

ST HELENA

REVISED EDITION OF THE LAWS 2017

FAMILY AND WELFARE LAW

MARRIAGE ORDINANCE, 1851¹

Ordinance 3 of 1851

Amended by Ordinances 4 of 1886, 9 of 1888, 9 of 1903, 1 of 1923, 4 of 1926, 11 of 1949, 15 of 1949, 2 of 1967, 9 of 1967, 8 of 1981 and 10 of 1985

Subsidiary legislation:

MARRIAGE (FEES) ORDER, 2013

Legal Notice 16 of 2013

MARRIAGE ORDINANCE, 1851

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AN ORDINANCE relating to marriage in St Helena.

Short title

1. This Ordinance may be cited as the Marriage Ordinance, 1851.

Interpretation

- 2. In this Ordinance, unless the context otherwise requires—
- "Chief Justice" and "Governor" include all persons lawfully acting as such;
- "Minister of any church or registered place of worship" includes any person authorised by such minister to act in that capacity, being legally competent so to act;
- "Registrar" means a Registrar of Marriages appointed under section 5 and includes any person authorised by the Governor to act as a Registrar.

PART I REGISTRAR-GENERAL

Registrar-General to be appointed

3. There is to be a Registrar-General's office at the Castle at Jamestown for the registration of marriages occurring on the Island of St Helena and on Ascension, and the Governor must from time to time appoint a person to be Registrar-General.

Certified copies of extracts to be under hand of Registrar-General

4. Every certified copy extract from the Register of Marriages of any Registry for delivery to any member of the public must be issued under the hand of the Registrar-General.

PART II GENERAL

Appointment of Registrars

5. The Governor may appoint a Registrar of Marriages for the St Helena.

Buildings used for solemnisation of marriages to be registered

- **6. (1)** A Registrar, on receiving from any proprietor or trustee of any separate building used as a place of public religious worship, other than that of the Church of the Province of South Africa (otherwise known as "The Church of England" or "the English Church" or "the Church of the Anglican Communion in these parts") -
 - (a) an application that the building may be registered for solemnising marriages in it; and
 - (b) a certificate signed by at least 12 householders and countersigned by the proprietor or trustee, that the building has been used by those householders during one year at least as their usual place of public religious worship,

must register such place of worship for the solemnisation of marriages in a book to be provided for that purpose, and give a certificate of such registration and of the date of it under his or her hand, to the person making the application.

- (1A) A Registrar has the same obligation as under subsection (1) if he or she receives an application as described in that subsection from the Archbishop of Capetown and Metropolitan of the Church of the Province of South Africa, or any person authorised by the Archbishop for the purpose in regard to any place of worship attached to the Church of the Province of South Africa,
- (1B) The Registrar must give public notice of the registration of a place of worship under this section by advertisement in the *Gazette*.
- (2) For every registration, certificate, and publication under this section, the prescribed fee is payable at the time of the delivery of the certificate.
- (3) The churches on St Helena dedicated to Almighty God by the names of St James and St Paul, and the offices for the time being in those places of the Registrar, are to be considered for all the purposes of this Ordinance as buildings registered for the solemnisation of marriages.

Cancellation and substitution of registration of buildings

7. (1) If at any time subsequent to the registry of any building for solemnising marriages therein it appears to the satisfaction of the Registrar that the building has been disused for the public religious worship of the congregation on whose behalf it was registered

under section 6, the Registrar must cancel the registration of the building.

- (1A) If it is proved to the satisfaction of the Registrar that the same congregation use instead of a building registered under section 6 some other such building for the purpose of public religious worship -
 - (a) the Registrar may substitute and register such new place of worship instead of the disused building, even if the new place was not used for public religious worship during the preceding year; and
 - (b) the cancellation or substitution, when made, must be entered in the book provided for the registration of such buildings, and must be certified and published in manner provided in section 6(1B) in the case of the original registration of the disused building.
- (2) For every substitution under section (1A), the prescribed fee is payable by the party requiring the substitution, at the time of the delivery of the certificate.
- (3) After the cancellation or substitution of a place of worship under this section has been made by the Registrar it is not lawful to solemnise any marriage in the disused building unless it is again registered under section 6.

