



# home affairs

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Home Affairs  
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## **DEPARTMENT OF HOME AFFAIRS:**

**HEAD OFFICE  
FOREIGN OFFICES  
PROVINCIAL OFFICES  
REGIONAL AND DISTRICT OFFICES  
ALL MARRIAGE OFFICERS**

## **CIRCULAR NO. 10 OF 2013:**

### **CONSOLIDATED PROCEDURES FOR SOLEMNISATION AND REGISTRATION OF MARRIAGES**

#### **1. TYPES OF SOUTH AFRICAN MARRIAGES**

As of the date of this Circular, the South African legal system has three pieces of legislation that regulates the solemnisation or recognition and registration of marriages. Such marriages and pieces of legislation are as follows

##### **1.1 “Civil” Marriages**

A civil marriage is solemnised and registered in terms of the Marriage Act, 1961 (Act No. 26 of 1961) (the Marriage Act) which was assented to by the President on 10 April 1961 and came into operation on 1 January 1962. The operation of the Marriage Act, 1961 was extended to the whole of South Africa by the Marriage Act, Extension Act, 1997 (Act No. 50 of 1997) with effect from 12 November 1997.

##### **1.2 Civil Unions**

A civil union is solemnised and registered in terms of the Civil Union Act, 2006 (Act No. 17 of 2006) (“the Civil Union Act”) which was assented to by the President on 29 November 2006, and came into operation on 1 December 2006. The Act provides for the solemnisation of civil unions by way of either marriage or civil partnership; as well as the legal consequences of civil unions.

##### **1.3 Customary marriages**

- 1.3.1 The recognition and registration of customary marriages is regulated by the Recognition of Customary Marriages Act 1998 (Act No 120 of 1998) Recognition of Customary Marriages Act) which was assented to by the President on 20 November 1998 and came into operation on 15 November 2000

- 1.3.2 The registration of customary marriages is time-based as provided for in section 4 of the Recognition of Customary Marriages Act. A customary marriage entered into **after** the commencement of the Recognition of Customary Marriages Act (i.e. 15 November 2000) must be registered within 3 (three) months of being entered into or celebrated whereas those customary marriages entered into **before** the commencement of the Recognition of Customary Marriages Act (i.e. 15 November 2000) are registered on a period prescribed by the Minister of Home Affairs.

## **2. PROCEDURE FOR SOLEMNISATION OF “CIVIL” MARRIAGE AND CIVIL UNIONS**

- 2.1 The following procedures must be adhered to before and during solemnisation of ‘civil’ marriages and civil unions

(a) Appointment

- (i) Marriage officers who are appointed in terms of section 2(2) of the Marriage Act (officials of the Department of Home Affairs) must follow an appointment system for all ‘civil’ marriages and civil unions that they solemnise. All appointments made must be recorded in a calendar or diary that must be kept by the supervisor for marriages or head of office.
- (ii) The particulars of the prospective spouses must be recorded on the date for which an appointment is made including the time allocated for the solemnisation of their ‘civil’ marriage or civil union.
- (iii) The marriage officer must enquire from the prospective spouses on the matrimonial property system (i.e. in or out of community of property) that they wish to have for their “civil” marriage or civil union. Where the parties choose an out of community of property, proof of registration of the antenuptial contract must be submitted on the day of solemnisation of the “civil” marriage or civil union. Furthermore, the spouses who enter into a civil union must indicate if their civil union will be a civil union “partnership” or civil union “marriage”.
- (iv) A marriage officer must ensure that at the time of solemnisation and registration of the “civil” marriage or civil union, all parties who sign the marriage register have valid identity documents or passport and proof of lawful sojourn (valid visa or permit) in the Republic.

(b) Verification of identity and status of prospective spouses

The following activities must be complied with in the verification of identity and status (marital and proof of lawful sojourn in the Republic) of the prospective spouses:

(i) South African citizens

- (aa) Verify the validity of the identity number in the green barcoded Identity Document and the particulars thereof online and print the results thereof for attaching to the register (DHA-30).

- (bb) Enquire from the prospective spouses and thoroughly verify the marital status on the national population register that neither of the prospective spouses is a partner in an existing “civil” marriage, civil union or customary marriage. Where there are discrepancies identified on the national population register, the marriage officer must request proof of status to the contrary from the prospective spouses.
- (cc) The marriage officer must further enquire if any of the prospective spouses is not a spouse in a customary marriage that is not registered.
- (dd) Ministers of religion who are duly appointed as marriage officers may verify the identity and status of the prospective spouses who are South African citizens through the nearest Home Affairs Office, on the departmental website <http://www.dha.gov.za/status/Status.html> or by sending the identity number of the prospective spouses, preceded by the letter “M” to 32551. The marriage officer must further enquire if any of the prospective spouses is not a spouse in a customary marriage that is not registered.



(ii) Foreigners

- (aa) **Marriage officers should make copies of all pages of the valid passport (to proof identity) and permit or visa (to proof status) and refer to an immigration officer for verification of the validity of the passport and permit or visa.** An immigration officer, to whom a verification request is made, must verify the validity of the passport and check the passport against the Movement Control System and authenticate the permit or visa. All verification results must be forwarded to the marriage officer to attach to the register (DHA-30), where the “civil” marriage or civil union is solemnised on the date of appointment.
- (bb) Marriage officers must enquire from the prospective spouses their marital status and if any of them is not a partner in a customary marriage in his or her country of origin and request submission of a letter of no lawful impediment (as per paragraph 3 below).

