

Marriages

H.B. 7A, 2019.]

MARRIAGES BILL, 2019

Memorandum

This Marriages Bill, 2019, repeals and replaces the current Customary Marriages Act [*Chapter 5:07*] and the Marriage Act [*Chapter 5:11*]. There will be one Act of Parliament governing marriages in Zimbabwe and the new Act will also update the law in line with the Constitution. The following are the main Constitutional precepts which the Marriages Bill takes into account—

- gender equality (section 3(1)(g) of the Constitution);
- recognition of the rights of women, youths and children (section 3(2)(i)(iii) of the Constitution);
- the recognition of the rights of cultural groups (section 3(2)(i)(i));
- the preservation of cultural values and practices which enhance the dignity, well-being and equality of people (section 16(1));
- section 26 of the Constitution with respect to the requirement of free and full consent to marriage by the intending spouses; the ban on the pledging of children in marriage; the equality of rights and obligations of spouses during marriage and at dissolution; provision for the protection of any children of a marriage upon the dissolution of marriage whether by divorce or on death;
- the paramountcy of the best interests of the child (section 19(1) and 81(2) of the Constitution), a child being a person under the age of 18 years (section 81(1) of the Constitution);
- the right of any person who has attained the age of eighteen to found a family, not to be compelled to enter into marriage against their will and the prohibition of same sex marriages (section 78 of the Constitution);
- protection of children from sexual exploitation (section 81(1)(e));
- the supremacy of the Constitution which, in section 2(1), invalidates any law, practice, custom or conduct which is inconsistent with the Constitution.

In brief therefore, the Bill re-enacts a marriage law that complies with these various provisions of the Constitution. There will be one Act of Parliament to deal with the creation of marriages.

In more detail, the Bill provides as follows:

Clause 1 sets out the short title of the Bill and provides for the coming into operation of the Bill on a date to be notified by the President in the *Gazette*.

Clause 2 defines terms used in the Bill and new and significant among them are “betrothal”, “civil marriage”, “civil partnership” which is more fully explained in clause 40 of the Bill, and “marriage”. The term “marriage” which encapsulates both “civil marriages” and “customary law marriages” refers to marriages formally solemnised or registered in terms of this Bill. This is to distinguish them from any other union which is not so solemnised or registered. The definition of “marriage officer” has been widened to include Chiefs, in their areas of jurisdiction, with respect to customary law marriages. The rest of the terms are fairly straight-forward.

Part II of the Bill deals with general provisions governing marriage.

Clause 3 provides that the minimum age of marriage is 18 years. In order to ensure the protection of minors, the minimum age requirement has been extended to unregistered customary law marriages and to civil partnerships. This guards against attempts to side-step the law by avoiding formal marriages and still have children being forced into relationships which are, to all intents and purposes, marriages.

Clause 3 also explicitly outlaws the marrying, pledging or betrothal of children by any person and doing so is an offence which is aggravated in circumstances where the contravention is by a parent or a person in the role of a parent.

Clause 4 requires that the free and full consent of parties to a proposed marriage be given before the marriage is solemnised.

Clause 5 states that a civil marriage is contracted in terms of the general law of Zimbabwe and is monogamous. No other marriage can be contracted by a person during the subsistence of a monogamous marriage. A customary law marriage is potentially polygamous. A person cannot be married under both the general law and customary at the same time. Parties to a customary law marriage can convert their marriage to a civil law marriage if there are no other existing spouses in the marriage. All marriages under the Act have equal status.

Clause 6 provides that spouses have equal rights and obligations during marriage and at its dissolution. This especially addresses wives who were previously regarded as having no legal capacity and were treated as perpetual minors. Equality at dissolution of marriage must be understood within the context of the proprietary regime governing the marriage concerned.

Clause 7 makes provision for the prohibited degrees of relationship between parties proposing to get married. The section cross-refers to section 75(2) of the Criminal Law Code where the following persons are prohibited from marrying:

- (a) a parent and his or her natural child, whether born in or out of wedlock, or adopted child, whether the child is under the age of 18 years or not;
- (b) a step-parent and his or her step-child, whether the step-child's parent and step-parent are married under the Marriage Act [*Chapter 5:11*] or the Customary Marriages Act [*Chapter 5:07*], or are parties to an unregistered customary law marriage, and whether or not the child was over the age of 18 years at the time of the marriage;
- (c) a brother and sister, whether of whole or half blood;
- (d) an uncle and his niece;
- (e) a grand-uncle and grand niece;
- (f) an aunt and her nephew;
- (g) an grand-aunt and her grand-nephew;
- (h) an grandparent and his or her grandchild;
- (i) subject to subsection (3), any person and his or her first or second cousin;
- (j) any person and an ascendant or descendant of his or her spouse or former spouse, whether the person and his or her spouse or former spouse are or were married under the present Marriage Act [*Chapter 5:11*] or Customary Marriages Act [*Chapter 5:07*], or are or were parties to an unregistered customary law marriage;
- (k) any person and his or her ascendant or descendant in any degree; or
- (l) any person and a descendant of a brother or sister, whether of whole or half-blood.

First and second cousins who are not members of a community governed by customary law whose cultural or religious customs or traditions of the community to which they belong do not prohibit marriage between first or second cousins are exempt from the prohibition.

Similarly, first and second cousins who are members of a community governed by customary law, whose cultural or religious customs or traditions of the particular

community to which they belong do not prohibit marriage between first and second cousins are exempt from the prohibition.

The Criminal Law Code details the considerations to be taken into account for the exemption with respect to first and second cousins to apply.

It is a criminal offence to contravene these prohibitions.

Part III of the Bill provides for marriage officers.

Under *clause 8*, all magistrates are marriage officers in the districts in which they hold office.

Clause 9 designates Chiefs as marriage officers in districts which they hold office.

Clause 10 provides for Heads of embassies, etc., to practise as marriage officers in a foreign State or territory or of a diplomatic or consular mission in a foreign State or territory as long as they hold such office, while on duty at that embassy or mission, subject to such conditions (including the condition that one of the parties to a proposed marriage must be a Zimbabwean citizen or permanent resident), as the Minister shall prescribe.

