

**MARRIAGES ACT [CHAPTER 5:15]**

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**CORRECTIONS & AMENDMENTS**

Cap. No. corrected to 5:17 [SI 141/2022]

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## ZIMBABWE

# ACT

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*], 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 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

#### **1 Short title and date of commencement** [Chapter No. corrected to 5:17 \[SI 141/2022\]](#)

(1) This Act may be cited as the Marriages Act [*Chapter 5:15*].

(2) This Act shall come into operation on a date to be fixed by the President by notice in the *Gazette*. [\[16th September 2022 - SI 164/2022\]](#)

#### **2 Interpretation**

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;

- “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 41;
- “Criminal Law Code” means the Criminal Law (Codification and Reform) Act [Chapter 9:23];
- “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;
- “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 Registration Act [Chapter 10:17] or a passport or drivers licence issued by or on behalf of the Government of Zimbabwe; or
  - (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;
- “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;
- “marriage licence” means a licence to marry issued in terms of section 25;
- “marriage officer” in relation to—
- (a) a customary law marriage, means a magistrate, minister of religion or a Chief;
  - (b) a civil marriage, means a magistrate or 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 11;
- “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 35.

## PART II

### 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,

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

(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**

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**

(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.

(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.

(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**

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

- (a) no persons who are related to each other in any degree of relationship specified in 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;
- (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.

(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;
- (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.

(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

#### **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 Chief to be marriage officer for customary law marriages**

(1) Every chief shall, by virtue of his or her office and so long as he or she holds such office, be a marriage officer for a customary law marriage in the district in which he or she holds office.

(2) No later than four months from the date of commencement of this Act, or from the date of investiture of any Chief, as the case may be, the Minister shall ensure that every chief is certified as competent to carry out the duties of a marriage officer for the purposes of solemnising marriages according to customary rites.

#### **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 denomination 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.

(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**

(1) 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, 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.

(2) 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 been a marriage officer in respect of such period.

(3) 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.

(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 circumstances 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)).

## **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.

(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.

(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.



(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.

#### PART IV

#### SOLEMNISATION OF CUSTOMARY LAW MARRIAGES; UNREGISTERED CUSTOMARY LAW MARRIAGES

### 16 Solemnisation of customary law marriages

(1) Every marriage contracted according to customary law, including the case 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 shall put to either of the parties to a proposed marriage or to the witnesses any questions relevant to the identity or marital status of the parties to the proposed marriage, to the agreement relating to marriage consideration (*lobola* or *roora*), if any, and to the existence of impediments to the marriage.

(3) At the solemnisations of every customary law marriage there must be present, in addition to the marriage officer and the parties to the marriage, two witnesses, one for each party to the marriage, being a relative who, under the customary law of the community concerned, is recognised as the primary family witness for the marriage.

(4) 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

(5) If any person impersonates either of the parties to a marriage, he or she shall 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.

(6) If the marriage officer is satisfied—

- (a) that the intended husband and wife freely and fully consent to the marriage; and
- (b) that from the two family witnesses it is apparent that customary law formalities have been met; and
- (c) that no lawful impediment exists to the proposed marriage;

he or she shall proceed in terms of section 31 and such marriage shall be a valid marriage contracted according to customary law.

### 17 Unregistered customary law unions

(1) A marriage contracted solely according to customary law and not 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 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.

(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.



(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 OF CIVIL MARRIAGES

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

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

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

(2) A party to a proposed marriage within Zimbabwe may, if the law of the country in which he 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 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.

### 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:

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

- (2) An application referred to in subsection (1) shall—
- (a) state the full names, age, 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 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.

(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
- (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.

(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**

(1) Subject to section 28, 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 20, issue to such person or persons a certificate to the effect that the banns have been so published.

(2) A certificate in terms of subsection (1) shall state the full names, age, 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.

(2) Section 26 shall apply, with any necessary changes, with reference to any banns or notice referred to in subsection (1).

## **23 Notice of intention to marry**

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

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

- (a) state the full names, age, 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) 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 a continuous period of fifteen days.

(4) If only one of the parties concerned has so resided in such district it shall, for the purposes of section 18, be deemed that only such party caused such notice to be published.

(5) Every notice referred to in subsection (2) shall state the full names, status and residential address of each of the parties desiring to marry.

**24 Certificate of publication of notice of intention to marry**

(1) Subject to section 28, any magistrate who has in terms of section 23, 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.

(2) 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**

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

(2) The magistrate to whom an application in terms of subsection (1) is made shall require each of the parties to furnish him 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.

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

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

(5) If the magistrate is satisfied, whether or not after any interrogation and inquiries in terms of this section, that there is no lawful impediment to the proposed marriage, he 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.

(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**

(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.

(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**

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.

## 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—

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

Provided that, in the case of banns published in terms of section 20(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—

- (a) the marriage officer who—

- (i) is required to issue a certificate in terms of section 21 or 24; or
- (ii) is to solemnise the marriage;

or

- (b) the magistrate who has issued a marriage licence in terms of section 25; 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.