(iii) Refugees / Asylum Seekers

- (aa) A letter of no lawful impediment should not be required from a person who is positively identified as a refugee or an asylum seeker. However, a copy of such person's refugee valid identity document and valid section 24 permit, or asylum seeker permit issued in terms of section 22, of the Refugees Act, 1998 (Act No. 130 of 1998) must be attached to the "civil" marriage or civil union register, as the case may be.
- (bb) Verification of the refugee identity document, refugee permit or asylum seeker permit must also be made by an immigration officer.
- (cc) Verification must be done by means of obtaining a printout from the Movement Control System if the foreigner is a holder of a temporary residence permit.

(c) Interview

- (i) All "civil" marriages or civil unions where one of the prospective spouses is a South African citizen must be preceded by an interview with an immigration officer. Both spouses must be interviewed.
- (ii) After conducting an interview, an immigration officer must **issue a declaration letter relating to the outcome of his or her verification of identity, status and whether or not in his or her view the marriage may be a marriage of convenience meant to help a foreigner to acquire an immigration permit.**
- (iii) There is no need for an interview to be conducted where both prospective spouses are foreigners. However, verification of identity and status in the Republic must be made.

2.2 All "civil" marriages or civil unions must be solemnised by a marriage officer appointed in terms of the Marriage Act or the Civil Union Act, as the case may be, followed by registration thereof on the appropriate register. Any person who purports to solemnise a "civil" marriage or a civil union which he or she is not authorised under the Act or to his or her knowledge is legally prohibited, shall be guilty of an offence.

2.3 Any "civil" marriage solemnised contrary to the provisions of the Marriage Act or the Civil Union Act cannot be registered and captured on the national population register by the Department.

### 3. IMPEDIMENTS TO MARRIAGE

3.1 Section 30 of the Marriage Act, 1961 and section 11 of the Civil Union Act (the formula for solemnizing a civil marriage or civil union) requires the prospective spouses or partners to declare that there is no lawful impediment. Therefore, in line with the aforementioned provisions and the principle of law that a person who is already married cannot enter into a legally binding marriage, the Department requires verification of marital status of the prospective spouses.

- 3.2 The impediments to a valid marriage can be classified into the following three groups:
- (a) Those resulting in an absolute inability to marry, that is, the person concerned is unable to marry anybody at all for as long as the impediments last. Such impediments are mental incapacity, non-attainment of the marriageable age, and an existing marriage.
  - (b) Those resulting in a relative inability to marry, that is, although the persons concerned have the capacity to marry, however they are unable to do so because they are related to each other within the prohibited degrees of relationships, e.g. a brother or a sister.
  - (c) Special impediments such as particular requirements which must be complied with before certain persons can enter into a valid marriage, e.g. the granting of consent for a marriage in which one or both prospective spouse(s) is a minor(s).

3.3 A letter of no lawful impediment from the authorities of the country of origin is **required** where one of the prospective spouses is a foreigner marrying a South African citizen.

3.4 An official who captures or enter into the national population register the particulars of a “civil” marriage or civil union between the spouses of whom one is a foreigner must first authenticate the letter of now lawful impediment with the country of origin through the Mission or the Embassy of the Republic in the country of origin of such a foreigner (where the letter was issued), unless such a letter is apostilled.

#### **4. UNABRIDGED MARRIAGE CERTIFICATES FOR TWO FOREIGNERS (WITHOUT IDENTITY DOCUMENTS)**

4.1 Upon submission of a marriage register of two foreign spouses (without identity documents) by the marriage officer, the office must **immediately** issue a hand-written unabridged marriage certificate to the spouses (and not the marriage officer).

4.2 Where one of the spouses is a South African citizen or a permanent residence permit holder, the office must capture the marriage on the national population register a computerized marriage certificate may be issued to the spouses.

4.3 Marriage officers must ensure that the correct applicable amount is charged for the issuance of an unabridged marriage certificate.

4.4 When entering the marriage in the system, officers need to specify the type of marriage (i.e. civil marriage/civil union partnership or civil union marriage).

#### **5. BIGAMOUS MARRIAGES**

“Civil” marriages and civil unions are monogamous in nature. A person married in terms of the Marriage Act or Civil Union Act who purports to conclude another “civil” marriage or civil union or customary marriage before his or her existing marriage has been dissolved, his or her second “marriage” is null and void and is considered as bigamous marriage which is an offence.

Should you have any enquiries regarding the contents of this Circular, please contact Ms Mmabatho Rakgalakane at 012 402 2259 or Ms Maria Mthimunye and Maria Matsoaisa at 012 402 2258.

**DEPUTY DIRECTOR-GENERAL: CIVIC SERVICES**

**Date: 18/12/2013**

This Circular follows Circular No. 9 dated 17 October 2013

**Note:** Birth Registration for the children born of the same sex parents and registration of birth for the children if one parent is a non-citizen in health facilities.

Hierdie dokument is oorgetik vanaf die Departement van Binnelandse Sake se webblad.

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