Clause 11 provides for the designation of ministers of religion as marriage officers authorised to solemnise marriages in accordance with the rites of any religion, faith or organisation. Ministers of religion are not authorised to solemnise customary law marriages.

Under *clause 12*, if a person has acted as a marriage officer in the *bona fide* belief that he or she is a marriage officer when in fact he was not, the Minister may direct in writing that the person is deemed to have been a marriage officer during the period he or she so acted. The marriages so solemnised shall be valid if there was no lawful impediment to the marriage and if the marriage was solemnised in accordance with the law. The person will however be liable to prosecution for acting as a marriage officer.

Clause 13 allows a person who is designated as a marriage officer to remain a marriage officer notwithstanding the change in name of the religious denomination or organisation or amalgamation of denominations or organisations. The Minister must be immediately informed of any change or amalgamation.

Clause 14 provides for the revocation of designations for misconduct or any other good reason following consultations with the authorities of the denomination or organisation concerned. A marriage officer will cease to be a marriage officer on severing connection with a denomination or organisation in respect of which he or she was designated.

Clause 15 forbids the solemnisation of marriage by any person other than a marriage officer. A marriage will not be invalid due to the fact that the person who solemnised it had no authority to do so if the parties believed the person had authority to do so and the parties showed an intention to be married.

Part IV of the Bill provides for the procedures to be followed in the solemnisation of the customary law marriages,

Clause 16 governs the solemnisation of customary law marriages. Customary law marriages include the taking as wife the widow of a deceased relative. The marriage officer, being a magistrate or a Chief, is required to put questions to the parties or the witnesses present with regard to the identity and conjugal status of the parties or the existence of any impediments. It is an offence to refuse to answer any question by the marriage officer. Impersonation of parties to a marriage is also an offence. If the marriage officer is satisfied that there is no impediment to the marriage and that the parties have freely and fully consented, he or she shall solemnise the marriage.

Clause 17 provides that a customary law marriage which has not been solemnised in terms of this Act must be registered by the parties to such marriage within three months of the date the union was entered into by furnishing the Registrar of Marriages with the information which will be required for the registration. The Registrar will register the marriage and issue the parties with a certificate of

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registration of a customary law marriage. Failure to register the marriage does not however affect the validity of the marriage at customary law with respect to the status, guardianship, custody and other rights of the children of the parties.

Clauses 18 to 27 provide for the procedures to be followed before the solemnisation of civil law marriage. These are the same as in the existing law. Under *clause 17*, a marriage officer for a civil marriage cannot solemnise a marriage unless either banns or a notice of intention to marry has been published or a marriage licence has been issued in respect of the proposed marriage. A certificate of no impediment to a marriage will be required from an appropriate authority of a country in which a person wishing to marry in Zimbabwe is ordinarily resident if that country does not require the publishing of banns or of a notice of intention to marry.

Clause 19 requires a person who wishes to have banns published to apply to a minister of religion for the publication of the banns if the person has resided in the area in which the minister holds office for at least 14 days before the date of the application. The application must state the full names, age, residential address and status of the parties and be signed and dated by them. A Minister of religion is not compelled to accept and publish the banns.

Clause 20 sets out the manner of publication of banns. Banns are published by the minister of religion or any person authorised by the relevant denomination or organisation concerned. Publication is either orally during a public service in the face of the congregation before whom he or she officiates on three Sundays preceding the solemnisation of the marriage. Alternatively, the banns may be posted for a period covering three consecutive Sundays preceding the solemnisation of the marriage in a conspicuous place in the immediate vicinity of the ordinary place of worship of the congregation. If the main divine service is held on any other day than Sunday, the banns may be called out on such other day.

Under *clause 21*, a minister of religion may, at their request, issue to the parties a certificate of to the effect that banns have been published and the clause sets out the details to be stated in the certificate.

Under *clause 22*, banns of marriage published outside Zimbabwe shall be regarded as having been published in Zimbabwe and a marriage officer may not solemnise any marriage unless proof is produced to him or her that the publication was in accordance with law of the country concerned.

Clause 23 provides for the publication of a notice of intention to marry. A party who desires to have a notice of intention to marry to be published must apply to a magistrate stating the full names, age, status and residential address of the parties and be signed and dated by them. The magistrate shall publish the notice by posting it in a conspicuous place in the immediate vicinity of his or her office for a continuous period of 15 days if he or she is satisfied that the person has resided in the area for at least 14 days immediately prior to the publication. If only one of the parties has resided in the area, only that person shall be deemed to have published a notice.

Under *clause 24*, parties may apply to the magistrate who published the notice of intention to marry for a certificate to the effect that such notice was published and the clause sets out the details to be stated in the certificate.

Clause 25 provides for the issue of a marriage licence to parties who wish to marry without the publication of banns or notice of intention to marry. The parties may personally apply to a magistrate for the licence and furnish him or her with their full names, age, status and residential addresses. The magistrate may ask them questions necessary to determine whether or not any lawful impediment to the marriage exists and may institute any other inquiries necessary to establish that no impediment exists. The magistrate will issue the licence if satisfied that no impediment exists.

Clause 26 provides that banns, a notice of intention to marry or a marriage licence will lapse if the marriage is not solemnised within three months of the date of their issue.

Clause 27 provides for the overlooking of any failure in the strict compliance with the provisions relating to the publication of any banns, notice of intention to marry or the issue of a marriage licence by reason of error, omission or oversight if there are no other lawful impediments to the marriage.

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Clause 28 provides for objections to any proposed marriage. A person wishing to object to any marriage can lodge the objection in writing with the marriage officer who published banns or orally in the case of banns called out orally; or with the marriage officer who issued the notice of intention to marry or the marriage licence; or with the marriage officer who is to solemnise the marriage. The marriage officer concerned must inquire into the ground of the objection and if satisfied that there is no lawful impediment, take no further action but if not so satisfied, he or she shall refuse to issue any certificate or to solemnise the marriage or he or she may revoke any marriage licence which may have been issued.

