (b) The written consent of the parents, guardian, commissioner of child welfare, Minister of Home Affairs or judge of the High Court of South Africa.
- (c) Any certificate or document for the purpose of a marriage obtained in terms of the Administration of Estates Act, 1965, and any affidavit made by a party to a marriage concerning the estate of a deceased spouse of such party.
- (2) The aforementioned documents, where applicable, shall be pinned or stapled to the original and the duplicate marriage registers,

ORDERING AND DISPOSAL OF FORMS

- 43.** (1) The following is a list of the forms which are prescribed for the solemnization and registration of marriages:
- (a) Form BI-30—Marriage register—for the registration of a marriage.
- (b) Form BI-27—Marriage certificate—to be issued by the marriage officer after the solemnization of a marriage.
- (c) Form BI-31—Declaration for the purpose of a marriage—to be furnished by the party who cannot present an identity document.
- (d) Form BI-32—Consent to the marriage of a minor—to be used by the parent(s) or legal guardian to grant consent to the marriage of a minor.
- (e) Form BI-34—Application for the consent of a commissioner of child welfare—to be used by a minor who requires the consent of a commissioner of child welfare. (This form is issued to commissioners of child welfare only.)
- (2) Marriage officers shall order the above-mentioned forms (except form BI-34) in writing from the regional or district representative of Home Affairs in whose area the marriage officer falls.
- 44.** Books of marriage registers and marriage certificates shall, in the case of church marriage officers, be issued to the marriage officers personally and every marriage officer shall be responsible for the safe-keeping of the books of registers and certificates issued to him. If a marriage officer is transferred from one congregation to another he must take the books of marriage registers and marriage certificates with him for use in his new congregation.

45. A church marriage officer may, in exceptional cases, make his books of marriage registers and marriage certificates available to another marriage officer, e.g., if such a marriage officer comes from elsewhere or if he has been designated a marriage officer for one specific marriage only. The books of marriage registers and marriage certificates may, however, under no circumstances be transferred from one marriage officer to another.
46. When a church marriage officer ceases to be marriage officer he shall return his books of unused marriage registers and marriage certificates to the regional or district representative of Home Affairs in whose area the marriage officer falls. Arrangements shall also be made that in the event of the death of a church marriage officer such books be returned to the regional or district representative.
47. (1) In the case of *ex officio* marriage officers and officers in the Public Service designated marriage officers, the books of marriage registers and marriage certificates shall be issued to the office to which such marriage officers are attached.
- (2) Where more than one book of marriage registers and marriage certificates are issued to an office, care shall be taken that the registers and certificates are at all times used in strict numerical order.
48. (1) To ensure that all marriage registers transmitted by marriage officers in respect of marriages solemnized by them have in fact been received in the Department, it is necessary for the triplicate marriage registers to be checked against the records of the Department.
- (2) Church marriage officers shall therefore, when they apply for a new book of marriage registers, submit the used book containing the triplicate marriage registers to the regional or district office of Home Affairs in whose area the marriage officer falls. After the triplicate registers have been checked against the records of the Department, the office concerned will return the book to the marriage officer who may dispose thereof as he thinks fit.
- (3) In the case of magistrate's offices and other Government offices where marriages are solemnized, the used books containing the triplicate marriage registers shall likewise be transmitted to the regional or district office of Home Affairs in whose area the office falls.

ISSUE OF CERTIFICATES

49. Marriage officers are authorised to issue a marriage certificate (BI-27) in respect of a marriage only at the solemnization of that marriage. If the parties require additional marriage certificates they may apply therefore at any regional or district office of Home Affairs. Parties may also have the certificate copied at their own cost.
50. (1) Attention is drawn to the fact that the maiden name of the wife shall be stated on the marriage certificate (BI-27), irrespective of whether she was married previously and is known under her married surname.
- (2) The date of issue of the marriage certificate (BI-27) shall correspond with the date on which the marriage was solemnized

ASSIGNMENTS OF THE ADMINISTRATION OF THE MARRIAGE ACT, 1961, TO THE ADMINISTRATION OF SOUTH-WEST AFRICA

51. (1) Attention is drawn to the fact that, in terms of Proclamation AG17 published in *South-West Africa Official Gazette* 3721, dated 30 March 1978, the administration of the Marriage Act, 1961 (Act 25 of 1961), in the territory of South-West Africa has been lawfully assigned to the Administration of South-West Africa,
- (2) In consultation with the authorities concerned in South-West Africa, the administration of the Marriage Act and all matters relating thereto were, with effect from 1 March 1986, administratively assigned to the Administration of South-West Africa.

