

Namibia

Marriage Act, 1961

Act 25 of 1961

Legislation as at 30 January 2019

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Republic of Namibia
Annotated Statutes

Marriage Act, 1961

Act 25 of 1961

Published in South African Government Gazette 6670 on 21 April 1961

Assented to on 19 April 1961

Commenced on 1 February 1972

**[This is the version of this document from 30 January 2019
and includes any amendments published up to 14 June 2024.]**

[Amended by Marriage Amendment Act, 1964 (Act 11 of 1964) on 28 February 1964]

[Amended by Bantu Laws Amendment Act, 1964 (Act 42 of 1964) on 1 January 1965]

[Amended by Marriage Amendment Act, 1968 (Act 19 of 1968) on 27 March 1968]

[Amended by Marriage Amendment Act, 1970 (Act 51 of 1970) on 1 February 1972]

[Amended by Marriage Amendment Act, 1972 (Act 26 of 1972) on 12 April 1972]

[Amended by Marriage Amendment Act, 1973 (Act 12 of 1973) on 4 April 1973]

[Amended by Marriage Amendment Proclamation,

1977 (Proclamation AG8 of 1977) on 11 November 1977]

[Amended by Native Laws Amendment Proclamation,

1979 (Proclamation AG3 of 1979) on 1 August 1978]

[Amended by Marriages, Births and Deaths Amendment Act, 1987 (Act 5 of 1987) on 30 April 1987]

[Amended by Married Persons Equality Act, 1996 (Act 1 of 1996) on 15 July 1996]

[Amended by Child Care and Protection Act, 2015 (Act 3 of 2015) on 30 January 2019]

**[APPLICABILITY TO SOUTH WEST AFRICA: Section 39A, inserted by Act
51 of 1970, states “This Act and any amendment thereof shall apply also in
the territory of South West Africa, including the Eastern Caprivi Zipfel.”]**

**[TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to
South West Africa by the Executive Powers (Interior) Transfer Proclamation, AG 17 of 1978,
dated 30 March 1978. None of the amendments to the Act in South Africa after the date
of transfer applied to South West Africa because none were made expressly so applicable.]**

**[Section 3(2) of the transfer proclamation excluded references to the
“Republic” in the Act from the operation of section 3(1)(c) of the Executive
Powers Transfer (General Provisions) Proclamation, AG 7 of 1977.]**

ACT

To consolidate and amend the laws relating to the solemnization of marriages and matters incidental thereto.

(English text signed by the Governor-General)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

[The Republic of South Africa Constitution Act [32 of 1961](#) provided in Article 3(a) that as from May 1961, any reference to the Union of South Africa or the State in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate, shall be construed as a reference to the Republic, and any reference to the Governor-General shall be construed as a reference to the Republic or the State President as the circumstances may require.]

[Act [1 of 1996](#) amends the Act throughout to substitute "Minister" for "Cabinet".]

1. Definitions

In this Act, unless the context otherwise indicates

"**magistrate**" includes an additional and an assistant magistrate;

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

"**Minister**" means the Minister of Home Affairs;

[The definition of "Minister" was substituted by Act [51 of 1970](#). In this substituted definition, AG 3 of 1979 changed the reference to "Minister of Bantu Administration and Development" to "Minister of Plural Relations and Development", and the word "Bantu" to "Black". The References to Plural Relations and Development Act [10 of 1979](#) (OG 4023), which came into force on 1 July 1979 (section 2 of Act [10 of 1979](#)), provided that a reference in any law to the Minister of Plural Relations and Development was to be construed as a reference to the Minister of Co-operation and Development, without technically amending any laws. The definition was then amended by Act [5 of 1987](#), which removed the phrase containing the reference to "Black" and removed the phrase which was construed to refer to the Minister of Co-operation and Development. The definition of "Minister" was then substituted by Act [1 of 1996](#).]

[The original Act contained a definition of "native commissioner". The definition of "native commissioner" was converted to a definition of "Bantu Affairs Commissioner" by Act [42 of 1964](#). This definition was then substituted by Act [51 of 1970](#). The definition of "Bantu Affairs Commissioner" was changed to a definition of "Commissioner" by AG 3 of 1979. This definition was then deleted by Act [5 of 1987](#).]