Clause 29 requires that a marriage officer be furnished with the appropriate documents as proof of age and identity of the parties to a proposed marriage before solemnising the marriage.

Clause 30 provides that a marriage may be solemnised at any time in a church, building used for religious services, public office or private residence or any other place approved by a marriage officer, in the presence of the parties themselves and at least two witnesses of or above the age of 18 years.

Clause 31 provides for the marriage formula which, if the marriage officer is a minister of religion, must be in accordance with the denomination concerned, and in the case of any other marriage officer, the section specifies the formula to be used.

Clause 32 provides that a minister of religion is not compelled to solemnise a marriage which does not conform to the rites of his or her denomination or organisation and a magistrate or Chief is not compelled to solemnise a marriage outside ordinary hours of work observed by the State.

Clause 33 provides that only ministers of religion are authorised to demand or receive a gift or reward for solemnising a marriage. A minister of religion may receive remuneration in accordance with the rules of his or her denomination or organisation.

Clause 34 permits a minister of religion to bless any marriage contracted within or outside Zimbabwe in accordance with the rites of his or her church or organisation or to issue any documents in connection with the blessing. The minister of religion is however required to inform the parties that the blessing is not recognised as a marriage under the law.

Part VIII provides for the registration of marriages.

Clause 35 provides for the Civil Service post of Registrar of Marriages.

Clause 36 details the procedures to be followed by a marriage officer in making entries into the marriage register book and duplicate original registers and the particulars to be entered. The form of the registers is prescribed in terms of the Act. The entries must be signed by the marriage officer, the parties and attested by at least two witnesses. One copy must be handed to the parties, one must be sent to the Registrar of Marriages within 30 days of the date of the marriage together with any other document required to be delivered to the Registrar. A marriage officer is required, upon payment of a prescribed fee, if any, to permit searches to be made in the marriage register book in his or her custody.

Under *clause 37*, the Registrar is required to file in his or her office all the documents sent to him or her by a marriage officer and must immediately register in the Marriage Registration Book such particulars as may be prescribed of every duplicate original register filed by him or her. Upon payment of the prescribed fee, the Registrar is required to allow any application to search the Marriage Registration Book or, if satisfied that a copy is not required for an unlawful or improper purpose, to issue certified copies of a duplicate original register filed by him.

Clause 38 authorises the Registrar to correct clerical errors or errors of fact in any duplicate original register filed in his or her office or in the possession of the parties if appropriate evidence as to the errors is produced to him or her. The Registrar will also direct a marriage officer to making corresponding corrections in the marriage register in his or her custody.

Part VIII of the Bill provides for offences and other miscellaneous matters.

Clause 39 provides for an offence and penalty for contravention of clause 35 by

a marriage officer. Imprisonment of up to six months may be imposed on the marriage officer.

Clause 40 also provides for an offence and penalty for the solemnising of a marriage by a marriage officer in contravention of the law. Imprisonment of up to five years may be imposed on the marriage officer.

Clause 41 provides for relationships which, to make a clear distinction between them and proper marriages, have been termed “civil partnerships”. Civil partnerships are the equivalent of what would be referred to under the general law as “common law marriages”. Civil partnerships are not recognised as marriages as defined under this Bill but for the purpose of realising justice between the parties to the partnership in terms of the Matrimonial Causes Act [*Chapter 5:13*] upon the dissolution of the relationship.

The parties to a civil partnership must be over 18 years of age, not within the prohibited degrees of relationship and, having regard to all the circumstances of the relationship, have lived together as a couple on a genuine domestic basis before their rights and obligations on the dissolution of the relationship can be determined in accordance with the Matrimonial Causes Act. *Subclause (2)* sets out the circumstances that may be taken into account in determining whether or not a civil partnership existed. Under *subclause (3)*, no particular factor in relation to any circumstance may be regarded as necessary in the determination and the court making a determination may attach such weight to any factor as may be appropriate. Under *subclause (4)*, because a civil partnership is not a marriage, it may exist notwithstanding that one or both parties are legally married to someone else or are in another civil partnership.

Clause 42 provides for the issue by the Registrar of Marriages of a certificate of no impediment to marriage to a Zimbabwean seeking to be married outside Zimbabwe. An application for the certificate must be in the prescribed form and the Registrar may issue the certificate if satisfied, following any searches or inquiries he or she may undertake, that there is no impediment to the marriage and shall ensure that the certificate discloses any specific information that may be required in the country concerned.

Clause 43 provides for circumstances in which a marriage is void or voidable. Void marriages include marriages of children contracted after 20th January, 2016, a civil marriage where either party was lawfully married to someone else, marriages of persons within prohibited degrees of relationship, marriages in which consent was not real consent in the circumstances specified in the clause. Voidable marriages include marriages of children contracted before 20th January, 2016. The annulment of a child marriage will not prejudice any personal or real rights which the person who was a child had become entitled to by virtue of the void or voidable marriage and the rights of any child of such marriage.

Clause 44 provides for the recognition of foreign marriages if the essential requirements of a marriage under Zimbabwean law are met.

Clause 45 provides for the dissolution of marriages in terms of the Matrimonial Causes Act [*Chapter 5:13*].

Clause 46 provides for the making of regulations governing any matter relating to marriages.

Clause 47 provides for the repeal of the Customary Law Marriages Act [*Chapter 5:07*] and the Marriage Act [*Chapter 5:11*] and also provides for savings and some transitional matters of significance is the period of 12 months granted to parties who contracted unregistered customary law marriages before the date of commencement of this Act to register such marriages as provided for under this Act.

Clauses 48 to 54 provide for consequential amendments to various Acts to bring them into line with the Constitutional definition of child. All the amendments are self-explanatory. Noteworthy is clause 47 which amends the Child Abduction Act [*Chapter 5:05*] by repealing and replacing the definition of “child”. The definition of “child” under that Act is going to be different from the definition of “child” under the Convention of the Civil Aspects of International Child Abduction which has the force of law in Zimbabwe. This means that, by virtue of this change in the definition of child, our law will afford greater protection than the Convention which restricts a child to a person under the age of 16 years.

