

eSwatini

## Marriage Act, 1964

Act 47 of 1964

Legislation as at 1 December 1998

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## eSwatini

# Marriage Act, 1964

Act 47 of 1964

Commenced on 31 July 1964

*[This is the version of this document at 1 December 1998.]*

**An Act to provide for restrictions on the right to marry, the consequences of marriage, the solemnisation of marriages and matters incidental thereto.**

### Part I – Introduction

#### 1. Short title and application

- (1) This Act may be cited as the Marriage Act, 1964.
- (2) This Act applies to all marriages intended to be solemnised after the commencement of this Act, except marriages contracted in accordance with Swazi law and custom.

#### 2. Interpretation

In this Act—

“**Minister**” means the Minister of Justice.

### Part II – Restrictions on right to marry

#### 3. Minors

- (1) No male person below the age of eighteen years and no female person below the age of sixteen years may marry:

Provided that if the special circumstances of any case, in the opinion of the Minister, warrant such a marriage, the Minister may grant special dispensation allowing such a marriage.

- (2) Minors below the age of twenty-one years but above the ages specified in subsection (1) may marry with the consent of their legal guardian, but persons who have previously been married, whether in accordance with Swazi law and custom or civil rites, shall not be regarded as minors.
- (3) Where a minor legally competent to marry has no legal guardian, or where the consent of the legal guardian cannot be obtained for a reason other than the unwillingness of the legal guardian to give the consent, or where the consent is manifestly unreasonably withheld, the district commissioner of the district in which the minor resides, or, if the minor resides outside Swaziland, the Minister may, give a written authorization for the marriage of that minor.
- (4) For the purposes of this section, the expression “legal guardian” means—
  - (a) the legal father of the minor; or,
  - (b) if the minor has no father, the mother of the minor; or,

- (c) if the minor has no father or mother, such person as a judge or the master of the High Court may appoint as guardian of the minor:

Provided that where the father or mother has been deprived of the custody of the minor by order of a court the person to whom the custody of the minor has been granted by such court shall be the legal guardian.

#### **4. Persons of unsound mind**

No person may marry who is certified or adjudged to be of unsound mind by competent authority; or is, through unsoundness of mind, incapable of managing himself or his affairs.

#### **5. Widows or widowers with minor children**

No widow or widower with minor children from a previous marriage, other than a marriage in accordance with Swazi law and customs, may marry unless the provisions of section 89 of the Administration of Estates Act [No. 28 of 1902](#) have been complied with.

#### **6. Relationship within the prohibited degrees**

- (1) No persons related to one another within the prohibited degrees of consanguinity or affinity may marry.
- (2) The prohibited degrees of relationship by consanguinity are as follows—
  - (a) no person may marry an ancestor;
  - (b) no two persons related to one another in the collateral line may marry if either of them is related to the common ancestor in the first degree.
- (3) The prohibited degrees of relationship by affinity are the same as the prohibited degrees of relationship by consanguinity save and except that it shall be competent for a person to marry the brother or sister, as the case may be, of a former spouse or any person related to the former spouse in a more remote degree whether the former marriage was dissolved by death or divorce.

#### **7. Person already married**

- (1) No person already legally married may marry in terms of this Act during the subsistence of the marriage, irrespective of whether that previous marriage was in accordance with Swazi law and custom or civil rites and any person who purports to enter into such a marriage shall be deemed to have committed the offence of bigamy:

Provided that nothing contained in this section shall prevent parties married in accordance with Swazi law or custom or other rites from re-marrying one another in terms of this Act.

- (2) No person married in terms of this Act shall, during the subsistence of the marriage, purport to contract a legally recognized ceremony of marriage with any person other than the lawful spouse of the first-named person.
- (3) Any person who contravenes subsection (2) shall be deemed to have committed the offence of bigamy.

### **Part III – Preliminaries to marriage**

#### **8. Requirement of banns or special licence**

No marriage shall be valid unless within a period of not more than three months previous to its solemnization banns have been published as provided in this Act or a special licence has been issued in terms of [section 14](#).

## 9. Banns

Banns of marriage shall state the full names of the intended consorts, their marital status and the district in which they reside.

