

Marriage Act 1974

ACT NO. 10 OF 1974

[Date of Assent: 4th July, 1974]

[Date of Commencement: 2nd August 1974]

ACT

To make provision for the solemnization and registration of marriages.

Enacted by the Assembly

1. This Act may be cited as the Marriage Act 1974. **Short title**

2. In this Act, unless the context otherwise requires — **Inter-pretation**
 - “marriage officer” means any person who is a marriage officer by virtue of the provisions of this Act;
 - “Minister” means the Minister responsible for the administration of this Act;
 - “prescribed” means prescribed by this Act or by regulation made under this Act;
 - “prior law” means any law repealed by this Act.

3. No person may be compelled to enter into a contract of marriage with any other person or to marry against his or her wish. **No person may be compelled to marry**

4. A marriage entered into according to Sesotho custom may be registered at the office of the District Administrator for the district in which such marriage was celebrated, or in the office of the District Administrator for the district in which the parties reside: **First customary marriage may be registered**

Provided that no such marriage shall be registered if either party thereto is at the time legally married to some other person.

5. The Minister may from time to time appoint in writing — **Appointment of Registrar and assistant Registrars of Marriages**
 - (a) a Registrar of Marriages, who shall perform the duties assigned to the Registrar of Marriages under this Act or any regulations made hereunder; and
 - (b) Assistant Registrars of Marriages, who shall, under the direction of the Registrar, have all the powers and perform all the duties of such Registrar of Marriages.

Ex Officio
marriage
officers and
public
servants
designated
as
marriage
officers

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

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

Designation
of
ministers of
religion as
marriage
officers

7. (1) The Minister and any officer in the public service authorized thereto by him may designate any minister of religion to be, so long as he is such minister, 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 limit the authority of any such minister of religion to the solemnization of marriages within a specified area and for a specified period.

Applica-
tions for
designation
and
manner
thereof

8. (1) Any minister of religion desiring to be appointed a marriage officer shall make application in writing stating his qualifications and submit documentary evidence to the satisfaction of the Minister of the position he holds in the religion of which he purports to be a minister.

(2) Every designation of a minister of religion as marriage officer shall be by notice in the Gazette and shall have effect from the date of publication of that notice.

Marriage
officers
under
laws
repealed by
this Act

9. (1) Any person who, at the commencement of this Act is under the provisions of any prior law authorized 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 or any regulations made hereunder.

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

Persons
deemed to
have been
marriage
officers

10. (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 authorized 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) Any marriage solemnized during such period or within such area by any person who is in terms of subsection (1) to be deemed to have been duly designated as a marriage officer in respect thereof, 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 in respect of such period or such area.

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

11. (1) If a religious denomination or organization changes the name whereby it was known or amalgamates with any other religious denomination or organization, 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 organization.

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

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

12. The Minister 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.

Revocation of designation as, or authority of, marriage officer and limitation of authority of marriage officer

13 (1) Any person who is under the provisions of this Act authorized to solemnize any marriages in any country outside Lesotho —

Solemnization of marriages in country outside Lesotho

(a) may so solemnize any such marriage only if the parties thereto are both citizens of Lesotho domiciled in Lesotho; and

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

(2) Any marriage so solemnized shall for all purposes be deemed to have been solemnized in Lesotho.

14 (1) A marriage may not be solemnized by any person who is not a marriage officer.

Unauthorized solemnization of marriages forbidden

(2) Any marriage officer who purports to solemnize a marriage which he is not authorized 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 four hundred rand or two years imprisonment or to both such fine and such imprisonment.

(3) Nothing in subsection (2) contained shall apply to any marriage ceremony solemnized in accordance with rites or formu-

laries of any religion, if such ceremony does not purport to effect a valid marriage.

Publication
of banns or
issue of
special
marriage
licence

15. No marriage officer shall solemnize any marriage unless in respect thereof and in terms of the provisions of this Act or any prior law and the banns thereof have been published or, in respect of that marriage, a special licence has been issued.

Marriage
invalid
unless banns
called or
special
marriage
licence
obtained

16. No marriage shall be valid unless within a period of not more than three months previous to its solemnization banns have been published as provided in section 17, or a special licence has been obtained as provided in section 20.

