



## ST HELENA

### A BILL

### FOR

### AN ORDINANCE

**to make new provision relating to marriage in St Helena; and for purposes connected therewith or incidental thereto.**

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Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

#### PART 1 PRELIMINARY

##### **Citation**

1. This Ordinance may be cited as the Marriage Ordinance, 2016.

##### **Interpretation**

2. In this Ordinance, unless the context otherwise requires—  
“**civil marriage**” means a marriage solemnised by the Registrar-General or a Registrar;  
“**marriage**” includes a marriage between persons of the same sex;  
“**Minister**” in relation to any church or registered place of worship means any minister, clergyman, pastor, priest or other celebrant of a religious or belief body authorised by such religious or belief body to solemnise marriages in a place of worship registered under this Ordinance;  
“**religious marriage**” means a marriage solemnised by a Minister.

#### PART 2 REGISTRAR-GENERAL’S OFFICE AND APPOINTMENTS

##### **Registrar-General’s Office**

3. There shall be a Registrar-General’s Office in Jamestown for the registration of marriages occurring within St Helena.

## **Appointment of Registrar-General and Registrars**

4. (1) The Governor shall from time to time appoint a person to be Registrar-General.
- (2) The Governor may appoint two Registrars of Marriages for St Helena.

### **PART 3 SOLEMNISATION OF MARRIAGES**

#### **Persons who may solemnise marriages**

5. A marriage may be solemnised only by—
- (a) a Minister in a building registered under section 6; or
  - (b) the Registrar-General or a Registrar at—
    - (i) the Registrar-General's Office;
    - (ii) any premises with current approval under section 8; or
    - (iii) any suitable public location which the Registrar-General or Registrar may agree to be the place of solemnisation upon payment of the prescribed fee by the parties to the intended marriage.

#### **Buildings used for solemnisation of religious marriages**

6. (1) Any building used for solemnisation of religious marriages shall be registered in accordance with this section.

(2) The Registrar-General may register a place of worship as a place for the solemnisation of religious marriages on receipt of an application from—

- (a) any proprietor or trustee of any separate building used as a place of public religious worship, together with a certificate signed by at least 12 householders and countersigned by the proprietor or trustee, that such building has been used by those householders for the last year as their usual place of public religious worship; or
- (b) the Bishop St Helena, and in his absence the Primate of the Province of the Anglican Church of Southern Africa (otherwise known as "The Church of England" or "the English Church" or "the Church of the Anglican Communion in these parts"), or any person authorised by the Primate in that behalf, in regard to any place of worship attached to such Church of the Province of South Africa.

(3) The Registrar-General shall issue a certificate of registration under subsection (1) to the applicant and shall publish notice of such registration in the *Gazette*.

(4) The applicant shall, at the time of delivery of the certificate under subsection (3), pay to the Registrar-General the prescribed fee for such registration, certificate and publication.

(5) The St. James' church in Jamestown and St. Paul's Cathedral in St Paul's shall be considered for all the purposes of this Ordinance as buildings registered for the solemnisation of marriages.

#### **Buildings no longer used for religious worship or substituted buildings**

7. (1) If at any time after registration a building for solemnising marriages under section 6, it appears to the satisfaction of the Registrar-General that such building is no longer used for public religious worship of the congregation on whose behalf it was so registered, the Registrar-General shall cancel such registration:

Provided that if it is proved to the satisfaction of the Registrar-General that such congregation instead thereof uses some other building for the purpose of public religious

worship, the Registrar-General may substitute and register such new place of worship, notwithstanding that such new place of worship may not have been used for that purpose for one year and such cancellation or substitution shall be registered, certified and published in the same manner as referred to in section 6.

(2) The party requiring such substitution shall pay to the Registrar-General the prescribed fee at the time of the delivery of the certificate, from the party requiring the substitution, the prescribed fee.

(3) After cancellation or substitution of a disused building under subsection (1), no marriage shall be solemnised in such disused building.

### **Premises used for solemnisation of civil marriages**

8. (1) Subject to section 5(b)(iii), any premises used for solemnisation of civil marriages must be approved in accordance with this section.

(2) The Registrar-General may, on application by the proprietor, tenant or person legally occupying any premises, approve such premises as a place for the solemnisation of civil marriages.

(3) An applicant shall, together with the application under paragraph (2), submit the prescribed fee.

(4) The Registrar shall—

(a) publish notice of the application in the *Gazette* requesting any comments from any person who may be likely to be affected by approval of such premises as a place for solemnisation of marriages;

(b) serve a copy of the notice on the Chief Planning Officer and the Director of Police.