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BILL

To consolidate the laws relating to marriages; to provide for the recognition and registration of customary law unions; to provide for the recognition of civil partnerships; to amend the Child Abduction Act [*Chapter 5:05*],
5 the Children’s Act [*Chapter 5:06*], the Guardianship of Minors Act [*Chapter 5:08*], the Maintenance Act [*Chapter 5:09*], the Matrimonial Causes Act [*Chapter 5:13*], the General Law Amendment Act [*Chapter 8:07*], and the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]; to repeal the Customary Marriages Act [*Chapter 5:07*] and the
10 Marriage Act [*Chapter 5:11*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

PART I

Preliminary

15 **1 Short title**

(1) This Act may be cited as the Marriages Act, 2019.

(2) This Act shall come into operation on a date to be fixed by the President by notice in the *Gazette*.

2 Interpretation

20 In this Act—

“betrothal” means the promising in marriage or the engagement for the purpose of marriage and includes any coerced act intended to lead to or result in marriage;

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“civil marriage” means a marriage contracted under the general law;

“Chief” means a Chief referred to in Chapter 15 of the Constitution;

“child” means a person under the age of eighteen years;

“civil partnership” means the relationship referred to in section 40;

“Criminal Law Code” means the Criminal Law (Codification and Reform) Act [Chapter 9:23]; 5

“customary law” means the customary law of any section or community of Zimbabwe’s people;

“customary law marriage” means a marriage solemnised in accordance with customary law; 10

“general law” means the law of Zimbabwe other than customary law;

“identity document” means—

(a) a document issued to a person in terms of section 7(1) or (2) of the National Registrations Act [Chapter 10:17] or a passport or drivers licence issued by or on behalf of the Government of Zimbabwe; or 15

(b) any visitors entry certificate or other certificate or permit issued to a person in terms of the Immigration Act [Chapter 4:02], or in terms of any enactment relating to refugees; or

(c) any passport, identity document or drivers licence issued by a foreign government; 20

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

“marriage” means a marriage solemnised, registered or recognised as such in terms of this Act;

“marriage consideration” means the consideration, by whatever name known at customary law, given or to be given by any person in respect of a marriage in terms of customary law, whether such marriage is contracted according to customary law or the general law; 25

“marriage licence” means a licence to marry issued in terms of section 24;

“marriage officer” in relation to—

(a) a customary law marriage, means a magistrate, minister of religion or a Chief; 30

(b) a civil marriage, means a magistrate; minister of religion;

“Minister” means the Minister responsible for justice or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“minister of religion” means a person designated and registered as a marriage officer in terms of section 10; 35

“prior law” means any law in force immediately before the date of commencement of this Act under which marriages were solemnised;

“Registrar” means the Registrar of Marriages referred to in section 34.

PART II 40

General Provisions as to Marriage

3 Minimum age of marriage

(1) No person under the age of eighteen years may contract a marriage or enter into an unregistered customary law marriage or a civil partnership.

(2) For the avoidance of any doubt, it is declared that child marriages are prohibited and under no circumstances shall any person contract, solemnise, promote, 45

permit, allow or coerce or aid or abet the contracting, solemnising, promotion, permitting, allowing or coercion of the marriage, unregistered customary law marriage, civil partnership, pledging, promise in marriage or betrothal of a child.

5 (3) Any person, other than the child concerned, who contravenes subsection (2), shall be guilty of an offence and liable to a fine not exceeding level 10 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(4) It shall be an aggravating factor in an offence referred to in subsection (3) that the contravention was by a parent or a person in *loco parentis* to the child concerned.

4 Consent to marriage

10 A marriage shall not be solemnised or registered in terms of this Act unless each party to the marriage has given his or her free and full consent to the marriage.

5 Nature of marriages

15 (1) A civil marriage is monogamous, that is to say, it is the lawful union of two persons to the exclusion of all others and no person may contract any other marriage during the subsistence of a marriage under the general law.

(2) A customary law marriage may, subject to the customary law of the people concerned, be polygamous or potentially polygamous.

(3) No person may be married under the general law and customary law at the same time.

20 (4) Parties to a registered customary law marriage in which the husband has no other existing spouse in polygamy may convert their marriage to a civil marriage and the appropriate marriage officer shall, upon being satisfied that there is no impediment to the conversion, solemnise the marriage in accordance with the general law and the civil marriage shall supersede the previous customary law marriage in the marriage register.

25 (5) All marriages registered in terms of this Act are equal.

6 Legal status of spouses

Parties to any marriage have equal rights and obligations during the subsistence, and at dissolution, of the marriage.

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

30 (1) With effect from the date of commencement of the Criminal Law Code—

35 (a) no persons who are related to each other in any degree of relationship specified in section 75(2) of the Criminal Law Code shall be capable of contracting a valid marriage, unless, in the case of persons who are related to each other as first or second cousins, they satisfy the marriage officer that they belong to a community referred to in section 75(3) of the Criminal Law Code;

40 (b) persons who are related to each other by affinity shall be capable of contracting a valid marriage if the affinity relationship between them is not one described in paragraph (b) or (j) of section 75(2) of the Criminal Law Code.

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

- (a) the parties knew or realised that there was a real risk or possibility that they were related to each other as first or second cousins, such marriage shall be void;
- (b) one of the parties knew or realised that there was a real risk or possibility that they were related to each other as first or second cousins, such marriage shall be voidable at the instance of the party who was not so aware within twelve months from the time when he or she became so aware; 5
- (c) the parties did not know or realise that there was a real risk or possibility that they were related to each other as first or second cousins, such marriage shall be valid. 10

(3) For the avoidance of doubt it is declared that a marriage between persons who are related to each other as first and second cousins shall be valid if such marriage was contracted before the date of commencement of the Criminal Law Code.

PART III

Marriage Officers 15

8 Magistrate to be marriage officer for district

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 in which he or she holds office.