Publication
of banns

17. (1) Banns may be published either —

- (a) in public, in an audible manner, during divine service on three successive Sundays preceding the solemnization of the marriage, or
- (b) by posting the banns up for an unbroken period covering three successive Sundays in a conspicuous place to which the public have access.

(2) Publication of banns shall —

- (a) where the parties to the intended marriage belong to the same congregation, be in a church or other building habitually used for public worship by that congregation, and
- (b) where the parties to the intended marriage belong to different congregations, in the churches or other buildings habitually used for public worship by each such congregation.

(3) Banns not published in the manner aforesaid may be posted up —

- (a) where the parties to the intended marriage reside in the same district at the office of the District Administrator of that district, and
- (b) where the parties to the intended marriage reside in different districts, at the office of the District Administrator in each of those districts.

(4) If according to the tenets or practices of a religious denomination, the principal public divine service of that denomination is held weekly on a day other than a Sunday, publication of banns may be made during such a service on such day instead of on a Sunday.

Certificate
of
publication
of banns

18. (1) Any minister of religion of a congregation or any District Administrator, in whose church or district, as the case may be; banns of marriage have been published shall, on the application of any person and on payment to him of the prescribed fee (if any) issue to such person a certificate to the effect that the said banns were published in the manner provided by this Act.

(2) Such certificate shall state the full christian name and surname, marital status, age and residential address of each party to the proposed marriage as well as the dates on which or the period during which publication of the banns was made, and may contain such further particulars as such minister of religion or District Administrator may think fit.

19. (1) Banns of marriage published in a country outside Lesotho shall for the purposes of this Act be regarded as having been published in Lesotho, but a marriage officer shall not solemnize any marriage in pursuance thereof unless there is produced to him the prescribed proof that such banns were duly published according to the law of such country.

Banns
published
outside
Lesotho

(2) The provisions of section 21 shall *mutatis mutandis* apply with reference to such banns.

20. (1) Parties desiring to marry without the publication of banns may personally apply to a District Administrator or an officer or employee in the diplomatic or consular service of Lesotho authorized by the Minister in that behalf for a special licence to marry without the publication of banns.

Special
marriage
licence

(2) Any such person to whom such application is made shall require each such party to furnish him with his or her full christian name and surname and may put to each of them such questions as he may deem necessary to determine whether any lawful impediment exists to the proposed marriage.

21. (1) Unless a marriage is solemnized in pursuance of banns of marriage published, or a special marriage licence within three months of the last day of publication of such banns or the issue of such licence, such banns or licence, as the case may be, shall lapse and no marriage shall be solemnized in pursuance thereof.

Period of
validity of
banns and
special
licence

(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 the provisions of subsection (1).

22. If in the case of any marriage solemnized before or after the commencement of this Act the provisions of this Act or, as the case may be, any prior law relating to the publication of banns or to the issue of special marriage licences, or the applicable provisions of any law of a country outside Lesotho relating to the publication of banns, have not been strictly complied with owing to —

Irregulari-
ties in
banns or
special
licence

- (a) an error committed in good faith by either of the parties to such marriage in interpreting those provisions; or
- (b) any error, omission or oversight of any person who made any such publication or issued a special marriage licence,

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 prior law, that marriage shall, provided there was no other lawful impediment thereto, be as valid and binding as it would have been if the said provisions had been strictly complied with.

**Objections
to marriage**

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

- (a) the person who makes publication of the banns of such marriage; or
- (b) the person who issues a special marriage licence in respect of such proposed marriage; or
- (c) the marriage officer who is to solemnize such marriage.

(2) If any person who makes such publication or issues such licence receives any such objection, that objection shall be stated by him in any relevant certificate or licence issued by him in terms of sections 18 or 20.

(3) If any such objection is brought to the notice of the marriage officer who is to solemnize such marriage he 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.

(4) If he is not satisfied that there are no impediments to the proposed marriage he shall refuse to solemnize it.