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

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

[definition of "prior law" substituted by Act [51 of 1970](#)]

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

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

[subsection (1) amended by Act [42 of 1964](#), AG 3 of 1979 and Act [5 of 1987](#)]

- (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 the Union to be, by virtue of his office and so long as he holds such office a marriage officer, either generally or subject to the provisions of section 5bis, for any specified population group or class of persons or country or area.

[subsection (2) amended by Act 51 of 1970 and by AG 8 of 1977]

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

- (1) The Minister and any officer in the public service authorized thereto by him may designate any minister of religion of, or any person holding a responsible position in, any religious denomination or organization to be, so long as he is such a minister or occupies such position, a marriage officer for the purpose of solemnizing marriages according to Christian, Jewish or Mohammedan rites or the rites of any Indian religion.
- (2) A designation under sub-section (1) may further limit the authority of any such minister of religion or person to the solemnization of marriages -
 - (a) within a specified area;
 - (b) for a specified period.

[subsection (2) amended by Act 51 of 1970 and by AG 8 of 1977]

4. How designation as marriage officer to be made

Every designation of a person as a marriage officer shall be by written instrument and the date as from which it shall have effect and any limitation to which it is subject shall be specified in such instrument.

5. Marriage officers under laws repealed by this Act

- (1) Subject to the provisions of subsection (3), any person who, at the commencement of this Act, or of the Marriage Amendment Act, 1970, is under the provisions of any prior law 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.

[subsection (1) substituted by Act 51 of 1970]

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

[subsection (3) inserted by Act 51 of 1970]

[Section 3(2) of the transfer proclamation excluded references to the "Republic" in the Act from the operation of section 3(1)(c) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that prior to Namibian independence this term was not to be construed as a reference to the territory. This is the only provision which uses the term "Republic", although a number of references to the term "Union" remain in the Act; section 39A(2), inserted by Act 51 of 1970, provides that a reference in the Act to "Union" or "province of the Union" shall be deemed to include a reference to the territory of South-West Africa.]

5bis. Authority of marriage officers in South West Africa

Notwithstanding anything to the contrary contained in this Act or a prior law or in any written instrument issued in terms of section 4 or a prior law, any person who is a marriage officer for the territory of South West Africa or any part of it, may solemnize marriages in that territory or in such part of it, as the case may be, between persons generally and not only between persons belonging to any particular population group or class of persons.

[section 5bis inserted by AG 8 of 1977]

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

- (1) Whenever any person has acted as a marriage officer during any period or within any area in respect of which he was not a marriage officer under this Act or any prior law, and the Minister or any officer in the Government 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, it or he may direct in writing that such person shall for all purposes be deemed to have been a marriage officer during such period or within such area, duly designated as such under this Act or such law, as the case may be.
- (2) Whenever any person acted as a marriage officer in respect of any marriage while he was not a marriage officer and both parties to that marriage bona fide believed that such person was in fact a marriage officer, the Minister or any officer in the Government Service authorized thereto by the Minister may, after having conducted such inquiry as it or he may deem fit, in writing direct that such person shall for all purposes be deemed to have been duly designated as a marriage officer in respect of that marriage.
- (3) Any marriage solemnized by any person who is in terms of this section to be deemed to have been duly designated as a marriage officer shall, provided such marriage was in every other respect solemnized in accordance with the provisions of this Act or any prior law, as the case may be, and there was no lawful impediment thereto, be as valid and binding as it would have been if such person had been duly designated as a marriage officer.
- (4) Nothing in this section contained shall be construed as relieving any person in respect of whom a direction has been issued thereunder, from the liability to prosecution for any offence committed by him.
- (5) Any person who acts as a marriage officer in respect of any marriage, shall complete a certificate on the prescribed form in which he shall state that at the time of the solemnization of the marriage he was in terms of this Act or any prior law entitled to solemnize that marriage.

[Section 6 is amended by Act 5 of 1987, which inserts subsections (2) and (5) as well as making other amendments.]