Notice of intended marriages to be given to Registrar

- **8.** (1) In every case of marriage intended to be contracted or solemnised, one of the parties must -
 - (a) give notice under his or her hand to the Registrar, in Form 1 in the Schedule, stating the name, surname, condition, profession and dwelling-place of each of the parties intending the marriage, and whether each of them is of full age or not, and the church or other building in which the marriage is to be had; and
 - (b) deliver to the Registrar a signed solemn declaration in Form 1 in the Schedule setting out the matters required by that form.
 - (1A) On receiving a notice under subsection (1), the Registrar must -
 - (a) file the notice and keep it with the records of his or her office;
 - (b) display a copy of the notice in a conspicuous place in his or her office from the time of the entry of it for the period for issuing a certificate provided by this section;
 - (c) enter a true copy of the notice, together with the date of entering it fairly into a book, to be called the Marriage Notice Book, which must be open at all reasonable times without fee to all persons who wish to inspect it.
- (2) For every entry in the Marriage Notice Book under this section the prescribed fee is payable.
- (3) Notice of a marriage intended to be solemnised at some place elsewhere than in St Helena or Ascension under the Foreign Marriage Act, 1892 (UK), may be given by one of the parties intending such marriage, who has had his or her usual place of abode for 3 consecutive weeks immediately preceding in some place in St Helena or Ascension, to the Registrar in the manner and subject to the conditions in this Ordinance provided.

(4) The Registrar unless he or she is aware of any impediment or objection which should obstruct the solemnisation of the marriage, must on payment of the prescribed fee give a certificate that the said notice has been so given and published as aforesaid.

Certificate of notice to issue after 21 days

- 9. (1) After entry of a notice under section 8, the Registrar, upon being requested so to do by or on behalf of the party by whom notice was given, must issue under his or her hand a certificate in Form 2 in the Schedule.
- (2) A certificate under subsection (1) must be issued within 3 months but not sooner than within 21 days after the entry of the notice, except pursuant to a licence under this section.
 - (3) A certificate must not be issued if -
 - (a) a lawful impediment is shown to the satisfaction of the Registrar why such certificate should not issue; or
 - (b) the issue of a certificate has been forbidden in the manner provided in this Ordinance by any person or persons whose consent is required to the said marriage,
 - (4) Every certificate must state -
 - (a) the particulars set forth in the notice;
 - (b) the day on which the notice was entered;
 - (c) that the issue of the certificate has not been forbidden by any person or persons whose consent is required to the said marriage; and that -
 - (i) either the full period of 21 days has elapsed since the entry of the notice; or
 - (ii) the marriage is to be had in pursuance of a licence under as provided by section 10.
 - (5) For every certificate issued under this section the prescribed fee is payable.

Certificate may issue within 21 days under Governor's licence

10. The Governor may at any time after the entry of a notice under section 8, if he or she thinks fit, by licence under his or her hand in Form 3 in the Schedule authorise the Registrar to issue a certificate under section 9 on or after any day named in the licence, on payment of the prescribed fee.

Consent necessary in case of marriage of minor

- 11. (1) In the case of a party to an intended marriage who is under 21 years of age and who is not a widower or widow -
 - (a) the father, if living;
 - (b) if the father is dead, the guardian or guardians of the person of that party lawfully appointed, or one of them; or
- (c) if there is no such guardian or guardians then the mother of that party, if unmarried, may give consent to the marriage of that party.
- (2) Such consent is required for the marriage of a party under 21 years of age who is not a widow or a widower, unless there is no person authorised to give such consent.

Forbidding issue of certificate

- 12. (1) Any person whose consent is required by law for any marriage may forbid the issue of the certificate under section 8 by -
 - (a) writing at any time before such issue the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book; and
 - (b) subscribing thereto his or her name and place of abode and his or her relationship to either of the parties in respect of whom such consent is required.
- (2) In such a case, the notice under section 8 and any certificate under section 9 which might be issued in respect of the notice and all other proceedings thereupon are utterly void unless the marriage has been authorised by the Chief Justice as provided by section 13.