9 Chiefs as marriage officers for district

- (1) Any Chief, by virtue of his or her office and so long as he or she holds such office, may be designated as a marriage officer for the district in which he or she holds office. by the Minister at the request of such Chief and in accordance with such conditions as the Minister may prescribe.
- (2) The Registrar shall keep a register in the prescribed manner of all Chiefs designated by the Minister as marriage officers in terms of this section.

10 Heads of embassies, etc., as marriage officers

Every head of an embassy of Zimbabwe in a foreign State or territory or of a diplomatic or consular mission in a foreign State or territory shall, by virtue of his or her office and so long as he or she holds such office, be a marriage officer while on duty at that embassy or mission, and shall exercise the duties of a marriage officer subject to such conditions (including the condition that one of the parties to a proposed marriage must be a Zimbabwean citizen or permanent resident), as the Minister shall prescribe.

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

- (1) The Minister may, at the request of the authority governing any religious denominations or organisation, designate in accordance with such conditions as the Minister may prescribe any person holding a responsible position in any such religious denomination or organisation to be a marriage officer for the purpose of solemnising marriages according to Christian, Jewish, Islamic or Hindu rites or the rites of any religion, and such person shall, for the purposes of this Act, be known as a minister of religion. 30
- (2) The Registrar shall keep a register in the prescribed manner of all persons designated by the Minister in terms of subsection (1) as marriage officers.

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

- (3) Whenever any person has acted as a marriage officer during any period in respect of which he or she was not a marriage officer under this Act or a prior law, 35

and the Minister is satisfied that such person did so in the *bona fide* belief that he or she was a marriage officer during that period, he or she may direct in writing that such person shall for all purposes be deemed to have been a marriage officer during such period under this Act or a prior law, as the case may be. 40

(4) Any marriage solemnised during such period by any person who is in terms of a direction under subsection (1) deemed to have been a marriage officer in respect thereof, shall, if such marriage was in every other respect solemnised in accordance with this Act or a prior law, as the case may be, and there was no lawful impediment to the marriage, be valid and binding as it would have been had such person had been a marriage officer in respect of such period. 45

(5) Nothing contained in subsection (1) shall be construed as relieving any person, in respect of whom a direction has been issued thereunder, from liability to prosecution for any offence committed by him or her.

13 Change of name of religious denomination or organisation and amalgamation of religious denominations or organisations

(1) A change in the name of a religious denomination or organisation or the amalgamation of a religious denomination or organisation with any other religious denomination or organisation shall not affect the designation as a marriage officer of any person who was so designated by virtue of his or her occupying any post or holding any position in any such religious denomination or organisation. 10

(2) If a religious denomination or organisation changes the name by which it was known or amalgamates with any other religious denomination or organisation in such circumstance as are contemplated in subsection (1), it shall immediately inform the Minister thereof (but any failure to comply with this section shall not affect the designation of a marriage officer referred to in subsection (1)). 15

14 Revocation of designation as marriage officer

(1) The Minister may, on the ground of misconduct or for any other good cause, and where possible after consultation with the authority governing the religious denomination or organisation concerned, revoke in writing the designation of any person as a marriage officer. 20

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

15 Unauthorised solemnisation of marriage ceremonies forbidden

(1) A marriage may be solemnised by a marriage officer only. 25

(2) A marriage shall not be invalid by reason that the person solemnising it was not authorised by this Act to do so, if either party to the marriage, at the time the marriage was solemnised, believed that that person was lawfully authorised to solemnise it, and in such case, the form and ceremony of the marriage shall be deemed to have been sufficient if they were such as to show an intention on the part of each of the parties to become thereby lawfully married. 30

(3) Any person, not being a marriage officer, who purports to solemnise a marriage, shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment. 35

PART IV

16 Solemnisation of customary law marriages

(1) Every marriage contracted according to customary law, including the case
40 where a man takes to wife the widow or widows of a deceased relative, shall be solemnised
before the appropriate marriage officer of the district in which either party resides.

(2) A marriage officer in a customary law marriage may put to either of the
parties to a proposed marriage or to the witnesses any questions relevant to the identity
or conjugal status of the parties to the proposed marriage and to the existence of
45 impediments to the marriage.

(3) Any person who refuses to answer, or wilfully gives a false answer to, any
question put to him or her in terms of subsection (2) shall be guilty of an offence and
liable to a fine not exceeding level 4 or to imprisonment for a period not exceeding
three months or to both such fine and such imprisonment.

(4) If any person impersonates either of the parties to a marriage, he or she shall 5
be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for
a period not exceeding six months or to both such fine and such imprisonment.

(5) If the marriage officer is satisfied—

- (a) that the intended husband and wife freely and fully consent to the marriage;
and 10
- (b) that no lawful impediment exists to the proposed marriage;

he or she shall proceed in terms of section 30 and such marriage shall be a valid mar-
riage contracted according to customary law.

17 Unregistered customary law unions

(1) A marriage contracted solely according to customary law and not solemnised 15
in terms of this Act must be registered by the parties to such marriage within three months
of the date the union was entered into or such later date as may be prescribed, and for
that purpose, the parties to the union shall furnish to the Registrar, such information and
in such form as may be prescribed and any additional information which the Registrar
may reasonably require, to enable the Registrar to register the marriage. 20

(2) If the Registrar is satisfied that such a marriage took place, he or she shall
record the identity particulars of the parties concerned, the date of the marriage and brief
details of the marriage consideration, if any, which was or is to be paid in respect of the
marriage, whereupon he or she shall issue the parties with a certificate of registration
of a customary law marriage. 25

(3) Failure to register a marriage contracted at customary law does not affect
the validity of the marriage at customary law with respect to the status, guardianship,
custody and the rights of succession of the children of such marriage.

PART V

Publication, notice of intention to marry, marriage licence and Solemnisation 30 of Civil marriages

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

(4) Subject to subsection (2), no marriage officer shall solemnise any marriage
unless in respect thereof and in terms of this Act or a prior law— 35

- (a) each of the parties has caused banns of marriage to be published; or
- (b) each of the parties has caused a notice of intention to marry to be published;
or
- (c) one of the parties has caused banns of marriage to be published and the other has caused a notice of intention to marry to be published; or 40
- (d) a marriage licence has been issued.