7. Effect of designation of certain ministers of religion as marriage officers

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

8. Change of name of religious denomination or organization and amalgamation of religious denominations or organizations

- (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.
- (2) If a religious denomination or organization in such circumstances as are contemplated in sub-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.

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

- (1) The Minister or any officer in the public service authorized thereto by him may, on the ground of misconduct or for any other good cause, revoke in writing the designation of any person as a marriage officer or the authority of any other person to solemnize marriages under this Act, or in writing limit in such respect as he may deem fit the authority of any marriage officer or class of marriage officers to solemnize marriages under this Act.
- (2) Any steps taken by any officer in the public service under sub-section (1) may be set aside by the Minister.

10. Solemnization of marriages in country outside the Union

- (1) Any person who is under the provisions of this Act authorized to solemnize any marriages in any country outside the Union -
 - (a) may so solemnize any such marriage only if the parties thereto are both South African citizens domiciled in the Union; 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 the province of the Union in which the male party thereto is domiciled.

11. Unauthorized solemnization of marriage ceremonies forbidden

- (1) A marriage may be solemnized by a marriage officer only.
- (2) 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 R1 000 or, in default of payment, to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

[subsection (2) amended by Act 5 of 1987; not all of the changes are indicated by amendment markings]
- (3) Nothing in sub-section (2) contained shall apply to any marriage ceremony solemnized in accordance with the rites or formularies of any religion, if such ceremony does not purport to effect a valid marriage.

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

No marriage officer shall solemnize any marriage unless -

- (a) each of the parties in question produces to the marriage officer his or her identity document issued under the provisions of the Identification of Persons Act, 1979 (Act [2 of 1979](#)), or any other satisfactory proof of identity; and

[The Identification of Persons Act [2 of 1979](#) has been replaced by the Identification Act [21 of 1996](#).]

- (b) each of such parties furnishes to the marriage officer the prescribed affidavit.

[section 12 amended by Act [11 of 1964](#), substituted by Act [51 of 1970](#), and amended by Act [5 of 1987](#)]

13. ***

[section 13 deleted by Act [51 of 1970](#)]

14. ***

[section 14 deleted by Act [51 of 1970](#)]

15. ***

[section 15 amended by Act [11 of 1964](#) and deleted by Act [51 of 1970](#)]

16. ***

[section 16 substituted by Act [19 of 1968](#) and deleted by Act [51 of 1970](#)]

17. ***

[section 17 deleted by Act [51 of 1970](#)]

18. ***

[section 18 deleted by Act [51 of 1970](#)]

19. ***

[section 19 amended by Act [19 of 1968](#) and deleted by Act [51 of 1970](#)]

20. ***

[section 20 deleted by Act [51 of 1970](#)]

21. ***

[section 21 deleted by Act [51 of 1970](#)]

22. Irregularities in publication of banns or notice of intention to marry or in the issue of special marriage licences

If in the case of any marriage solemnized before the commencement of the Marriage Amendment Act, 1970, the provisions of any law relating to the publication of banns or notice of intention to marry or to the issue of special marriage licences, or the applicable provisions of any law of a country outside the

Union relating to the publication of banns or the publication of notice of intention to marry were not strictly complied with but such marriage was in every other respect solemnized in accordance with the provisions of this Act or, as the case may be, a former law, that marriage shall, provided there was no other lawful impediment thereto and provided such marriage has not been dissolved or declared invalid by a competent court, and provided further that neither of the parties to such marriage has after such marriage and during the life of the other, already lawfully married another, be as valid and binding as it would have been if the said provisions had been strictly complied with.

[section 22 substituted by Act [19 of 1968](#), amended by Act [51 of 1970](#), and substituted by Act [26 of 1972](#)]

23. Objections to marriage

- (1) Any person desiring to raise any objection to any proposed marriage shall lodge such objection in writing with the marriage officer who is to solemnize such marriage.
- (2) Upon receipt of any such objection the marriage officer concerned shall inquire into the grounds of the objection and if he is satisfied that there is no lawful impediment to the proposed marriage, he may solemnize the marriage in accordance with the provisions of this Act.
- (3) If he is not so satisfied he shall refuse to solemnize the marriage.