## 10. Publication of banns

Banns may be published either—

- (a) in public during three consecutive Sundays during divine service in a church or other building habitually used for public worship by congregations to which the parties to the intended marriage belong and in the district in which each of the parties resides; or
- (b) by posting them up, for a period covering three consecutive Sundays, in a conspicuous place, to which the public has access, at the office of the district commissioner or other local authority in the district in which each of the parties to the intended marriage resides.

## 11. Banns published elsewhere in Africa

A marriage officer may solemnize a marriage the banns of which have been published in different districts in Swaziland or in any other country in Africa:

Provided that the marriage officer satisfies himself by written evidence (on oath if he deems it necessary) that the banns have been duly published in that other district, country, in accordance with the law thereof.

## 12. Banns relating to marriage of British subject in Swaziland

Where a marriage is intended to be solemnized in Swaziland between a British subject residing in Swaziland and a British subject residing in the United Kingdom, or Northern Ireland, a certificate for marriage issued by a superintendent registrar in England and a certificate for marriage issued by a registrar and a certificate of proclamation of banns in Scotland and a certificate for marriage issued by a registrar in Northern Ireland shall, in respect of the party resident in the United Kingdom, have the same effect in Swaziland as the publication of banns in the manner provided by this Act.

## 13. Banns for marriage in United Kingdom of Swaziland resident

Where a marriage is intended to be solemnized in the United Kingdom or Northern Ireland between a British subject residing in the United Kingdom or Northern Ireland and a British subject residing in Swaziland, the banns of the intended marriage in respect of the party residing in Swaziland may be published in like manner as if the marriage were intended to be solemnized in Swaziland and a certificate of the publication shall be given by the person by whom they were published.

## 14. Special licence

- (1) It shall be lawful to join persons in matrimony, without the previous publication of banns as provided in this Part, on production and exhibition by the parties of a special licence obtained for the purpose and signed by a district officer.
- (2) The licence mentioned in subsection (1) shall be in the form prescribed by any regulations made under the Births, Marriages and Deaths Registration Act [No. 22 of 1927](#), and shall be subject to any fee prescribed by those regulations.

## 15. Application for special licence

Persons desiring to be married by licence in accordance with [section 14](#) shall appear before the district officer, give him their names, produce such documents and give such written statements (on oath if he

deems it necessary) and answer such questions as he sees fit to put to them for the purpose of satisfying himself that—

- (a) in the case of minors, there has been obtained either the consent of the legal guardian, or the authorization, mentioned in [section 3](#);
- (b) if an intended spouse was a widow or widower with minor children from a previous marriage, other than a marriage in accordance with Swazi law and custom, the provisions of section 89 of the Administration of Estates Act [No. 28 of 1902](#) have been complied with; and
- (c) the intended spouses do not stand in relationship to one another within the prohibited degrees of consanguinity or affinity referred to in [section 6](#) and that there are no other lawful impediments to the intended marriage.

## Part IV – The marriage ceremony

### 16. Marriage officers

- (1) No marriage shall be valid unless solemnized by a marriage officer:

Provided that no marriage officer shall without the written approval of the Minister solemnize a marriage unless the male person to such marriage is either a citizen of Swaziland or a person in possession of a Residence Permit or a Temporary Residence Permit issued in such person's favour under the Immigration Act [No. 32 of 1964](#).

*[Added K.O-I-C. 19/1974]*

- (2) The following persons are marriage officers—
  - (a) an administrative officer;
  - (b) a duly appointed magistrate;
  - (c) a minister of religion or a person holding a responsible position in a religious denomination or community specially appointed as a marriage officer by the Minister by notice in the *Gazette*;
  - (d) any other person specially appointed a marriage officer by the Minister by notice in the *Gazette*; and
  - (e) a person appointed to act as a marriage officer in terms of the Marriage Act [No. 26 of 1902](#):  
Provided that such an appointment shall lapse six months after the commencement of this Act.
- (3) The Minister may, by notice in the *Gazette*, revoke the appointment of a person as marriage officer.
- (4) Where a person has acted as a marriage officer during a period he was not, in accordance with this section, a marriage officer, the Minister may, if satisfied that the person did so under the *bona fide* belief that he was a marriage officer during that period, direct by notice, published in the *Gazette*, that the person shall, for all purposes, be deemed to have been a marriage officer during that period.