(5) A party to a proposed marriage within Zimbabwe may, if the law of the country in which he or she is ordinarily resident does not require the publication of banns of marriage or of notice of intention to marry, lodge with the marriage officer concerned a certificate issued by an appropriate authority in that country to the effect 45

that there is no impediment to the proposed marriage, and such certificate shall be accepted by the marriage officer *in lieu* of a certificate or notice of intention to marry if the marriage officer is satisfied that publication of such banns or notice of intention is not required by the laws of that country.

5 **19 Application for publication and acceptance of banns**

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

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

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

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

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

20 **20 How publication of banns of marriage to be made**

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

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

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

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

21 Certificate of publication of banns

40 (1) Subject to section 27, a minister of religion shall, on the application of either of the persons desiring to marry and after banns of marriage have been published in terms of section 19, issue to such person or persons a certificate to the effect that the banns have been so published.

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

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

(1) Banns of marriage or a notice of intention to marry, as the case may be, published in a country outside Zimbabwe shall, for the purposes of this Act, be regarded as having been published in Zimbabwe, but a marriage officer shall not solemnise any marriage in pursuance thereof unless there is produced to him or her proof that publication of such banns or such notice, as the case may be, was duly made according to the law of such country. 5

(2) Section 25 shall apply, with any necessary changes, with reference to any banns or notice referred to in subsection (1).

23 Notice of intention to marry 10

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

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

(a) state the full names, age, status and residential address of each of the parties; and 15

(b) bear the signature of each of the parties and be dated by either of them.

(5) If the magistrate to whom such application is made is satisfied that the applicant has resided in the district in respect of which the magistrate holds office, for a period of at least fourteen days immediately preceding the date of the receipt of the application, he or she shall publish such notice by posting it in a conspicuous place in or in the immediate vicinity of his or her office for continuous period of fifteen days. 20

(6) If only one of the parties concerned has so resided in such district it shall, for the purposes of section 17, be deemed that only such party caused such notice to be published.

(7) Every notice referred to in subsection (3) shall state the full names, status and residential address of each of the parties desiring to marry. 25

24 Certificate of publication of notice of intention to marry

(8) Subject to section 27, any magistrate who has in terms of section 22, published a notice of intention to marry shall, on the application of either of the persons desiring to marry and on payment to him or her of the prescribed fee, if any, issue to such person a certificate to the effect that such notice was so published. 30

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

25 Marriage licence 35

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

(11) The magistrate to whom an application in terms of subsection (1) is made shall require each of the parties to furnish him or her with their full names, age, status and residential address and may put to each of them such questions as he or she may deem necessary to determine whether any lawful impediment exists to the proposed marriage. 40

(12) If the magistrate to whom an application in terms of subsection (1) is made is not satisfied that the proposed marriage may be legally solemnised, he or she shall, in 45

order to determine whether there is any lawful impediment to the marriage, interrogate

each of the parties, demand the production of relevant documents and institute such other inquiries as he or she may think necessary.

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

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

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

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

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

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

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

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

30 PART VI

Provisions applicable to all marriages

28 Objections to marriage

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

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

40 Provided that, in the case of banns published in terms of section 19(2)(a), any person desiring to raise any objection may do so orally, and such objector shall, if so required by the person making the publication, confirm such objection in writing; or

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

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

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

45 (a) the marriage officer who—

- (i) is required to issue a certificate in terms of section 20 or 23; or
- (ii) is to solemnise the marriage;

or

(b) the magistrate who has issued a marriage licence in terms of section 24; such marriage officer or magistrate, as the case may be, shall inquire into the ground of objection and, if satisfied that there is no lawful impediment to the proposed marriage, such marriage officer may issue the relevant certificate or solemnise the marriage, as the case may be, and such magistrate need take no further action. 5

(3) If such marriage officer or magistrate is not satisfied in terms of subsection (2), he or she shall refuse to issue the relevant certificate or solemnise the marriage, as the case may be, and where a marriage licence had been issued, such magistrate shall take steps to cancel the marriage licence. 10

29 Proof of age and identity of parties to proposed marriage

A marriage officer shall not solemnise a marriage and a Registrar shall not register a marriage unless he or she has satisfied himself or herself as to the age and identity of the parties and for that purpose, each party shall furnish to the marriage officer or the Registrar, as the case may be, an appropriate identity document as proof of his or her age and identity. 15

30 Time and place for, and presence of parties and witnesses at, solemnisation of marriage

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

(2) A marriage officer shall solemnise any marriage in a church or other building used for religious service, or in a public office or private dwelling-house or other place approved by such marriage officer, in the presence of the parties themselves and at least two witnesses of or above the age of eighteen years. 25

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

31 Marriage formula

In solemnising any marriage the marriage officer, if he or she is a minister of religion, may follow the rites usually observed by his or her religious denomination or organisation, but any other marriage officer shall cause each of the parties in some part of the proceedings to make the following declaration— 30

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

and each of the parties shall say to the other— 35

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

32 Certain marriage officers may refuse to solemnise certain marriages

Nothing contained in this Act shall be construed as compelling a marriage officer who is— 40

- (a) a minister of religion, to solemnise a marriage which would not conform to the rites or discipline of his or her religious denomination or organisation; or
- (b) a magistrate or Chief, to solemnise a marriage outside the ordinary hours of attendance observed at offices of the State. 45

33 Payments to marriage officers

It shall not be lawful for any marriage officer to demand or receive any gift or reward for or by reason of anything done or to be done by him or her as a marriage officer in terms of this Act.

5 34 Blessing of a marriage

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

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

15 (2) A minister of religion acting in terms of this section shall inform the parties that the blessing of a marriage does not create a marriage as defined in this Act.