[section 23 substituted by Act [51 of 1970](#)]

24. Marriage of minors

- (1) No marriage officer shall solemnize a marriage between parties of whom one or both have not attained the age of 21 years unless the consent to the party or parties which is legally required for the purpose of contracting the marriage has been granted and furnished to him in writing.
- (2) Subsection (1) does not include a person who is under the age of twenty-one years and previously contracted a valid marriage which has been dissolved by death or divorce.

[section 24 substituted by Act [3 of 2015](#)]

25. When consent of parents or guardian of minor cannot be obtained

- (1) If a commissioner of child welfare as defined in section one of the Children's Act, 1960 (Act [No. 33 of 1960](#)), is after proper inquiry satisfied that a minor who is resident in the district or area in respect of which he holds office has no parent or guardian or is for any good reason unable to obtain the consent of his parents or guardian to enter into a marriage such commissioner of child welfare may in his discretion grant written consent to such minor to marry a specified person, but such commissioner of child welfare shall not grant his consent if the minor is such a pupil or child as is mentioned in paragraph (a) of sub-section (1) of section fifty-nine of the said Act or if one or other parent of the minor whose consent is required by law or his guardian refuses to grant consent to the marriage.
- (2) A commissioner of child welfare shall, before granting his consent to a marriage under sub-section (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 commissioner of child welfare in question refuses to consent to a marriage of a minor, such consent may on application be granted by a judge of the Supreme Court of South Africa: Provided that such a judge shall not grant such consent unless he is of the opinion that such refusal of consent by the parent, guardian or commissioner of child welfare is without adequate reason and contrary to the interests of such minor.

26. Prohibition of marriage of persons under certain ages

- (1) No boy or girl under the age of 18 years shall be capable of contracting a valid marriage except with the written permission of the Minister or any staff member in the Public Service authorized thereto by the Minister, which he or she may grant in any particular case in which he or she considers such marriage desirable: Provided that such permission shall not relieve the parties to the proposed marriage from the obligation to comply with all other requirements prescribed by law: Provided further that such permission shall not be necessary if by reason of any such other requirement the consent of a judge or court having jurisdiction in the matter is necessary and has been granted.

[subsection (1) substituted by Act 51 of 1970, and amended by Act 5 of 1987 and by Act 1 of 1996]

- (2) If any person referred to in subsection (1) who was not capable of contracting a valid marriage without the written permission of the Minister or any officer in the Government Service authorized thereto by the Minister, in terms of his Act or a prior law, contracted a marriage without such permission and the Minister or such officer, as the case may be, considers such marriage to be desirable and in the interests of the parties in question, it or 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.

[subsection (2) amended by Act 5 of 1987]

- (3) If the Minister or any officer in the Government Service authorized thereto by the Minister so directs it shall be deemed that it or he granted written permission to such marriage prior to the solemnization thereof.

[subsection (3) amended by Act 5 of 1987]

27. Proof of age of parties to proposed marriage

If parties appear before a marriage officer for the purpose of contracting a marriage with each other and such marriage officer reasonably suspects that either of them is of an age which debars him or her from contracting a valid marriage without the consent or permission of some other person, he may refuse to solemnize a marriage between them unless he is furnished with such consent or permission in writing or with satisfactory proof showing that the party in question is entitled to contract a marriage without such consent or permission.

28. Marriage between person and relatives of his or her deceased or divorced spouse

Any legal provision to the contrary notwithstanding it shall be lawful for -

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

29. Time and place for and presence of parties and witnesses at solemnization of marriage and validation of certain marriages