**Remarriage
of widow
or widower**

24. No banns shall be published and no special licence issued under any of the provisions of this Act with respect to or for the marriage of any widower or widow having minor children of a former marriage, unless a certificate shall be produced signed by the Master of the High Court or an officer in the public service authorized thereto by him to the effect that the inheritances which have devolved upon such minors have been settled by payment to the Master, or secured by the common law bond or obligation commonly called a **kinderbewys** duly registered at the Deeds Registry, or to the effect that the value of such inheritances was less than two hundred rand:

Provided that the provisions of this section shall not apply to the marriage of any widower or widow having minor children of a former marriage whose rights of inheritances are regulated according to Sesotho law and custom.

**Marriage of
minors**

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

Provided that for purposes of this subsection a minor does not include a person who is under the age of twenty-one years and who has previously contracted a valid marriage which has been dissolved by death or divorce.

(2) Subject to other provisions of this Act relating to the giving of consent in respect of a marriage of a minor, the consent of the parents or guardian of that minor shall be furnished to the marriage officer in writing:

Provided that —

- (i) When the parents of a minor disagree the consent of the father shall be sufficient; and

- (ii) when a minor is illegitimate the consent of the mother or other lawful guardian only shall be required.

26. (1) If a District Administrator is, after proper enquiry, 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 District Administrator may in his discretion grant written consent to such minor to marry a specified person, but such District Administrator 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.

When consent of parents or guardian cannot be obtained

(2) A District Administrator shall, before granting his consent to a marriage under subsection (1), enquire whether it is in the interests of the minor in question that the parties to the proposed marriage should enter into an antenuptial contract, and if he 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 District Administrator 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:

Provided that a judge shall not grant such consent unless he is of the opinion that such refusal of consent by the parent, guardian or District Administrator is without adequate reason and contrary to the interests of such minor.

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

Persons under certain ages prohibited from marrying

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 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 in terms of this Act, or a prior law, contracted a marriage without such permission and the Minister considers such marriage to be desirable and in the interests 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 directs that a marriage referred to in subsection (2) shall for all purposes be a valid marriage he shall be deemed to have granted written permission to such marriage prior to the solemnization thereof.

Proof of age

28. 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 marriage without such consent or permission.

Impediments to marriage

29. (1) No person may marry who has previously been married to any other person still living unless such previous marriage has been dissolved or annulled by the sentence of a competent court of law.

(2) No insane person who is incapable of giving consent to a marriage may marry.

(3) No persons may intermarry who are related within the forbidden degrees of relationship, that is to say who are related —

- (a) in the direct ascending or descending line, or
- (b) in the collateral line by being children of the same person, or by one being a child and another a grand-child or more remote descendant of the same person:

Provided that 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.

30. (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. Witnesses and hours

(2) A marriage officer shall solemnize any marriage in a church or other building used for religious service, or in a public office or private dwelling-house, with open doors and in the presence of the parties themselves and at least two competent witnesses.

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

31. In solemnizing a marriage the marriage officer, if he is a minister of religion, may follow the rites usually observed by his religious denomination, but if he is any other marriage officer he shall solemnize the marriage by requiring the bridegroom and bride to repeat separately after him the following words: "I (name) do solemnly declare that as far as I know there is no lawful impediment to my proposed marriage with (name) here present, and I call upon all here present to witness that I take (name) as my lawful wife (or husband)", and thereupon the parties shall give each other the right hand and the said marriage officer shall declare the marriage solemnized in the following words: Marriage formula

"I declare that (name of bridegroom) and (name of bride) here present are lawfully married."

32 Nothing in this Act contained shall be construed so as to compel a marriage officer who is a minister of religion in a religious denomination to solemnize a marriage which would not conform to the rites, formularies, tenets, doctrines or discipline of his religious denomination. Certain marriage officers may refuse to solemnize certain marriages

33. (1) No marriage officer may demand or receive any fee, gift or reward, for or by reason of anything done by him as a marriage officer in terms of this Act: Fees to marriage officers

Provided that a minister of religion 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 in terms of the rules, regulations or custom of his religious denomination, 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 to a fine not exceeding one hundred rand or, in default of payment, to imprisonment for a period not exceeding six months.