PART VII

Registration of Marriages

20 35 Registrar of Marriages

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

36 Register of marriages

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

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

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

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

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

(6) Every extract from a marriage register which purports to be certified as a true copy therefrom by the marriage officer who for the time being has the custody of the marriage register and every duplicate original register shall respectively be good evidence of the facts recorded therein in any proceedings before any court and shall be admissible upon its mere production by any person. 5

37 Registration of marriages by Registrar

(1) The Registrar shall file in his or her office all duplicate original registers and other documents transmitted to him or her in terms of this Act and shall forthwith register, in a book to be kept in his or her office for that purpose and to be called the Marriage Registration Book, such particulars as may be prescribed of every duplicate original register filed by him or her. 10

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

- (a) on application made in writing, cause a search to be made in the Marriage Registration Book and of duplicate original registers filed by him or her;
- (b) subject to subsection (3), issue certified copies of a duplicate original register filed by him or her. 15

(3) The Registrar may—

- (a) refuse to issue a certified copy of any duplicate original register referred to in subsection (2)(b) where he or she is not satisfied that such copy is being required for a purpose which, in his or her opinion, is a lawful or proper one or for any other reason; 20
- (b) issue a limited number only of certified copies of any duplicate original register referred to in subsection (2)(b) to any one applicant therefor.

38 Correction of errors

(4) The Registrar may correct any clerical error or error of fact or substance in any duplicate original register filed in his or her office or in possession of the parties to the marriage if there is produced to him or her such evidence as he or she may require, stating the nature of the error and the true facts of the matter, and he or she is satisfied that an error has been made. 25

(5) If the Registrar makes any correction in terms of subsection (1), he or she shall direct the marriage officer having the custody of the marriage register book in which the marriage in question is entered to make a like correction to the entry in that book. 30

PART VIII

Offences and miscellaneous Provisions

39 Penalty for failure to comply with section 35

Any marriage officer who knowingly fails to comply with section 35 shall be guilty of an offence and liable to a fine not exceeding level 5 to imprisonment for a period not exceeding six months or to both such fine and such imprisonment. 40

40 Penalties for solemnising marriage contrary to this Act and for false representation or statement

Any marriage officer who knowingly solemnises a marriage in contravention of this Act or any person who makes, for any of the purposes of this Act, any false representation or false statement knowing it to be false, shall be guilty of an offence and 45

liable to a fine not exceeding level 10 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

41 Civil partnerships

- (6) A relationship between a man and a woman who—
- 5 (a) are both over the age of eighteen years; and
 - (b) have lived together without legally being married to each other; and
 - (c) are not within the degrees of affinity or consanguinity as provided in section 7; and
 - 10 (d) having regard to all the circumstances of their relationship, have a relationship as a couple living together on a genuine domestic basis;

shall be regarded as being in a civil partnership for the purposes of determining the rights and obligations of the parties on dissolution of the relationship and, for this purpose, sections 7 to 11 of the Matrimonial Causes Act [*Chapter 5:13*] shall *mutatis mutandis* apply on the dissolution of any such relationship.

- 15 (2) The circumstances referred to in paragraph (d) may include—
- (a) the duration of the relationship;
 - (b) the nature and extent of their common residence;
 - (c) whether a sexual relationship exists;
 - 20 (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
 - (e) the ownership, use and acquisition of their property;
 - (f) the degree of mutual commitment to a shared life;
 - (g) the care and support of children;
 - (h) the reputation and public aspects of the relationship.

- 25 (3) No particular factor in relation to any circumstance may be regarded as necessary in determining whether or not the persons concerned have a civil partnership.

(4) A court determining whether a civil partnership exists is entitled to have regard to such matters and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

30 “(5) A civil partnership exists—

- (a) where both of the partners are not married, civilly or customarily, to anyone else; or
- (b) where both of the partners were not married, civilly or customarily, to anyone else, and subsequently either of them marry someone else, civilly or customarily, in which event only those assets acquired by them before the marriage to the other person (or the first of the marriages, as the case may be) shall be capable of being divided, apportioned or distributed by the court on dissolution of the partnership

Provided that if their partnership still subsists after the marriage of one or both of them to other persons, those assets acquired by them jointly after the marriage to the other person (or the first of the marriages, as the case may be) shall be divided, apportioned or distributed in accordance with subsection (6);

- (c) where one of the partners is married civilly to someone else and also married customarily to the other partner, in which event—
 - (i) subsection (6) applies to the division, apportionment or distribution of the assets in contention; and

- (ii) the civil partners shall be deemed to be in an unregistered customary law marriage despite the fact that it was not registered timeously in accordance with section 16(1) and that the marriage consideration was not paid or fully paid at the time of dissolution; and
- (iii) it is here provided that, by virtue of the partners dissolving their civil partnership, neither of them shall be deemed to be guilty of bigamy under section 104 of the Criminal Law Code.

(6) Where one of the persons in a civil partnership is legally married to someone else in a marriage that is not an unregistered customary law marriage (this person being hereinafter called the “civilly married partner”), no part of the assets the civilly married partner shall be capable of being divided, apportioned or distributed with the civil partner except those that the civil partner proves —

- (a) were purchased or acquired using her own resources;
- (b) were purchased or acquired using of the resources of the civilly married partner that—
 - (i) constitute the income of the civilly married partner as an employee; or
 - (ii) constitute the income of the civilly married partner from the business of the civilly married partner—
 - A. in which the spouse of the civilly married partner had no legally verifiable stake in the form of shares or a partnership interest in the business; or
 - B. in which the partner of the civilly married partner had a legally verifiable stake in the form of shares or a partnership interest in the business;
 - (iii) constitute the income of the civilly married partner from the investments of the civilly married partner that were made using income referred to in subparagraph (i) and (ii)
- (c) were purchased or acquired jointly using her own resources and the resources of the civilly married partner referred to in paragraphs (a) and (b).

42 Certificate of no impediment to marriage

(1) A person who intends to marry outside Zimbabwe in accordance with the law of another country may apply to the Registrar for a certificate of no impediment to the proposed marriage.

(2) An application must—

- (a) be made in the prescribed form; and
- (b) contain the prescribed information; and
- (c) be accompanied by the prescribed fee.