- (1) A marriage officer may solemnize a marriage at any time on any day of the week but shall not be obliged to solemnize a marriage at any other time than between the hours of eight in the morning and four in the afternoon.
- (2) A marriage officer shall solemnize any marriage in a church or other building used for religious service, or in a public office or private dwelling-house, with open doors and in the presence of the parties themselves and at least two competent witnesses, but the foregoing provisions of this subsection shall not be construed as prohibiting a marriage officer from solemnizing a marriage in any place other than a place mentioned therein if the marriage must be solemnized in such other place by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties.
- (3) Every marriage -
 - (a) which was solemnized in the Orange Free State or the Transvaal before the commencement of this Act in any place other than a place appointed by a prior law as a place where for the purposes of such law a marriage shall be solemnized; or
 - (b) which by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties was solemnized before the commencement of the Marriage Amendment Act, 1968, in a place other than a place appointed by subsection (2) of this section as a place where for the purposes of this Act a marriage shall be solemnized,

shall, provided such marriage has not been dissolved or declared invalid by a competent court and provided further that neither of the parties to such marriage has after such marriage and during the life of the other, already lawfully married another, be as valid and binding as it would have been if it had been solemnized in a place appointed therefor by the applicable provisions of the prior law or, as the case may be, of this Act.

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

[section 29 substituted by Act 19 of 1968]

30. Marriage formula

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

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

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

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

[subsection (1) substituted by Act 12 of 1973]

- (2) Subject to the provisions of subsection (1), a marriage officer, if he is a minister of religion or a person holding a responsible position in a religious denomination or organization, may

in solemnizing a marriage follow the rites usually observed by his religious denomination or organization.

- (3) If the provisions of this section or any former law relating to the questions to be put to each of the parties separately or to the declaration whereby the marriage shall be declared to be solemnized or to the requirement that the parties shall give each other the right hand, have not been strictly complied with owing to -
- (a) an error, omission or oversight committed in good faith by the marriage officer, or
 - (b) an error, omission or oversight committed in good faith by the parties or owing to the physical disability of one or both of the parties,

but such marriage has in every other respect been solemnized in accordance with the provisions of this Act or, as the case may be, a former law, that marriage shall, provided there was no other lawful impediment thereto and provided further that such marriage, if it was solemnized before the commencement of the Marriage Amendment Act, 1970 (Act [No. 51 of 1970](#)), has not been dissolved or declared invalid by a competent court and neither of the parties to such marriage has after such marriage and during the life of the other, already lawfully married another, be as valid and binding as it would have been if the said provisions had been strictly complied with.

[section 30 substituted by Act [51 of 1970](#), and amended by Act [26 of 1972](#) to insert subsection (3)]

31. Certain marriage officers may refuse to solemnize certain marriages

Nothing in this Act contained shall be construed so as to compel a marriage officer who is a minister of religion or a person holding a responsible position in a religious denomination or organization to solemnize a marriage which would not conform to the rites, formularies, tenets, doctrines or discipline of his religious denomination or organization.

32. Fees payable to marriage officers

- (1) No marriage officer may demand or receive any fee, gift or reward, for or by reason of anything done by him as marriage officer in terms of this Act: Provided that a minister of religion or a person holding a responsible position in a religious denomination or organization may, for or by reason of any such thing done by him, receive -
- (a) such fees or payments as were immediately prior to the commencement of this Act ordinarily paid to any such minister of religion or person in terms of the rules and regulations of his religious denomination or organization, 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 sub-section (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.

33. Blessing of a marriage

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

34. Religious rules and regulations

Nothing in this Act contained shall prevent -

- (a) the making by any religious denomination or organization of such rules or regulations in connection with the religious blessing of marriages as may be in conformity with the religious views of such denomination or organization or the exercise of church discipline in any such case; or
- (b) the acceptance by any person of any fee charged by such religious denomination or organization for the blessing of any marriage,

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

35. Penalties for solemnizing marriage contrary to the provisions of this Act

Any marriage officer who knowingly solemnizes a marriage in contravention of the provisions of this Act shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or, in default of payment, to imprisonment for a period not exceeding six months.

36. Penalties for false representations or statements

Any person who makes for any of the purposes of this Act, any false representation or false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

37. Offences committed outside the Union

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

38. Regulations

- (1) The Minister may make regulations as to
 - (a) the form and content of certificates, notices, affidavits and declarations for the purposes of this Act;
 - (b) the fees payable for any certificate issued or any other act performed in 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.

[subsection (1) amended by Act 51 of 1970]

- (2) Such regulations may prescribe penalties for a contravention thereof, not exceeding, in the case of a fine, fifty rand or, in the case of imprisonment, a period of three months.
- (3) Different and separate regulations may be made under subsection (1) in respect of different areas or in respect of persons belonging to different population groups, and regulations made under subsection (1) (b) shall be made in consultation with the Minister of Finance.