(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.

#### **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.

#### **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.

(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—

*“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—

*“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—

- (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.

### 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.

### 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—

- (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.

(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

### 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 Public Service.

### 36 Register of marriages

(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.

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

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

(4) One duplicate original register of the entry shall be delivered to the parties and the other shall, as soon as possible but not later than thirty days after the date of 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.

(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.

### 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.

(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.

(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;
- (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

(1) 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.

(2) 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.

## PART VIII

### OFFENCES AND MISCELLANEOUS PROVISIONS

#### **39 Penalty for failure to comply with section 36**

Any marriage officer who knowingly fails to comply with section 36 shall 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.

#### **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 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**

- (1) A relationship between a man and a woman who—
- (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
  - (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, with necessary changes, apply on the dissolution of any such relationship.

- (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;
  - (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.

(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.

(5) Where one of the persons in a civil partnership is legally married to someone else (hereinafter called the “spouse of the civil partner”), a court applying sections 7 to 11 of the Matrimonial Causes Act [*Chapter 5:13*] to the division, apportionment or distribution of the assets of the civil partnership shall pay due regard to the rights and interests of the spouse of the civil partner and ensure that its order shall not extend to any assets which are proved, to the satisfaction of the court, to be assets properly belonging to the spouse of the civil partner.

(6) 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 contrary to section 104 of the Criminal Law Code if either of them is legally married to someone else.

#### **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 Recognition of marriages of foreigners**

(1) 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 as a party to a civil marriage, or already married under the law of a third country that forbids marriage while either party is a party to a marriage that still subsists in that third country; or
- (b) the spouses were not related to one another within a degree of relationship prohibited for the purposes of section 75 (“Sexual intercourse within a prohibited degree of relationship”) of the Criminal Law Code; 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.

(2) For the avoidance of doubt—

- (a) no party to a polygamous marriage contracted in a foreign country where such marriage was contracted lawfully and without contravening subsection (1) shall be guilty of bigamy under section 104 of the Criminal Law Code if at the time of the marriage the husband was domiciled in that country;

- (b) in accordance with the common law, the law of the husband's domicile at the time of the marriage governs the matrimonial property regime of the spouses even if the husband subsequently redomiciles in Zimbabwe;
- (c) proceedings for the dissolution of a marriage referred to in paragraph (a) and the consequent disposition of the assets of the spouses and the award of the custody of any children may be conducted in Zimbabwe on the basis of the applicable foreign law in accordance with section 25 of the Civil Evidence Act [*Chapter 8:01*].

#### **44 Application of Act to certain marriages other than civil or customary marriages**

(1) In this section—

“qualified civil marriage” means a union between a man and a woman, not being a union registrable as a civil or customary law marriage under this Act, which is registered in terms of this section;

“marriage officer”, for the purposes of this section, means a person designated in terms of section 11 for the purpose of solemnising marriages according to Islamic rites.

(2) Subject to this section, a minister of religion who is a marriage officer may, after ascertaining the wishes of the parties as embodied in a marriage contract and otherwise, solemnise a qualified civil marriage between a man and a woman in accordance with the procedures recognised by the faith of which the marriage officer is a minister, if, at the date of such solemnisation—

- (a) the religion of which the marriage officer is a minister permits a man to be married to more than one woman; and
- (b) both parties are members of the faith of which the marriage officer is a minister, and have been such members for a period of at least twelve months before the date of the proposed solemnisation of the qualified civil marriage; and
- (c) the man and the woman are not parties to an existing civil marriage with each other, or the man is not a party to an existing civil marriage with another woman.

(3) Before solemnising a qualified civil marriage the marriage officer concerned must satisfy himself or herself that both parties—

- (a) are opting for a qualified civil marriage in preference to a civil marriage; and
- (b) understand that that the principal difference between a civil marriage and a qualified civil marriage is that the latter is a polygamous or potentially polygamous marriage.

(4) Parts VI (“Provisions applicable to all marriages”) and VII (“Registration of Marriages”) apply to the registration by the marriage officer referred to in subsection (2) of a qualified civil marriage, for which purpose the marriage officer shall keep two marriage register books, one for civil marriages only and one for qualified civil marriages only:

Provided that until such time as the form of the qualified civil marriage register book and the form of an entry therein are prescribed, the marriage officer concerned shall clearly distinguish in his or her marriage register book between those entries relating to civil marriages and those relating to qualified civil marriages, by inscribing the words “qualified civil marriage” in the entries in his or her book relating to such marriages.

(5) If the parties to a union qualify in terms of subsection (2) to contract a qualified civil marriage, there must be no other impediment to the union that, under this Act, would be an impediment to the registration of a civil or customary marriage, that is to say (without derogating from the applicable provisions of Part VI) the parties to the proposed non-civil marriage must—

- (a) both be aged eighteen years or more at the date of the solemnisation of the qualified civil marriage and be capable of understanding, and understand, the nature and effect of the marriage ceremony; and
- (b) not be within a degree of relationship prohibited for the purposes of section 75 (“Sexual intercourse within a prohibited degree of relationship”) of the Criminal Law Code; and
- (c) both give real consent to the qualified civil marriage, that is to say, their consent must be informed and freely given and not be tainted by duress or fraud, or the mistaken identity of either party.