Court may consent to marriage in certain cases

- 13. (1) If the person or persons whose consent is required by law for any marriage, not being the father of either of the parties to the marriage, be absent from St Helena or Ascension or be unable or refuse to give the same, or being the father of one of such parties is *non compos* or absent from St Helena, the persons wishing to contracting the marriage may apply by petition to the Chief Justice who may proceed upon such petition in a summary way.
- (2) If the marriage proposed appears to the Chief Justice, upon examination, to be proper, the Chief Justice must judicially declare by order in writing that the marriage may be solemnised forthwith; and any such order is for the purposes of this Ordinance deemed equivalent to the required consent.

Caveat may be entered

- 14. (1) Any person, on payment of the fee prescribed, may enter a caveat with the Registrar against the grant of a certificate for the marriage of any person named in the caveat.
 - (2) If a caveat -
 - (a) is entered with the Registrar;
 - (b) is duly signed by or on behalf of the person who enters it; and
 - (c) states the person's place of residence and the ground of objection on which it is founded.

no certificate under section 9 may issue or be granted until -

- (i) 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 the said marriage; or
- (ii) the caveat is withdrawn by the party who entered it.
- (3) In cases of doubt the Registrar may refer the matter of any such caveat to the Chief Justice who must decide upon it.
- (4) If the Registrar refuses the grant of the certificate, the person requiring it has a right to apply by petition to the Chief Justice, who must proceed in a summary way either to confirm the refusal or direct the grant of the certificate.

Ministers may solemnise marriages during certain hours and after declaration

- 15. (1) On the delivery of a certificate under section 9 to the minister of or officiating in any registered place of worship named in it, the minister may solemnise a marriage in that place between the parties named in the certificate.
 - (2) A marriage as contemplated by subsection (1) -
 - (a) must be solemnised with open doors, between the hours of 8.00 a.m. and 6.00 p.m., and in the presence of 2 or more credible witnesses besides the minister;
 - (b) may only be solemnised if there is no lawful impediment to the marriage of the parties.
 - (3) If the form of solemnisation is other than that of the Church of England -
 - (a) each of the parties must in some part of the ceremony and in the presence of the 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
 - (b) each of the parties must 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][husband]".

Marriages before Registrar

- 16. (1) The parties named in a certificate under section 9 may if they prefer contract marriage at the office and in the presence of the Registrar, and of 2 other witnesses, with open doors, and between the hours prescribed by section 15, making the declaration and using the form of words provided in that section.
 - (2) For every certificate issued under this section the prescribed fee is payable.

Certificate of notice or licence void after 3 months from notice

17. If a marriage is not had solemnised within 3 months after notice of it under section 8 has been entered by the Registrar, the notice and any licence or certificate which granted upon that notice and all other proceedings on it are utterly void, and no person may proceed to solemnise the marriage, nor may any Registrar register the marriage, until new notice under section 8 has been and entry made and a certificate of such entry given at the time and in the manner prescribed above.

No evidence of consent necessary after marriage

18. After a marriage has been solemnised it is not necessary in support of the marriage to give any proof of the consent of any person whose consent to the marriage thereunto is required by law, nor may any evidence be given to prove the contrary in any suit touching the validity of the marriage.

Clergy not compellable to solemnise marriage

19. No clergyman or minister is compellable to solemnise marriage between

persons either of whom is not a member of his or her own communion, nor otherwise than according to the rules or custom of such communion, nor 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

- **20.** (1) Immediately after the solemnisation of any marriage by the minister of any registered place of worship, the minister must enter into a book to be kept for that purpose in that place of worship, a statement of the said marriage in the form and comprising the particulars set out in Form 4 in the Schedule.
- (2) An entry under subsection (1) must be signed by the minister and by the parties married, and by 2 credible witnesses of the said marriage, and the minister must forthwith transmit to the Registrar a duplicate of such statement similarly signed, and all such statements must be filed by the said Registrar and duly preserved in his or her office.