[Subsection (3) is inserted by Act 51 of 1970, which contains the following transitional provision in section 11(2): "Regulations made under section 38 of the principal Act and in force at the commencement of the Marriage Amendment Act, 1970, shall be deemed to have been made under the said section, as amended by this section, and shall remain in force until amended or repealed by the competent authority."]

38A. ***

[section 38A inserted by Act 51 of 1970, amended by AG 3 of 1979, and deleted by Act 5 of 1987]

39. Repeal of laws and savings

- (1) Subject to the provisions of sub-sections (2) to (5) inclusive, the laws specified in the Schedule are hereby repealed to the extent set out in the fourth column thereof, except in so far as they apply in the territory of South-West Africa.
- (2) Anything done under any provision of a law repealed by sub-section (1) shall be deemed to have been done under the corresponding provision of this Act (if any).
- (3) Any marriage which is validated by or is valid in terms of any law repealed by sub-section (1) shall not be effected by such repeal.

[The word “effected” should be “affected”.]

- (4) [subsection (4) deleted by Act 5 of 1987]
- (5) [subsection (5) deleted by Act 5 of 1987]

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

- (1) This Act and any amendment thereof shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel.
- (2) A reference in this Act to “Union” or “province of the Union” shall be deemed to include a referenceto the territory of South-West Africa.
- (3) The Marriage Ordinance, 1963 (Ordinance No. 33 of 1963), sections 16 and 17 of the General Law Amendment Ordinance, 1965 (Ordinance No. 36 of 1965), and the Marriage Amendment Ordinance, 1967 (Ordinance No. 18 of 1967), of the territory of South-West Africa are hereby repealed.
- (4) Anything done under any provision of a law repealed by subsection (3) shall be deemed to have been done under the corresponding provision of this Act (if any).
- (5) Any marriage which is validated by or is valid in terms of any law repealed by subsection (3) shall not be affected by such repeal.

[section 39A inserted by Act 51 of 1970]

40. Short title and commencement

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

[The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(b) that as from 31 May 1961, any reference to the Governor-General in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic or the State President as the circumstances may require. However, by this time the Act had already come into operation on a date fixed by the Governor-General.]

Schedule
Laws Repealed

Province or Union.	No. and Year of Law.	Title or Subject Matter.	Extent of Repeal.
Cape of Good Hope	Marriage Order in Council, 7th September, 1838.	Amendment of Marriage Laws.	The whole.
	Order in Council, 20th February, 1839.	Construction of Marriage Order in Council, 7th September, 1838, in certain respects.	The whole.
	Order in Council, 3rd April, 1840.	Amendment of Marriage Order in Council, 7th September, 1838.	The whole.
	Ordinance No. 4 of 1848.	Ordinance for rendering legal certain Marriages supposed to be invalid.	The whole.
	Act No. 13 of 1857 .	Act for Removing all Doubts regarding the Validity of the Marriages of certain Military Settlers.	The whole.
	Act No. 16 of 1860 .	"Marriage Act, 1860".	The whole.
	Act No. 9 of 1882 .	"The Marriage Licence Act, 1882".	The whole.
	Act No. 40 of 1892 .	"The Marriage Law Amendment Act, 1892".	The whole.
	Act No. 11 of 1906 .	"The Marriage Law Amendment Act, 1906".	The whole.
Natal	Ordinance No. 17 of 1846.	"Ordinance to amend the Law regarding marriages within the District of Natal".	The whole.