(6) Additionally—

- (a) there must be no impediment to the union that, in accordance with the tenets of the faith concerned, would be an impediment to the recognition of that marriage in the eyes of that faith, such as the fact that the man is already married to more women than allowed by the faith concerned, or that the woman is still married to another man at the time of the marriage ceremony;
- (b) the woman who is a party to the union may, in any marriage contract evidencing her consent to the marriage that is produced to the marriage officer at the time of solemnisation, stipulate that that her husband may not, without her express consent, become a party to any other qualified civil marriage during the subsistence of their marriage, the breach of which stipulation shall be sufficient cause for the institution of divorce proceedings by the woman.

(7) If after a qualified civil marriage is registered it is found that any requisite for such marriage mentioned in subsections (2), (5) or (6) was not complied with or did not exist at the time of registration, or that the purported marriage was registered in contravention of subsection (13)(b) or (c) or (14), then the marriage shall be void.

(8) Subject to subsection (9), the general law shall apply to the status, guardianship, custody and rights of succession of the surviving spouse or spouses and children of a qualified civil marriage.

(9) In the absence of a will or of a distribution agreement referred to in subsection (10), property in an intestate estate of a party to a qualified civil marriage shall devolve in accordance with the general law on intestate succession as if every surviving spouse of a qualified civil marriage was entitled to a joint and undivided share of the estate on the same basis as every child of the intestate.

(10) The Master of the High Court shall accept for the purpose of subsection (9) a distribution agreement lodged by the executor to which all parties interested in the succession to the estate who are capable of giving assent thereto have subscribed their assent, and in respect of which there is exhibited to the Master an affidavit sworn by a licensed marriage officer who is a minister of religion competent to solemnise qualified civil marriages, to the effect that the distribution agreement conforms to the tenets of the faith by virtue of which the intestate contracted the qualified civil marriage.

(11) Section 45 (“Dissolution of marriage”) applies to the dissolution of a qualified civil marriage, and if there is any question as to the subsistence of such a marriage by reason of its voidness as mentioned in subsection (7) or for any other

reason, then section 40 (“Civil partnerships”) will apply as if the relationship between the putative spouses is a civil partnership falling within the scope of that section.

(12) In proceedings for the dissolution of a qualified civil marriage under the Matrimonial Causes Act [*Chapter 5:13*] the court shall take into consideration any agreement between the parties as to the division of assets, custody of the children, and maintenance of the wife and children of the marriage, that is in accordance with the tenets of the faith by virtue of which the spouses contracted the qualified civil marriage, for which purpose the court may request and receive in evidence the testimony by affidavit of a licensed marriage officer who is a minister of religion competent to solemnise qualified civil marriages to the effect that the agreement is in accordance with such tenets.

(13) For the avoidance of doubt it is declared that—

- (a) parties to a registered qualified civil marriage that is actually polygamous are not in contravention of section 104 (“Bigamy”) of the Criminal Law Code, unless either party purports to contract the qualified civil marriage while he or she is still a party to a subsisting civil marriage;
- (b) if any of the parties to a qualified civil marriage subsequently changes his or her faith, the qualified civil marriage continues to subsist until its dissolution;
- (c) if either of the parties to a civil marriage subsequently changes his or her faith to a faith permitting of marriage in the form of a qualified civil marriage, he or she may not contract a qualified civil marriage until after the dissolution of the civil marriage;
- (d) an extract from a marriage register referred to in section 36(6), being an extract from the qualified civil marriage register book or an extract clearly indicating thereon that the marriage concerned is a qualified civil marriage, can be produced in resolution of any question that arises in connection with—
  - (i) the registration or certification of any birth or death of a child or spouse of a qualified civil marriage; or
  - (ii) the issuance of any other official documentation directly or indirectly required to secure any of the rights conferred by this section on such spouses and their children.

(14) This section does not apply to men and women—

- (a) married under the repealed Marriage Act before the date of this Act; or
- (b) who contract a civil marriage under this Act at a time when either or both of them were not members of the faith under which a qualified civil marriage can be contracted in accordance with this section;

unless, at the time of the solemnisation of the qualified civil marriage, the civil marriage has earlier been dissolved.

## 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*].

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

#### **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 43)—
  - (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 been kept, issued, commenced or done, as the case may be, under the corresponding provision of this Act;
  - (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.

(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.

#### **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;”.

#### **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—
  - (i) “child”, by the deletion of “sixteen” and the substitution of “eighteen”;
  - (ii) “legal guardian”, by the deletion of “and includes a husband of a girl who is under the age of eighteen years of age”.
- (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, 2022”.

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