(3) On receipt of an application, the Registrar must make whatever searches and inquiries he or she considers necessary to determine the status of the applicant as required for purposes of the proposed marriage in the country concerned.

(4) The Registrar may issue a certificate of no impediment to the applicant if the Registrar is satisfied that no lawful impediment to the proposed marriage exists

and ensure that the certificate discloses any specific information that may be required in the country concerned.

43 Void and voidable marriages

- (1) The following marriages shall be void, namely—
- (a) any marriage or unregistered customary law marriage of a child contracted on or after 20th January, 2016; 5
 - (b) any civil marriage where either of the parties was, at the time of the marriage, lawfully married to some other person;
 - (c) subject to section 75(3) of the Criminal Law Code, any marriage in which the parties are within the prohibited degrees of relationship; 10
 - (d) any marriage to which the consent of either of the parties was not a real consent because—
 - (i) it was obtained by duress or fraud; or
 - (ii) a party was mistaken as to the identity of the other party or as to the nature of the ceremony performed; or 15
 - (iii) a party was mentally incapable of understanding the nature and effect of the marriage ceremony by reason of mental illness, intoxication or being under the influence of drugs;
 - (iv) any marriage of convenience in circumvention of any law.
- (2) The following marriages shall be voidable, namely— 20
- (a) any marriage or unregistered customary law marriage contracted on or before 20th January, 2016, at the instance of the party who was a child at the time of the marriage, or at the instance of a third party in the interests of the protection of the rights of a child or a victim of crime;
 - (b) any marriage where a party has remained incapable of consummating the marriage; 25
 - (c) where any formalities required in terms of this Act have not been complied with (not being informalities such as are referred to in section 14(2) and section 26). 30
- (3) The annulment of a marriage referred to in subsections (1)(a) and (2)(a) shall not affect—
- (a) any right or interest in any real or personal rights to which a person who was a child at the date of the purported marriage had become entitled to by reason of the said marriage; 35
 - (b) the rights of any child of the marriage with respect to status, guardianship, custody and rights of succession.

44 Recognition of marriages of foreigners

A foreign marriage is recognised as valid if, at the time the marriage was contracted in any country—

- (a) none of the spouses was already married; or 40
- (b) the spouses were not related to one another by consanguinity or by adoption; or
- (c) none of the spouses was under the age of eighteen years; or
- (d) none of the spouses suffered a mental incapacity to consent; or
- (e) each spouse freely and fully consented to the marriage.

45 Dissolution of marriage

Subject to this Act, no marriage solemnised or registered or deemed to be solemnised or registered in terms of this Act shall be dissolved except by order of court of competent jurisdiction in terms of the Matrimonial Causes Act [*Chapter 5:13*].

5 46 Regulations

(1) The Minister may make such regulations as he or she may think necessary for giving effect to the provisions of this Act.

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

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

47 Repeals, savings and transitional provisions

(1) The Customary Law Marriages Act [*Chapter 5:07*] and the Marriages Act [*Chapter 5:11*] are repealed.

(2) Notwithstanding subsection (1) (but subject to section 42)—

- 20 (a) any marriage which was contracted, solemnised, registered or was valid in terms of any prior law shall continue to be valid and shall be deemed to have been contracted in terms of this Act;
- (b) every marriage register book which was kept in terms of any prior law and any document which was issued or anything commenced or done in terms of any prior law shall be deemed to have kept, issued, commenced or done, as the case may be, under the corresponding provision of this Act;
- 25 (c) any statutory instruments which immediately before the date of commencement of this Act were in force under the Acts referred to in subsection (1) shall remain in force as if they had been made under this Act.
- 30

(3) The parties to any unregistered customary law marriage contracted before the date of coming into operation of this Act shall secure the registration of such marriage in terms of this Act within twelve months of the date of coming into operation of this Act.

35 48 Amendment of section 2 of Cap. 5:05

The Child Abduction Act [*Chapter 5:05*] is amended in section 2 (“Interpretation”) by the repeal of the definition of “child” and the substitution of—

“child”, notwithstanding Article 4 of the Convention, means a person under the age of eighteen years;”.

40 49 Amendment of sections 2 and 47 of Cap. 5:06

The Children’s Act [*Chapter 5:06*] is amended—

- (a) in section 2 (Interpretation), in the definition of—
 - (a) “child”, by the deletion of “sixteen” and the substitution of “eighteen”;
 - (b) “legal guardian”, by the deletion of “and includes a husband of a girl who is under the age of eighteen years of age”.
- 45

- (b) in section 47 (Transfer of certain parental powers), by the deletion from subsection (4) of “or the power to consent to marriage of a pupil, child or young person”.

50 Amendment of section 4 of Cap. 5:08

The Guardianship of Minors Act [*Chapter 5:08*] is amended in section 4 (Guardianship and custody of minors), by the deletion from subsection (1) of “which shall include the power to consent to a marriage”.

51 Amendment of section 11 of Cap. 5:09

The Maintenance Act [*Chapter 5:09*] is amended in section 11 (Termination order), in subsection (1), by the repeal of paragraph (c).

52 Amendment of section 8 of Cap. 5:13

The Matrimonial Causes Act [*Chapter 5:13*] is amended in section 8 (Duration of maintenance orders), in subsection (2), by the deletion from paragraph (a) of “or marries”.

53 Amendment of section 15 of Cap. 8:07

The General Law Amendment Act [*Chapter 8:07*] is amended in section 15 (Reduction of age of majority from 21 to 18), by the repeal of subsection (5).

54 Amendment of Cap. 9:23

(1) The Criminal Law (Codification and Reform) Act [*Chapter 9:23*] is amended in section 75 (Sexual intercourse within a prohibited degree of relationship), in subsection (2), by the deletion from paragraphs (b) and (j) of “Marriage Act [*Chapter 5:11*] or the Customary Marriages Act [*Chapter 5:07*] and the substitution of “Marriages Act, 2019”.

(2) Section 79 of the Criminal Law Code is repealed.