(5) Any person who wishes to submit representations in relation to an application as provided for under subsection (4), must submit his or her written representations to the Registrar within 30 days.

(6) The Registrar-General may, after taking into consideration any representations or comments under paragraph (5), approve the premises as a place for solemnisation of civil marriages (with or without any conditions), if he or she is satisfied that it complies with the requirements in paragraph (2) and that any concerns or comments raised have been addressed sufficiently.

(7) Approval of any premises as a place for solemnisation of civil marriages shall be valid for a period of 12 months.

(8) The Registrar-General may revoke any such approval—

(a) if the holder thereof has failed to comply with one or more conditions of the approval; or

(b) where the use or structure of the premises has changed and the premises are no longer suitable for the purpose,

and, on deciding to revoke the approval, the Registrar-General shall deliver a notice in writing to such holder confirming its revocation.

## **PART 4**

### **PROCEDURES FOR SOLEMNISATION OF MARRIAGES**

#### **Notice of intended marriages to be given to Registrar**

9. (1) In every case of religious or civil marriage intended to be solemnised, one of the parties shall give notice to the Registrar in the prescribed form.

(2) The Registrar shall, upon payment of the prescribed fee—

(a) file every notice under subsection (1) with the records of the Registrar-General's Office;

- (b) publish a copy of such notice on a Government notice board in a conspicuous place readily accessible to the public, from the time of the entry thereof until the issuing of a certificate under section 10; and
- (b) enter a true copy of such notice, together with the date of entry into a book, to be called the Marriage Notice Book, which shall be open at all reasonable times without fee to all persons who wish to inspect it.

### **Certificate of notice to issue after 21 days**

**10. (1)** Subject to section 11, at any time not more than three months, nor less than 21 days after the entry of the notice under section 9, the Registrar shall, on payment of the prescribed fee, issue a certificate in the prescribed form.

- (2)** The Registrar shall not issue a certificate under subsection (1) where—
- (a) any lawful impediment is shown to the satisfaction of the Registrar why such certificate should not be issued; or
  - (b) the issue of such certificate is forbidden by any person or persons whose consent is required to the marriage.

### **Certificate may issue within 21 days under Governor's licence**

**11.** Subject to section 10(2), the Governor may, if he or she thinks fit, at any time after the entry of a notice under section 9, and upon payment of the prescribed fee, by licence in the prescribed form authorise the Registrar to issue the certificate under section 10 on or after any day named in such licence.

### **Consent necessary in case of marriage of minor**

**12.** Where any party to an intended marriage is under the age of 18 years, the consent of the person with parental responsibility with respect to that party shall be required for the marriage, unless such party is a widow or widower.

### **Forbidding issue of certificate**

**13.** A person whose consent is required by law for any marriage may forbid the issue of the certificate under section 10 at any time before such issue, by writing the word "forbidden" opposite the entry of the notice of intended marriage in the Marriage Notice Book, and by adding his or her name and place of residence and his or her relationship to either of the parties in respect of whom such consent is required and any certificate granted thereafter and all other proceedings thereupon shall be void, unless the marriage is authorised by the Chief Justice under section 14 or 15.

### **Court may consent to marriage in certain cases**

**14.** Where the person (or persons) whose consent is required by law for any marriage, is absent from St Helena or is otherwise unable or refuses to give consent, the persons who wish to contract such marriage may apply by petition to the Chief Justice and where the proposed marriage appears to him or her upon examination to be proper, the Chief Justice shall judicially declare by order in writing that such marriage may be solemnised and such order shall for the purposes of this Ordinance be deemed equivalent to such consent.

### **Caveat may be entered**

**15. (1)** Any person may, on payment of the prescribed fee, enter a caveat with the Registrar against the grant of a certificate for the marriage of any person named in such caveat.

**(2)** If a caveat is entered with the Registrar, which is signed by or on behalf of the person who enters it and stating his or her place of residence and the ground of objection on which such caveat is founded, no certificate shall be issued or granted until the Registrar has examined into the matter of the caveat and is satisfied that it ought not to obstruct the grant of the certificate for such marriage, or until the caveat is withdrawn by the party who entered it:

Provided that—

- (a)** in the case of doubt, the Registrar may refer the matter of any such caveat to the Chief Justice who shall decide upon the matter; or
- (b)** where the Registrar refuses the grant of the certificate, the person requiring such certificate may apply to the Chief Justice by petition, who shall either confirm the refusal or direct the grant of the certificate.