Registration of marriages

- **21.** (1) Every Registrar must forthwith enter the above-mentioned particulars of every marriage contracted in his or her presence, and (with the word "copy "prefixed) all statements of marriages transmitted to the Registrar under section 20 into a Marriage Register Book, which must be in Form 4 in the Schedule.
- (1A) Every entry of a marriage contracted in the presence of the Registrar must be signed by the Registrar, and by the parties married, and by 2 credible witnesses, and all entries made in the book must be made in order from the beginning to the end of it.
- (1B) Every such entry under the hand of the Registrar, or any copy of such an entry certified under the hand of the Registrar-General, is good evidence of the facts recorded in it pursuant to 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 the entry or copy relates.
- (2) A Registrar, upon registering any marriage as provided in this section must forthwith transmit to the Registrar-General a duplicate of the entry in the register duly certified by the Registrar under his or her hand to be a true copy of the entry; and any such duplicate must be duly preserved in the office of the Registrar-General.

Marriages in articulo mortis

- **22.** (1) An authorised minister may perform the ceremony of marriage between any persons, without notice given of the intended marriage or without a certificate duly issued by the Registrar, if -
 - (a) both the parties between whom the ceremony of marriage is performed are, at the time of the ceremony, of full age and legally competent to contract marriage and able to signify their consent to it; and
 - (b) one at least of them, to the best of the knowledge and belief of the minister and of the other persons signing the certificate as required in subsection (2), is at the time of the performance of the ceremony, in a dying state and is a member of the

religious communion or denomination to which the minister belongs.

- (2) Immediately after the solemnisation of any such marriage the officiating minister must transmit to the Registrar a certificate of the marriage in Form 5 in the Schedule, signed by the minister and by 2 credible witnesses present at the marriage. The certificate must be filed by the Registrar in a register to be specially kept for the purpose and the Registrar must transmit a copy of it to the Registrar-General as provided in section 21(2).
- (3) Subject to the observance of the foregoing conditions, a marriage solemnised under the provisions of this section is good and effectual in law.
- (4) A marriage solemnised under this section does not operates as a revocation of any will.
- (5) For the purposes of this section "authorised minister" means a minister authorised to solemnise marriages in a place of worship registered under this Ordinance.

Registers may be searched

- 23. Any person may at all reasonable times and on payment of the prescribed fee -
- (a) search the entries in the Marriage Register Books, and the files of declarations aforesaid in the presence of the Registrar; and
- (b) have true copies certified under the hand of the Registrar-General of any such entries or statements.

PART III MISCELLANEOUS PROVISIONS

Clandestine marriage void

- 24. If -
- (a) any persons knowingly and wilfully intermarry under this Ordinance in any place other than the office or building specified in the notice under section 8 and certificate under section 9 or without due notice given as required by section 8, or without a certificate of such notice issued under section 9; or
- (b) the parties to any marriage are within the prohibited degrees of consanguinity or affinity,

the marriage of such persons is null and void.

Under-age marriages

25. A marriage solemnised between persons either of whom is under 16 years of age is void.

Frivolous entry of caveat

26. A person who enters a caveat with the Registrar against the issue of any certificate, on grounds which the Registrar declares in writing under his or her hand to be frivolous, is 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 the caveat was entered.

Failure to register or render return of marriages

- 27. It is an offence for -
- (a) a minister to fail to transmit to the Registrar the statement required by section 20, within one week after solemnisation of the marriage to which the statement relate;
- (b) a Registrar to fail to register any such marriage within one week of receiving such statement;
- (c) a Registrar to fail to register any marriage contracted before him or her on the day on which it was contracted.

Penalty: A fine of £10.

False declarations

- **28.** A 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,

commits perjury and is liable to be punished accordingly.