### 17. Unauthorized marriage officers

A person, not being a marriage officer under this Act, who knowingly purports to conduct a marriage ceremony in terms of this Act is guilty of an offence and shall be liable, on conviction, to a fine not exceeding two hundred emalangeni or imprisonment for a period not exceeding one year.

## 18. Place and time of marriage ceremony

- (1) Except in circumstances which the marriage officer presiding at a marriage deems to be exceptional, no marriage shall be solemnized except between eight o'clock in the morning and six o'clock in the afternoon.
- (2) All marriages shall be solemnized in a church or other building used for religious services, public office or private dwelling house with open doors, and in the presence of at least two persons competent to give evidence in a court of law.

## 19. The ceremony: religious

Any marriage officer who is a minister of religion or a person holding a responsible position in any religious denomination or community shall perform the marriage ceremony in accordance with the formula in use in the congregation to which he belongs:

Provided the formula complies substantially with [section 20\(a\)](#), (b) and (c).

## 20. The ceremony: civil

A marriage officer who is not a minister of religion or who does not hold a responsible position in a religious denomination or community shall solemnize a marriage in the following manner—

- (a) he shall put the following question separately to the bride and bridegroom. “Do you (*name of bride or bridegroom*) solemnly declare that you know of no legal impediment to your marriage to (*name of bridegroom or bride*) here present?”;
- (b) upon receiving an affirmative answer to the question put to the bride and bridegroom in accordance with paragraph (a), the marriage officer shall request the bridegroom and bride separately to repeat after him the following words—

“I (*name of bridegroom or bride*) call upon all persons here present to witness that I take (*name of bride or bridegroom*) to be my lawfully wedded (*husband or wife*).”;
- (c) if the parties are to use a wedding ring the marriage officer shall instruct the bridegroom to place the ring upon the wedding finger of the bride and shall thereafter instruct the parties to join their right hands. The marriage officer shall then repeat the following formula—

“I declare that A. B. and C. D. here present are in the eyes of the civil law joined together in matrimony.”.

## 21. Bride's signature in marriage register in former name

When complying with the requirements of section 21 of the Births, Marriages and Deaths Act [No. 22 of 1927](#), the bride shall sign in the name she bore immediately prior to the marriage.

## 22. Penalty for making false declaration to a marriage officer

A person who knowingly falsely declares to a marriage officer that he knows of no legal impediment to his marriage shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred emalangeni or, in default of payment thereof, imprisonment for a period not exceeding six months:

Provided that such penalty shall be in addition to any penalty he may incur on a conviction for bigamy.

## 23. Penalty for conducting a marriage ceremony otherwise than in terms of this Act

A marriage officer who conducts a marriage ceremony otherwise than in terms of this Act shall be guilty of an offence and liable, on conviction, to a penalty of a fine not exceeding two hundred emalangeni or imprisonment for a period not exceeding one year.

## Part V – Consequences of marriage

### 24. Common law

The consequences flowing from a marriage in terms of this Act shall be in accordance with the common law as varied from time to time by any law, unless both parties to the marriage are Africans in which case, subject to the terms of [section 25](#), the marital power of the husband and the proprietary rights of the spouses shall be governed by Swazi law and custom.

### 25. Variation of consequences of marriage

- (1) If both parties to a marriage are Africans, the consequences flowing from the marriage shall be governed by the law and custom applicable to them unless prior to the solemnization of the marriage the parties agree that the consequences following from the marriage shall be governed by the common law.
- (2) If the parties agree that the consequences flowing from the marriage shall be governed by the common law, the marriage officer shall endorse on the original marriage register and on the duplicate original marriage register the fact of the agreement; and the production of a marriage certificate, original marriage register or duplicate original marriage register so endorsed shall be *prima facie* evidence of that fact unless the contrary is proved.

[Amended A.13/1967]