### **Ministers may solemnise marriages during certain hours and after declaration**

**16. (1)** On the delivery of a certificate under section 10 to the Minister of, or officiating in, any registered place of worship named therein, such Minister may solemnise a marriage in such building between the parties named in such certificate.

**(2)** A marriage under subsection (1) shall be solemnised with open doors, between the hours of 8am and 6pm, and in the presence of two or more credible witnesses besides the Minister, and where the form of solemnisation is other than that of the Church of England, each of the parties shall in some part of the ceremony and in the presence of such Minister and witnesses make the following declaration:

“I do solemnly 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 thee, C. D., to be my lawful wedded wife [or husband]”:

Provided also that there be no lawful impediment to the marriage of such parties.

### **Marriages before Registrar**

**17. (1)** The parties named in the certificate issued under section 10 may have the marriage solemnised by the Registrar-General or a Registrar at any place referred to in section 5(b) and in the presence of two witnesses, with open doors (where applicable), and between the hours prescribed in section 16(2), making the declaration and using the form of words prescribed in that section.

**(2)** The parties to the marriage being so contracted in the presence of the Registrar shall pay to the Registrar the prescribed fee.

### **Certificate of notice or licence void after three months from notice**

**18.** If a marriage is not solemnised within three calendar months after notice thereof was entered by the Registrar, the notice and any licence or certificate which was granted thereupon and all other proceedings thereupon shall be void, and no person shall proceed to solemnise the marriage, nor shall any Registrar register any such marriage, until new notice has been given and entry made and certificate thereof given at the time and in the manner as provided in sections 9 and 10.

### **No evidence of consent necessary after marriage**

19. After any marriage has been contracted, it shall not be necessary in support of such marriage to give any proof of the consent of any person whose consent was required by law.

### **Clergy not compellable to solemnise marriage**

20. No Minister shall be compellable to solemnise marriage—
- (a) between persons either of whom is not a member of his or her own communion; or
  - (b) otherwise than according to the rules or custom of such communion; or
  - (c) unless he or she is satisfied by the declaration of the parties or otherwise that the proposed marriage is consistent with such rules or custom.

### **Entry of marriages in places of worship**

21. Immediately after the solemnisation of any marriage by the Minister of any registered place of worship, the Minister shall enter into a book to be kept for that purpose in such place of worship, a statement of such marriage in the prescribed form and comprising the prescribed particulars which entry shall be signed by the Minister and by the parties married, and by two credible witnesses of such marriage, and the Minister shall submit to the Registrar a duplicate of such statement similarly signed, and all such statements shall be filed by the Registrar and duly preserved in his or her office.

### **Registration of marriages**

22. (1) Every Registrar shall enter the particulars of every marriage contracted in his presence, and (with the word “ copy “ prefixed) all statements of marriages submitted to him or her under section 21 into a Marriage Register Book, which shall be made out in the prescribed form, and every entry of such marriage contracted in the presence of the Registrar shall be signed by him or her, and by the parties married, and by two credible witnesses, and every such entry made by the Registrar, or any copy thereof certified by the Registrar-General, shall be evidence of the facts recorded therein, in pursuance of this Ordinance, before all courts and in all proceedings before or in which it may be necessary to give evidence of the marriage to which it shall relate.

(2) Every Registrar shall, upon registering any marriage as provided in subsection (1), submit to the Registrar-General a duplicate of such entry in the register duly certified by such Registrar to be a true copy of such entry; and such duplicate shall be preserved in the office of the Registrar-General.

### **Marriages *in articulo mortis***

23. (1) Notwithstanding anything contained in this Ordinance, a Minister may perform the ceremony of marriage between any persons, without notice given of the intended marriage under section 9 or without a certificate issued by the Registrar under section 10, provided that—

- (a) both the parties between whom the ceremony of marriage is to be performed are, at the time of the performance thereof, of full age and legally competent to contract marriage and able to signify their consent thereto; and
- (b) one of them, to the best of the knowledge and belief of such Minister and of the other persons signing the certificate referred to in subsection (2), is, at the time of the performance of such ceremony, in a dying state and that such dying person is a member of the religious communion or denomination to which such Minister belongs.

(2) Immediately after the solemnisation of any marriage under subsection (1), the officiating Minister shall submit a certificate of such marriage to the Registrar in the prescribed form, signed by such Minister and two credible witnesses present at such marriage.

(3) The certificate submitted under subsection (2) shall be filed by the Registrar in a register to be specially kept for the purpose and he or she shall transmit a copy thereof to the Registrar-General as provided in section 21(2).