DEPARTMENT OF HOME AFFAIRS

PRETORIA

DATE; JULY 2001

ANNEXURE A
MARRIAGE ACT, No. 25 OF 1961

[ASSENTED TO 19 APR L. 1961]

[DATE OF COMMENCEMENT: 1 JANUARY 1962]

(English text signed by the Governor-General)
as amended by

Marriage Amendment Act, No. 11 of 1964
Marriage Amendment Act, No. 19 of 1968
Marriage Amendment Act, No. 51 of 1970
Marriage Amendment Act, No. 26 of 1972
Marriage Amendment Act, No. 12 of 1973
Marriage Amendment Act, No. 45 of 1981
Marriage Amendment Act, No. 88 of 1984
Marriages, Births and Deaths Amendment Act, No. 41 of 1986

ACT

**TO CONSOLIDATE AND AMEND THE LAWS RELATING TO THE SOLEMNIZATION OF MARRIAGES
AND MATTERS INCIDENTAL THERETO**

1. *Definitions.*—In this Act, unless the context otherwise indicates—

"Commissioner" includes an Additional Commissioner, and Assistant Commissioner, a Native Commissioner, and Additional Native Commissioner and an Assistant Native Commissioner;

[Definition of "Commissioner" substituted by section 1 (a) of Act 51 of 1970.]

"magistrate" includes an additional and an assistant magistrate;

"marriage officer" means any person who is a marriage officer by virtue of the provisions of this Act;

"Minister" means the Minister of Home Affairs;

[Definition of "Minister" substituted by section 1 (b) of Act 51 of 1970 and amended by section 1 of Act 41 of 1986.]

"prescribed" means prescribed by this Act or by regulation made under this Act;

"prior law" means any law repealed by this Act or the Marriage Amendment Act, 1970, or any provision of any law declared by proclamation under section 39 (5) no longer to apply.

[Definition of "prior law" substituted by section 1 (c) of Act 51 of 1970.]

2. *Ex officio marriage officers, and designation of persons in service of State as marriage officers.* —

(1) Every magistrate, shall by virtue of his office and so long as he holds such office, be a marriage officer for the district or other area in respect of which he holds office.

(2) The Minister and any officer in the public service authorised thereto by him may designate any officer or employee in the public service or the diplomatic or consular service of the Union to be, by virtue of his office and so long as he holds such office a marriage officer, either generally or for any specified population group or class of persons or country or area.

[Subsection (2) amended by section 2 of Act 51 of 1970.]

3. *Designation of ministers of religion and other persons attached to churches as marriage officers.* —

(1) The Minister and any officer in the public service authorised thereto by him may designate any minister of religion of, or any person holding a responsible position in, any religious denomination or organisation to be, so long as he is such a minister or occupies such position, a marriage officer for the purpose of solemnizing marriages according to Christian, Jewish or Mohammedan rites or the rites of any Indian religion.

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

- (a) within a specified area:
- (b) for a specified period: and
- (c) between persons belonging to a specified population group.

[Paragraph 'c' amended by section 3 of Act 51 of 1970.]

4. *How designation as marriage officer to be made.*—Every designation of a person as a marriage officer 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.

5. *Marriage officers under laws repealed by this Act.*—

(1) Subject to the provisions of subsection (3), any person who, at the commencement of this Act, or of the Marriage Amendment Act, 1970, is under the provisions of any prior law authorised to solemnize any marriages, shall continue to have authority to solemnize such marriages as if such law had not been repealed, but shall exercise such authority in accordance with the provisions of this Act.

[Subsection (i) substituted by section 4 (a) of Act 51 of 1970.]

(2) Any such person shall be deemed to have been designated as a marriage officer under this Act.

(3) Any such person whose authority to solemnize any marriages in the Republic is at the commencement of the Marriage Amendment Act, 1970, not limited to a specified area, shall be deemed to have been designated as a marriage officer for solemnizing marriages in the territory of South-West Africa also, and any such person whose authority to solemnize any marriages in the said territory is at such commencement not limited to a specified area, shall be deemed to have been designated as a marriage officer for solemnizing marriages in the Republic also.