Irregular procedure

- 29. (1) It is an offence for a person knowingly and wilfully to solemnise any marriage -
 - (a) not being legally competent to do so;
 - (b) between parties not legally competent to contract the same;
 - (c) in any other place than the building or office specified in the notice under section 8 and the certificate under section 9;
 - (d) before the issue of such certificate; or
- (e) after the expiration of 3 months from the entry of the notice under section 8

Penalty: As for a felony

- (2) It is an offence for a Registrar knowingly and wilfully to
- (a) issue any certificate of marriage, except within the period allowed by this Ordinance for issuing the same;
- (b) issue any certificate the issue of which has been forbidden under section 12 by any person authorised so to forbid the same; or
- (c) register or allow to be contracted in his or her presence any marriage herein declared to be null and void.

Penalty: As for a felony

Destruction and forgery of documents

- **30.** It is an offence for a person to -
- (a) unlawfully and maliciously erase, obliterate or destroy any notice, licence, certificate, entry or statement mentioned in this Ordinance, or any certified copy of any such item;

- (b) knowingly and wilfully forge or alter or falsely make or procure to be forged, altered or falsely made any document or other item mentions in paragraph (a); or
- (c) knowingly and wilfully utter or publish as true any such forged, false or altered copy.

Penalty: Imprisonment for not less than 3 months nor more than 18 months.

Marriage pursuant to false notice, etc

- **31.** (1) If any valid marriage is had under this Ordinance by means of any wilfully false notice, oath or declaration made by either party to the marriage, as to any matter for which a notice, oath or declaration is required by this Ordinance, the Attorney General (by information, at the relation of a parent or guardian of any minor whose consent has not been given to the marriage, and who is responsible for any costs incurred in the suit, such parent or guardian previously making oath as is hereinafter required) may sue for a forfeiture of all estate or interest in any property accruing to the offending party by the marriage.
- (2) The Chief Justice may in any such suit declare such forfeiture and direct that all the estate and interest or any part of it that to the court seems fit be secured in a manner that to the court seems fit for the benefit of -
 - (a) the innocent party;
 - (b) the innocent party and the issue of the marriage or any of them; or
 - (c) if both parties to the marriage are in the judgment of the court guilty of any falsity as described in subsection (1), for the benefit of the issue of the marriage subject to any provisions for the offending parties by way of maintenance or otherwise as the court thinks reasonable.
- (3) No suit under subsection (1) may be instituted unless it has been first made out to the satisfaction of the Attorney General, by the oath of some person whose consent was required by law to the marriage or by his or her solemn affirmation made in lieu of an oath, that -
 - (a) the circumstances of the case are such as to authorise the institution of such proceedings;
 - (b) the consent required by law for the marriage had not been obtained; and
 - (c) the person making the oath or affirmation had not discovered that the said marriage had been contracted more than 3months before making the oath or affirmation.

Limitation of time for prosecutions

32. A prosecution under this Ordinance must not commenced after the expiration of 3 years after the offence was committed.

Fees

33. The Governor in Council may by Order prescribe the fees or charges payable in respect of any act or thing done under this Ordinance.

SCHEDULE

(Section 8(1), etc.)

FORMS

FORM 1 NOTICE OF MARRIAGE

(Section 8(1))

	. 1	T	• ,	C	3 <i>T</i>	•	•	. 1	T 1	1 1	c	α.	TT 1	
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I, the undersigned hereby give you notice, that a marriage is intended to be had without [or by, as the case may be] Licence within 3 calendar months from the date hereof between me and the other party herein named and described, that is to say:
Name and surname Condition Rank or profession Age Dwelling Place Church or Building in which Marriage is to be solemnised Consent, if any by whom given
And I hereby solemnly declare, that I believe there is no impediment of kindred or alliance or other lawful hindrance to the said marriage (and that I the abovenamed
[And I further declare that I am not a minor under the age of 21 years, and that the other party herein named and described is not a minor under the age of 21 years.] (If one or both of the parties is under age these words must be expunged.) (Or, as the case may be.) And I further declare that she [or I] the said, not being a widow [or widower], is [or am] a minor under the age of 21 years, and that the consent of, whose consent to her [or my] marriage is required by law, has been duly given and obtained thereto [or "that there is no person whose consent to her (or my) marriage is by law required" (as the case may be)]. And I make the foregoing declarations solemnly and deliberately, conscientiously believing the same to be true, well knowing that every person who knowingly or wilfully makes and sign or subscribes any false declaration or who signs any false notice or certificate for the purpose of procuring any marriage will suffer the penalties of perjury.
In witness whereof I have hereunto set and subscribed my hand this day of in the year of Our Lord 20
Signed and declared by the above-named in the presence of
[Witness attesting the signature of the party giving the notice]