	Law No. 2 of 1876.	“To provide for the signing of Marriage Licences”.	The whole.
	Law No. 19 of 1881.	“To provide for the appointment of Marriage Officers for the Solemnization of Marriages of persons professing the Jewish faith, and of persons professing the Mohammedan faith”.	The whole.
	Law No. 46 of 1887.	“To regulate the Marriage of Natives by Christian Rites”.	The whole, subject to the provisions of subsection (4) of section thirty-nine of this Act.
	Law No. 7 of 1889.	“The Marriage Licence Law, 1889”.	The whole.
	Law No. 25 of 1891.	“Indian Immigration Law, 1891”.	Sections sixty-five to seventy-two inclusive, seventy-five and eighty-one, subject to the provisions of subsection (4) of section thirtynine of this Act.
	Act No. 45 of 1898 .	“To repeal and re-enact with certain amendments, Act No. 15 of 1897 , entitled ‘Act for removing a certain Restriction upon Marriage within the Colony of Natal’ ”. [The word “entitled” is misspelt.]	The whole.
	Act No. 44 of 1903 .	“To amend the Law relating to Marriages of Natives by Christian Rites”.	The whole, subject to the provisions of subsection (4) of section thirtynine of this Act.
Orange Free State	Law No. 22 of 1898.	“Over Assistent Landdrosten”.	The whole.

	Law No. 26 of 1899.	“De Huwelijkswet”.	The whole.
	Ordinance No. 27 of 1902.	“Validation of Marriages Ordinance, 1902”.	The whole.
	Ordinance No. 31 of 1903.	“Marriage (Prohibited Degrees) Ordinance, 1903”.	The whole.
Transvaal	Law No. 3 of 1871.	“Huwelijks Ordonnantie”.	The whole.
	Volksraad Resolution, 15th May, 1883, Art. 74.	Legalization of certain Marriages.	The whole.
	Volksraad Resolution, 7th May, 1885, Art. 53.	Legalization of certain Marriages.	The whole.
	First Volksraad Resolution, 10th December, 1896, Art. 2286.	“Recht tot huwelijksbevestiging door de Hollandsche Consuls en Consulaire ambtenaren in de Z.A.R.”.	The whole.
	Law No. 3 of 1897.	“Regelende de huwelijken van Kleurlingen binnen de Zuid-Afrikaansche Republiek”.	The whole, subject to the provisions of subsection (4) of section thirty-nine of this Act.
	Proclamation No. 6 of 1900.	Native Marriages by Christian Rites.	The whole, subject to the provisions of subsection (4) of section thirty-nine of this Act.
	Proclamation No. 2 of 1901.	Amendment of Marriage Laws as to officer granting special licences.	The whole.
	Proclamation No. 25 of 1902.	Amending Law No. 3 of 1897.	The whole.
	Proclamation No. 31 of 1902.	“Legalization of Marriages Proclamation, 1902”.	The whole.

	Ordinance No. 26 of 1902.	“Legalization of Marriages Ordinance 1902”.	The whole.
	Ordinance No. 29 of 1903.	Legalization of Marriages of Coloured Persons Ordinance, 1903.	The whole.
	Ordinance No. 39 of 1904.	Marriage Law Amendment Ordinance 1904.	The whole.
	Ordinance No. 33 of 1905.	The Legalization of Marriages Ordinance 1905.	The whole.
	Act No. 13 of 1909 .	Marriage Law Amendment Act 1909.	The whole.
Union	Act No. 20 of 1913 .	Marriage Laws Amendment Act, 1913.	The whole.
	Act No. 43 of 1916 .	Marriage Officers Act, 1916.	The whole.
	Act No. 11 of 1920 .	Natal and Transvaal Marriage Law Amendment Act, 1920.	The whole.
	Act No. 17 of 1921 .	Marriage Law Amendment Act, 1921.	The whole.
	Act No. 41 of 1927 .	Orange Free State Marriage Law Amendment Act, 1927.	The whole.
	Act No. 7 of 1934 .	Births, Marriages and Deaths Registration Amendment Act, 1934.	Sections ten and eleven.
	Act No. 8 of 1935 .	Marriage Law Amendment Act, 1935.	The whole.
	Act No. 21 of 1943 .	Native Administration (Amendment) Act, 1943.	Section twelve.

	Act No. 13 of 1945 .	Publication of Banns Amendment Act, 1945.	The whole.
	Act No. 32 of 1952 .	General Law Amendment Act, 1952.	Section seven.
	Act No. 25 of 1954 .	Marriage Officers Amendment Act, 1954.	The whole.
	Act No. 68 of 1957 .	General Law Amendment Act, 1957.	Section eight.