[Subsection (3) added by section 4 (b) of Act 51 of 1970.]

6. *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 or within any area in respect of which he was not a marriage officer under this Act or any prior law, and the Minister or any officer in the public service authorised thereto by the Minister is satisfied that such person did so under the *bona fide* belief that he was a marriage officer during that period or within that area, he 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 acted as a marriage officer in respect of any marriage while he was not a marriage officer and both parties to that marriage *bona fide* believed that such person was in fact a marriage officer, the Minister or any officer in the public service authorised thereto by him may, after having conducted such inquiry as he may deem fit, in writing direct that such person shall for all purposes 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) Nothing in this section contained shall be construed as relieving any person in respect of whom a direction has been issued there under, from the liability to prosecution for any offence committed by him.

(5) Any person who acts as a marriage officer in respect of any marriage shall complete a certificate on the prescribed form in which he shall state that at the time of the solemnization of the marriage he was in terms of this Act or any prior law entitled to solemnize that marriage.

[Section 6 substituted by section 1 of Act 45 of 1981.]

7. *Effect of designation of certain ministers of religion as marriage officers.* —Any minister of religion who before or after the commencement of this Act was or is designated as a marriage officer while a minister of the "Nederduitse Gereformeerde Kerk in Suid-Afrika, Kaap", or of the "Nederduitse Gereformeerde Kerk van Natal", or of the "Nederduitse Gereformeerde Kerk in die Oranje-Vrystaat", or of the former "Nederduitse Hervormde of Gereformeerde Kerk van Suid-Afrika, Transvaal", or of the "Nederduitse Gereformeerde Kerk van Transvaal", shall as from the date of such designation but subject to the provisions of this Act be deemed to have been or to be a marriage officer while he remained or remains a minister of any of the said churches.

8. *Change of name of religious denomination or organisation and amalgamation of religious denominations or organisations.* —(1) If a religious denomination or organisation changes the name whereby it was known or amalgamates with any other religious denomination or organisation, such change in name or amalgamation shall have no effect on the designation of any person as a marriage officer by virtue of his occupying any post or holding any position in any such religious denomination or organisation.

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

9. *Revocation of designation as, or authority of, marriage officer and limitation of authority of marriage officer.* —(1) The Minister or any officer in the public service authorised thereto by him may, on the ground of misconduct or for any other good cause, revoke in writing the designation of any person as a marriage officer or the authority of any other person to solemnize marriages under this Act, or in writing limit in such respect as he may deem fit the authority of any marriage officer or class of marriage officers to solemnize marriages under this Act.

(2) Any steps taken by any officer in the public service under subsection (1) may be set aside by the Minister.

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

(a) may so solemnize any such marriage only if the parties thereto are both South African citizens domiciled in the Republic: and

(b) shall solemnize any solemnize in accordance with the provisions of this Act.

(2) Any marriage so solemnizes shall purposes be deemed to have been solemnized in the province of the Republic in which the male party thereto is domiciled,

11. *Unauthorized solemnization of marriage ceremonies forbidden.* —(1) A marriage may be solemnized by a marriage officer only.

(2*i*) Any marriage officer who purports to solemnize a marriage which he is not authorised under this Act to solemnize or which to his 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 on conviction to a fine not exceeding R400 or, in default of payment, to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

(3) Nothing in subsection (2) contained shall apply to any marriage ceremony solemnized in accordance with the rites or formularies of any religion, if such ceremony does not purport to effect a valid marriage.

12. *Prohibition of solemnization of marriage without production of identity document or prescribed declaration.* —No marriage officer shall solemnize any marriage unless—

- (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, 1997 (Act No. 68 of 1997), or the Identity Documents in South-West Africa Act, 1970; or
- (b) each of such parties furnished to the marriage officer the prescribed affidavit; or
- (c) one of such parties produces his or her identity document referred to in paragraph (a) to the marriage officer and the other furnishes to the marriage officer the affidavit referred to in paragraph (b).

[Section 12 amended by section 1 (1) of Act 11 of 1964 and substituted by section 5 of Act 51 of 1970.]

13 and 14.

[Sections 13 and 14 repealed by section 6 of Act 51 of 1970.]

15.....

[Section 15 amended by section 2 of Act 11 of 1964 and repealed by section 6 of Act 51 of 1970.]