FORM 2

(Section 9)

REGISTRAR'S CERTIFICATE

I,						
Name Condition Rank or Profession Age Dwelling Place Place of Worship in which marriage is to be solemnised						
Date of notice entered						
The issue of this certificate [when the certificate is issued under licence from the Governor, insert "is authorised by licence of the Governor and"] has not been forbidden by any person authorised to forbid the issue thereof. Witness my hand this						
(Signed), Registrar. This certificate will be void unless the marriage is solemnised on or before						
[The blanks in this Form to be filled up as required.]						
FORM 3 (Section 10)						
MARRIAGE LICENCE						
Whereas on the, notice was given to the Registrar of Marriages in St Helena, of a marriage intended to be had between						
Now therefore under the Marriage Ordinance, 1851, I do hereby authorise the said Registrar to issue the said certificate at any time after the, and within 3 calendar months after that date						

Given under my hand this	day of,	20
(Signed)	•	
Governor		

FORM 4

(Sections 20 and 21(1))

SHORT FORM OF CERTIFICATE

No.
Date of Marriage
Names and Surnames of Parties
Ages
Condition
Rank or Profession
Residence at time of Marriage
Place of Marriage
Signatures of Parties
Signatures of officiating Minister and Witnesses

FORM 5

(Section 22)

MARRIAGE IN ARTICULO MORTIS

I, the undersigned minister of (1)		authorized to solemnise
marriages in (2)		
and we the undersigned		
and of (
the age of 21 years or more	,	C
do hereby certify that on the day o	of	, 20, the
ceremony of marriage was performed by		
between	. of (4)	-
and	. of (4)	
and that both the said	and	at the time
of the performance of such ceremony we	re of full age and we	re legally competent to contract
marriage and to signify their consent ther	reto,	
and the said (5)	is a	member of the same religious
communion or denomination to which the	e said minister belon	gs, that is to say, the
(6)	; and that at the tir	ne of the performance of such
Ceremony the said (7)	W	as, to the best of our knowledge
and belief, in a dying state.		
Signatures—		

- (1) State residence
- (2) State registered place of Worship

- (3) State residence and profession
- (4) State names, surnames and where widower or widow
- Name of party in dying state (5)
- Religious communion or denomination (6)
- (7) Name of party in dying state

MARRIAGE ORDINANCE, 1851

MARRIAGE (FEES) ORDER, 2013

(Section 33)

Citation and commencement

1. This Order may be cited as the Marriage (Fees) Order, 2013, and comes into force on 1st April 2013.

Fees

2. The following fees are prescribed for the purposes of the Ordinance:

1.	For every certified copy of an entry in the Register: Same day One day notice Three day notice	£6.50 £5.50 £4.50
2.	For entering a notice of intended marriage	£6.00
3.	For issuing a certificate pursuant to notice of intended marriage	£6.00
4.		Such fee as the Registrar may assess, not exceeding £40.00
5.	For every Governor's Licence	£50.00
6.	For contracting marriage before a Registrar: Mondays to Fridays Saturdays	£30.00 £40.00
7.	For lodging a caveat	£6.00
8.	For registering any building to be used for the solemnisation of marr	riages £60.00
9.	For registering any substituted building	£30.00
10.	For every issue of a Marriage Certificate, to the Minister	£6.00
11.	For every issue of a certificate of no impediment of marriage	£6.00

12.	For correction made to Register	£5.00
13.	For certification of a certificate	£5.00