Consecration
of marriage

34. Any minister of religion may consecrate, bless or solemnize a marriage that has already been solemnized by a marriage officer under this Act or a prior law and the provisions of this law as such shall not apply thereto.

Registrar of
marriages

35. (1) Every marriage officer shall keep a register of marriages solemnized by him; and immediately after solemnizing any marriage he shall enter in such register the solemnization of such marriage the place and date thereof, the full names of the parties, their ages, condition (whether widowers or bachelors, widows or spinster) and residence, whether the marriage was by banns or special licence, whether in the case of one or both of the parties being minors the marriage was with the consent of parents or guardians or by what authority and any other particulars that the Minister may by notice in the Gazette direct. Such register shall thereupon be signed in duplicate by the parties (by name or mark) and by the marriage officer in the presence of two witnesses who shall also sign the register. The sum of twenty-five cents, or such other sum as the Minister may from time to time prescribe, shall be paid to the marriage officer in respect of the registration of each marriage under this subsection.

(2) A duplicate original of the register of every marriage duly stamped with revenue stamps to the value of twenty-five cents shall be transmitted to the Registrar of Marriages within one month after the solemnization of the marriage, and all such duplicates shall be carefully preserved in his office.

(3) Any person shall be entitled on payment of the sum of twenty-five cents to receive a copy of such register certified as correct by the marriage officer in whose custody it is, or by the Registrar of Marriages; and such copy shall, in the absence of evidence to the contrary, be legal proof of the due solemnization of the marriage, provided that the sum of twenty-five cents so paid is affixed to such copy in the form of revenue stamps by the person certifying such copy, and that such stamps are duly defaced by such person in the manner prescribed in the law relating to stamp duties.

Penalties for
omitting to
register etc.

36. Any marriage officer who shall omit —

- (a) to make the entries in the register required by this Act immediately after each marriage solemnized by him; or
- (b) to transmit in terms of this Act a duplicate original of each register of marriage solemnized by him, duly stamped as provided in subsection (2) of section 35, to the Registrar of Marriages within one month of the solemnization thereof; or
- (c) to affix and deface revenue stamps to the value of twenty-five cents, or such other sum as may be prescribed by the Minister from time to time to a copy of a marriage register certified by him as correct in terms of subsection (3) of section 35,

shall, unless he can show that there was a reasonable excuse for such omission, be liable to a fine not exceeding twenty rand, or, in default of payment, to imprisonment for a period not exceeding one month.

37. 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 two hundred rand or, in default of payment, to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Penalties for solemnizing marriages contrary to the provisions of this Act

38. Any person who makes for 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.

Penalties for false statements

39. Any person who contravenes any provision of this Act outside Lesotho may be tried inside Lesotho in any court which would have been competent to try that matter if the offence had been committed within its area of jurisdiction, and for all purposes incidental to or consequential on the trial of such person, the offence shall be deemed to have been committed within the area of jurisdiction of such court.

Offences committed outside Lesotho

40. (1) The Minister may make regulations as to —

Regulations

(a) the form and content of certificates, notices, affidavits and declarations for the purposes of this Act;

(b) the fees payable for any certificate issued or any other act performed in terms of this Act,

and, 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 this Act may be achieved or that the provisions of this Act may be effectively administered.

(2) Such regulations may prescribe penalties for a contravention thereof not exceeding a fine of fifty rand or imprisonment for a period of three months.

41. The Marriage Proclamation, No. 7 of 1911, is hereby repealed.

Repeals

42. This Act shall apply to all marriages solemnized in Lesotho save and except marriages contracted in accordance with Sesotho law and custom, and nothing herein contained shall be taken as in any manner affecting or casting doubts upon the validity of any such last-mentioned marriages contracted before or after the coming into operation of this Act.

Saving as to customary marriages

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

Saving as to repealed laws

(2) Any fees prescribed by any provision of a law repealed by this Act shall be deemed to have been prescribed under this Act.

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

(4) A person who held an appointment as a marriage officer under or by virtue of the provisions of the law repealed by this Act shall continue to hold such appointment as if that appointment was made under the provisions of this Act.