16.

[Section 16 substituted by section 1 of Act 19 of 1968 and repealed by section 6 of Act 51 of 1970.]

17 and 18.

[Sections 17 and 18 repealed by section 6 of Act 51 of 1970.]

19.

[Section 19 amended by section 2 of Act 19 of 1968 and repealed by section 6 of Act 51 of 1970.]

20 and 21.....

[Sections 20 and 21 repealed by section 6 of Act 51 of 1970.]

22. Irregularities in publication of banns or notice of intention to marry or in the issue of special marriage licenses. —If in the case of any marriage solemnized before the commencement of the Marriage Amendment Act, 1970, the provisions of any law relating to the publication of banns or notice of intention to marry or to the issue of special marriage licenses, or the applicable provisions of any law of a country outside the Union relating to the publication of banns or the publication of notice of intention to marry were not strictly complied with but such marriage was in every other respect 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 such marriages has not been dissolved or declared invalid by a competent court, and provided further that 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.

[Section 22 substituted by section 3 of Act 19 of 1968, amended by section 7 of Act 51 of 1970 and substituted by section 1 of Act 26 of 1972.]

23. Objections to marriage.—(1) Any person desiring to raise any objection to any proposed marriage shall lodge such objection in writing with the marriage officer who is to solemnize such marriage,

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

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

[Section 23 substituted by section 8 of Act 51 of 1970.]

24. Marriage of minors—(1) No marriage officer shall solemnize a marriage between parties of whom one or both are minors unless the consent to the party or parties which is legally required for the purpose of contracting the marriage has been granted and furnished to him in writing.

(2) For the purposes of subsection (1) a minor does not include a person who is under the age of 21 years and previously contracted a valid marriage, which has been dissolved by death or divorce.

24A. Consequences and dissolution of marriage for want of consent of parents or guardian. — (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 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 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 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.

[Section 24A inserted by section 34 of Act 88 of 1984.]

25. When consent of parents or guardian of minor cannot be obtained. —(1) If a commissioner of child welfare defined in section 1 of the Child Care Act, 1983, is after proper inquiry satisfied that a minor who is resident in the district or area in respect of which he holds office has no parent or guardian or is for any good reason unable to obtain the consent of his parents or guardian to enter into a marriage, such

commissioner of child welfare may in his discretion grant written consent to such minor to marry a specified person, but such commissioner of child welfare shall not grant his consent if one or other parent of the minor whose consent is required by law or his guardian refuses to grant consent to the marriage.

[Section (1) substituted by section 62 of Act 74 of 1983.]

(2) A commissioner of child welfare shall, before granting his consent to a marriage under subsection (1), enquire whether it is in the interest of the minor in question that the parties to the proposed marriage should enter into an antenuptial contract, and if he is satisfied that such is the case he shall not grant his 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 in question refuses to consent to a marriage of a minor, such consent may on application be granted by a judge of the High Court of South Africa: Provided that such a judge shall not grant such consent unless he is of the opinion that such refusal of consent by the parent, guardian or commissioner of child welfare is without adequate reason and contrary to the interests of such minor.

26. Prohibition of marriage of persons under certain ages. —(1) No boy under the age of 18 years and no girl under the age of 15 years shall be capable of contracting a valid marriage except with the written permission of the Minister or any officer in the public service authorised thereto by him, which he may grant in any particular case in which he 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

(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 or any officer in the public service authorised thereto by him, in terms of this Act or a prior law, contracted a marriage without such permission and the Minister or such officer, as the case may be, considers such marriage to be desirable and in the interest of the parties in question, he may, provided such marriage was in every other respect solemnized in accordance with the provisions of this Act, or, as the case may be, any prior law, 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 or any officer in the public service authorised thereto by him so directs it shall be deemed that he granted written permission to such marriage prior to the solemnization thereof.

[Section 26 amended by section 9 of Act 51 of 1970 and substituted by section 2 of Act 45 of 1981.]

27. 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 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 may refuse to solemnize a marriage between them unless he 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.