(4) Subject to the observance of the foregoing conditions, a marriage solemnised under this section shall be good and effectual in law.

(5) No marriage solemnised under the provisions of this section shall operate as a revocation of any will.

### **Registers may be searched**

24. Any person may at all reasonable times and on payment of the prescribed fee search the entries in the Marriage Register Books, and the files of such statements in the presence of the Registrar, and may apply for true copies certified under the hand of the Registrar-General of any such entries or statements.

## PART 5 NON-COMPLIANCE AND OFFENCES

### **Clandestine marriage void**

25. A marriage shall be null and void if the parties knowingly and wilfully contract such marriage under the provisions of this Ordinance—

- (a) in any place other than the place specified in the notice and certificate under sections 9 and 10; or
- (b) without such due notice given, or without certificate of such notice duly issued; or
- (c) where the parties to such marriage are within the prohibited degrees of consanguinity or affinity.

### **Under-age marriages**

26. A marriage solemnised between persons either of whom is under 16 years of age shall be void.

### **Frivolous entry of caveat**

27. Every person who enters a caveat with the Registrar against the issue of any certificate, on grounds which the Registrar declares in writing to be frivolous, shall be liable for the costs of the proceedings and for damages to be recovered in a special action on the case by the party against whom such caveat was entered.

### **Failure to register or render return of marriages**

28. Every—
- (a) Minister who fails to transmit to the Registrar the statement required by section 21 within one week after solemnisation of the marriage to which such statement relates; and
  - (b) Registrar who fails to register any such marriage within one week of receiving such statement or who fails to register any marriage contracted before him on the day on which it was contracted,

is guilty of an offence for which the maximum penalty on conviction is a fine of £5,000 or imprisonment for a term of three months, or both.

### **False declarations**

**29.** Every person who—

- (a) knowingly and wilfully makes any false declaration, or signs any false notice or certificate required by this Ordinance, for the purpose of procuring any marriage; or
- (b) forbids the issue of any Registrar's certificate by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false,

is guilty of an offence for which the maximum penalty on conviction is a fine of £5,000 or imprisonment for a term of three months, or both.

### **Irregular procedure**

**30. (1)** Any person who knowingly and wilfully solemnises any marriage—

- (a) not being legally competent to do so; or
- (b) between parties not legally competent to contract such marriage; or
- (c) in any place other than the place specified in the notice and certificate under sections 9 and 10; or
- (d) before the issue of such certificate, or after the expiration of three months from the entry of such notice,

is guilty of an offence for which the maximum penalty on conviction is a fine of £5,000 or imprisonment for a term of three months, or both.

**(2)** Any Registrar who knowingly and wilfully—

- (a) issues any certificate of marriage, except within the period allowed by this Ordinance, or any certificate the issue of which is forbidden by any person authorised so to forbid such marriage; or
- (b) registers or allows to be contracted in his or her presence any marriage herein declared to be null and void,

is guilty of an offence for which the maximum penalty on conviction is a fine of £5,000 or imprisonment for a term of three months, or both.

### **Destruction and forgery of documents**

**31.** Any person who—

- (a) unlawfully and maliciously erases, obliterates or destroys or who knowingly and wilfully forges or alters or falsely makes or procures to be forged, altered or falsely made, any notice, licence, certificate, entry or statement mentioned in this Ordinance or any certified copy thereof; or
- (b) knowingly and wilfully utters or publishes as true any such forged, false or altered copy,

is guilty of an offence for which the maximum penalty on conviction is a fine of £5,000 or imprisonment for a term of three months, or both.

## PART 6 MISCELLANEOUS

### **Certified copies of extracts to be issued by Registrar-General**

**32.** Every certified copy extract from the Register of Marriages for delivery to any member of the public shall be issued and signed by the Registrar-General or a Registrar.

### **Regulations**

**33.** The Governor in Council may make Regulations generally for carrying into effect the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations may provide for forms to be used, fees to be paid, and procedures to be adopted for or in connection with the operation of this Ordinance and for anything which is to be, or may be, prescribed hereunder.

### **Repeal and transitional provisions**

**34. (1)** The Marriage Ordinance, Cap. 80, is repealed.

(2) Notwithstanding the repeal of the Marriage Ordinance, Cap. 80, by subsection (1), any religious building registered under that Ordinance prior to its repeal shall be deemed to be registered as such under section 6 of this Ordinance.

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#### **EXPLANATORY NOTE**

*(This note is not part of the Ordinance)*

This Ordinance makes new provision for Marriages in St Helena and repeals the Marriage Ordinance, Cap. 80.