28. Marriage between person and relatives of his or her deceased or divorced spouse. —Any legal provision to the contrary notwithstanding it shall be lawful for—

- (a) any widower to marry the sister of his deceased wife or any female related to him through his deceased wife in any more remote degree of affinity than the sister of his deceased wife, other than an ancestor or descendant of such deceased wife;
- (b) any widow to marry the brother of her deceased husband or any male related to her through her deceased husband in any more remote degree of affinity than the brother of her deceased husband, other than an ancestor or descendant of such deceased husband;
- (c) any man to marry the sister of a person from whom he has been divorced or any female related to him through the said person in any more remote degree of affinity than the sister of such person, other than an ancestor or descendant of such person; and

- (d) any woman to marry the brother of a person from whom she has been divorced or any male related to her through the said person in any more remote degree of affinity than the brother of such person, other than an ancestor or descendant of such person.

29. *Time and place for and presence of parties and witnesses at solemnization of marriage and validation of certain marriages.* —(1) A marriage officer may solemnize a marriage at any time on any day of the week but shall not be obliged to solemnize a marriage at any other time than between the hours of eight in the morning and four in the afternoon.

(2) A marriage officer shall solemnize any marriage in a church or other building used for religious service, or in public office or private dwelling-house, with open doors 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 injury to, one or both of the parties.

(3) Every marriage—

(a) which was solemnized in the Orange Free State or the Transvaal before the commencement of this Act in any place other than a place appointed by a prior law as a place where for the purposes of such law a marriage shall be solemnized; or

(b) which by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties was solemnized before the commencement of the Marriage Amendment Act, 1968, in a place other than a place appointed by subsection (2) of this section as a place where for the purposes of this Act a marriage shall be solemnized,

shall, provided such marriage has not been dissolved or declared invalid by a competent court and provided further than 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 it had been solemnized in a place appointed therefore by the applicable provisions of the prior law or, as the case may be, of this Act.

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

[Section 29 substituted by section 4 of Act 19 of 1968.]

“Registration of Marriages

29A. (1) The marriage officer solemnizing any marriage, the parties thereto and two competent witnesses shall sign the marriage register concerned immediately after such marriage has been solemnized.

(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)."

30. *Marriage formula.*—(1) In solemnizing any marriage any marriage officer designated under section 3 may follow the marriage formula usually observed by his religious denomination or organisation if such marriage formula has been approved by the Minister, but if such marriage formula has not been approved by the Minister, or in the case of any other marriage officer, the marriage officer concerned shall put the following questions to each of the parties separately, each of whom shall reply thereto in the affirmative:

"Do you, A.B., declare that as far as you know there is no lawful impediment to your proposed marriage with C.D. here present, and that you call all here present to witness that you take C.D. as your lawful wife (or husband)?"

and thereupon the parties shall give each other the right hand and the marriage officer concerned shall declare the marriage solemnized in the following words:

"I declare that A.B. and C.D. here present have been lawfully married."

[Subsection (1) substituted by section 1 of Act 12 of 1973.]

(2) Subject to the provisions of subsection (1), a marriage officer, if he is a minister of religion or a person holding a responsible position in a religious denomination or organisation, may in solemnizing a marriage follow the rites usually observed by his religious denomination or organisation.

(3) If the provisions of this section or any former law relating to the question 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 complied with owing to—

- (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,

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 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.

[Section 30 substituted by section 10 of Act 51 of 1970. Subsection 3 added by section 2 of Act 26 of 1972.]

31. *Certain marriage officers may refuse to solemnize certain marriages.*—Nothing 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 organisation to solemnize a marriage which would not conform to the rites, formularies, tenets, doctrines or discipline of his religious denomination or organisation.

32. *Fees payable to marriage officers.* —(1) No marriage officer may demand or receive any fee, gift or reward, for or by reason of anything done by him as marriage officer in terms of this Act: Provided that a minister of religion or a person holding a responsible position in a religious denomination or organisation may, for or by reason of any such thing done by him, receive—

- (a) such fees or payments as were immediately prior to the commencement of this Act ordinarily paid to any such minister of religion or person in terms of the rules and regulations of his religious denomination or organisation, for or by reason of any such thing done by him in terms of a prior law; or
- (b) such fee as may be prescribed,

(2) Any marriage officer who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction of a fine not exceeding R100 or, in default of payment, to imprisonment for a period not exceeding six months.

33. *Blessing of a marriage*—After a marriage has been solemnized by a marriage officer, a minister of religion or a person holding a responsible position in a religious denomination or organisation may bless such marriage according to the rites of his religious denomination or organisation.

34. *Religious rules and regulations.* —Nothing in this Act contained shall prevent—

- (a) the making by any religious denomination or organisation 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 organisation or the exercise of church discipline in any such case;
- or

- (b) the acceptance by any person of any fee charged by such religious denomination or organisation for the blessing of any marriage,

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

35. *Penalties for solemnizing marriage contrary to the provisions of this Act.* —Any marriage officer who knowingly solemnizes a marriage in contravention of the provisions of this Act shall be guilty of an offence and liable on conviction to a fine not exceeding R100 or, in default of payment, to imprisonment for a period not exceeding six months.

36. *Penalties for false representations or statements.*—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 on conviction to the penalties prescribed by law for perjury.

37. *Offences committed outside the Republic.*—If any person contravenes any provision of this Act in any country outside the Republic the Minister of Justice shall determine which court in the Republic shall try such person for the offence committed thereby, and such court shall thereupon be competent so to try such person, and for all purposes incidental 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.

38. *Regulations.*—(1) The Minister may make regulations as 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 this Act,

and, generally, as to any matter which by this Act is required or permitted to be prescribed or which he considers it necessary or expedient to prescribe in order that the purposes of the Act may be achieved or that the provisions of this Act may be effectively administered.

[Subsection amended by section 11 (1) (a) of Act 51 of 1970.]

(2) Such regulations may prescribe penalties for a contravention thereof, not exceeding, in the case of a fine, R50 or, in the case of imprisonment, a period of three months.

(3) Different and separate regulations may be made under subsection (1) in respect of different areas or in respect of persons belonging to different population groups, and regulations made under subsection (1) (b) shall be made in consultation with the Minister of Finance.

[Subsection (3) added by section 11 (1) (b) of Act 51 of 1970.]

38A. ,,,,,,

[Section 38A inserted by section 12 of Act 51 of 1970 and repealed by section 2 of Act 41 of 1986.]

39. *Repeal of laws and savings.* —(1) Subject to the provisions of subsections (2) to (5) inclusive, the laws specified in the Schedule are hereby repealed to the extent set out in the fourth column thereof exception so far as they apply in the territory of South-West Africa.

(2) Anything done under any provision of a law repealed by subsection (1) shall be deemed to have been done under the corresponding provision of this Act (if any).

(3) Any marriage, which is validated by or is valid in terms of any law repealed by subsection (1) shall not be affected by such repeal,

(4) Any provision of a law repealed by subsection (1) which applies only in respect of Non-White persons or a particular class of Non-White persons shall, notwithstanding the provisions of this Act, but subject to the provisions of subsection (5), continue to apply in respect of any Black and any Asiatic in respect of whom it is applicable

[Section 39 amended by section 3 of Act 41 of 1986.]

39A. *Application of Act to the territory of South-West Africa, and repeal of laws of that territory.*—

(1) This Act and any amendment thereof shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel.

(2) A reference in this Act to "Union" or "province of the Union" shall be deemed to include a reference to the territory of South-West Africa.

(3) The Marriage Ordinance, 1963 (Ordinance 33 of 1963), sections 16 and 17 of the General Law Amendment Ordinance, 1965 (Ordinance 36 of 1965), and the Marriage Amended Ordinance, 1967 (Ordinance 18 of 1967), of the territory of South-West Africa are hereby repealed

(4) Anything done under any provision of a law repealed by subsection (3) shall be deemed to have been done under the corresponding provision of this Act (if any).

(5) Any marriage, which is validated by or is valid in terms of any law repealed by Subsection (3) shall not be affected by such repeal.

[Section 39A inserted by section 13 of Act 51 of 1970.]

40. *Short title and commencement*—This Act shall be called the Marriage Act, 1961, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

ANNEXURE B

REGULATIONS IN TERMS OF THE MARRIAGE ACT, 1961 (ACT 25 OF 1961)

The Minister of Home Affairs has, in terms of section 38 of the Marriage Act, 1961 (Act 25 of 1961), made the regulations as set out in the Schedule hereto.

SCHEDULE

1. (1) In these regulations any word or expression to which a meaning has been assigned in the Act has that meaning and, unless the context otherwise indicates—
 - (a) "controlling body" means the central body or the person administering the affairs of a religious denomination or organisation referred to in section 3 (1) of the Act;
 - (b) "Director-General", for the purposes of these regulations concerning the designation of marriage officers, means, with regard to all population groups of this definition and for the purposes of these regulations concerning the solemnization of marriages between persons of any population group, the Director-General of Home Affairs and also any person in the service of the State or the holder of a post in the Public Service acting by virtue of delegation by, or under the control or by direction of the Director-General of Home Affairs;
 - (c) "the Act" means the Marriage Act, 1961 (Act 25 of 1961);
 - (d) "the marriage laws" means the Marriage Act, 1961 (Act 25 of 1961).
- (2) Unless the context otherwise indicates, a reference in these regulations—
 - (a) to a section by a specific number shall be interpreted as a reference to the section of that number in the Act; and
 - (b) to a form by a specific number shall be interpreted as a reference to the form of that number in the Annexure
2. (1) An application for the designation of any person as a marriage officer under section 3 shall be directed to the Director-General.
 - (2) Such an application shall be made in writing by the controlling body of the religious denomination or organisation to which the person, with regard to whom application is being made, belongs.
3. The Director-General may direct that any marriage officer, or any person in respect of whom application is made in terms of regulation 2, be subjected to an oral or written test, or both, for the purpose of ascertaining whether such marriage officer or person has an adequate knowledge of the marriage laws and these regulations.
4. The Director-General shall—
 - (a) maintain a list of persons designated in terms of section 3 in which is stated in respect of each such person his full names, postal address, religious denomination or organisation, date of designation and any limitation in his designation referred to in section 3 (2); and
 - (b) in such list note any change of address or change of the name of the religious denomination or organisation of which he has been advised and delete the names and other particulars of any person who has for any reason whatever ceased to be a marriage officer.
5. (1) A controlling body shall notify the Director-General immediately of the change of address, the retirement or death of any marriage officer who belongs to its religious denomination or organisation and the name of any marriage officer who has for any reason whatever ceased to be a minister of religion of, or a person holding a responsible position in such religious denomination or organisation.
 - (2) Any person designated a marriage officer in terms of section 3, shall immediately notify the controlling body of his religious denomination or organisation of any change of address.

6. (1) Any marriage officer shall, in respect of every marriage solemnized by him, forward the documents referred to in sub regulation (2), where applicable, together with the register and duplicate of the register mentioned in section 29A of the Marriage Act, 1961 (Act 25 of 1961), to the regional or district representative of the Department of Home Affairs for forwarding to the Director-General as contemplated in sub regulation (3).

(2) The following documents shall, where applicable, be forwarded to the regional or district representative of the Department of Home Affairs together with the register and duplicate of the register referred to in sub regulation (1):

- (a) Any affidavit referred to in section 12;
- (b) any written consent of the parents, guardian, Minister, commissioner of child welfare or judge of the High Court of South Africa, as the case may be;
- (c) any certificate or document for the purpose of a marriage obtained in terms of the Administration of Estates Act, 1965 (Act 66 of 1965), and any affidavit made by a party to a marriage concerning the estate of a deceased spouse of such party;
- (d) the marriage officer's certificate referred to in section 6 (5).

(3) The regional or district representative of the Department of Home Affairs, as the case may be, shall forward all the documents mentioned in sub regulation (2) received by him, together with the relevant registers to the Director-General of Home Affairs for safe-keeping.

7. (1) The Director-General of Home Affairs shall—

- (a) keep any written permission referred to in section 26 (1) and any direction referred to in section 26 (2); and
- (b) attach any direction referred to in paragraph (a) to the register and a copy thereof to the duplicate of the register of the marriage concerned.

(2) The relevant Director-General shall keep any direction referred to in section 6.

8. An affidavit referred to in section 12 shall be made on form BI-31.

9. The consent by a parent or guardian to the marriage of a minor referred to in section 24 shall be furnished on form BI-32.

10. Any marriage officer who receives a written objection to a proposed marriage in terms of section 23 shall file such objection and shall keep a record of his inquiry and of his decision with regard to the objection.

11. (1) Any minor who requires the consent of a commissioner of child welfare referred to in section 25, shall apply therefore on form BI-34.

(2) On receipt of such application the said Commissioner may, in addition to any inquiry which he may deem necessary, obtain and take into consideration a report by the probation officer concerned on either or both of the parties to the proposed marriage.

(3) The said Commissioner shall keep such application and any report received by him and shall keep a record of any enquiries, his decision on the matter and his reasons for such decision.

12. The certificate referred to in section 6 (5) which is to be printed or written at the foot of the marriage register as prescribed by the Director-General in terms of the regulations made under the Marriage Act, 1961 (Act 25 of 1961), shall be signed by the marriage officer and shall be phrased as follows:

**"CERTIFICATE BY MARRIAGE OFFICER
(Section 6 of Act 25 of 1961)**

I declare that at the time of the solemnization of this marriage I was entitled in terms of the Marriage Act, 1961, or any prior law, to solemnize this marriage.

Signature of marriage officer".

13. The regulations published under Government Notice R. 1779 of 8 October 1971, as amended by Government Notice R. 11 of 8 January 1982, and Government Notice R. 115 of 28 January 1972, as amended by Government Notices R. 71 of 18 January 1974 and R. 849 of 16 April 1981, are hereby withdrawn.

ACT 37 OF 1953: MATRIMONIAL AFFAIRS ACT, 1953

5. Guardianship and custody of minors

(1) Any provincial or local division of the Supreme Court or any judge thereof may—

(a) on the application of either parent of a minor in proceedings for divorce or judicial separation in which an order for divorce or judicial separation is granted; or

(b) on the application of either parent of a minor whose parents are divorced or are living apart,

It proved that it would be in the interest of the minor to do so, grant to either parent the sole guardianship (which shall include the power to consent to a marriage) or sole custody of the minor, or order that on the predecease of the parent named in the order, a person other than the survivor shall be the guardian of the minor, to the exclusion of the survivor or otherwise.

(2) An order under subsection (1) granting the sole guardianship or custody of a minor whose parents are living apart to a parent shall, if the parents become reconciled and live together again as husband and wife, lapse with effect from the date on which the parents commence to live together again.

(3) Subject to any order of court—

(a) a parent to whom the sole guardianship or custody of a minor has been granted under subsection (1), or a father or a mother upon whom a children's court has under section 60 (1) of the Children's Act, 1960 (Act 33 of 1960), conferred the exclusive right to exercise any parental powers in regard to a minor, may by testamentary disposition appoint any person to be the sole guardian or to be vested with the sole custody of the minor, as the case may be; and

(b) the father of a minor to whom the sole guardianship of the minor has not been granted under subsection (1) or upon whom a children's court has not conferred the exclusive right to exercise any parental powers in regard to the minor, shall not be entitled by testamentary disposition to appoint any person as the guardian of the minor in any other manner than to act jointly with the mother.

(4) If the mother of a minor does not consent to the marriage of the minor, the consent of the father (whether or not he has in any proceedings been granted the sole custody of the minor), shall not be sufficient, unless he has been granted the sole guardianship of the minor.

ANNEXURE C

ACT 72 OF 1985: IMMORALITY AND PROHIBITION OF MIXED MARRIAGES AMENDMENT ACT, 1985

7. (1) The Prohibition of Mixed Marriages Act, 1949, is hereby repealed.

(2) Any of the parties to a marriage which, but for the provisions of the Prohibition of Mixed Marriages Act, 1949, would have been a valid marriage in the Republic, may with the consent of the other party or, if the other party is deceased, without such consent, apply to the Director-General: Home Affairs for a written direction contemplated in subsection (4).

(3) The Director-General: Home Affairs may, for the purposes of the consideration of an application referred to in subsection (2), require the applicant to furnish the said Director-General with such information or documents as he may deem necessary.

(4) If the Director-General: Home Affairs, after consideration of an application referred to in subsection (2) and of information, if any, furnished to him in terms of subsection (3) or contained in any document so furnished, as well as of any other information, if any, already at his disposal, is satisfied that—

(a) the marriage in question would, but for the provisions of the Prohibition of Mixed Marriages Act, 1949 have been a valid marriage in the Republic;

(b) the said marriage has not on the ground other than the provisions of the Prohibition of Mixed Marriages Act, 1949, been dissolved or declared invalid by a competent court; and (c) neither of the parties to the said marriage has after the contraction thereof and during the life of the other party lawfully married another person,

he shall direct in writing that the marriage in question shall for all purposes be a valid marriage in the Republic, and the marriage in question shall thereupon be deemed to have been such a valid marriage with effect from the date upon which it was contracted.