



ST. HELENA

GOVERNMENT OF SAINT HELENA

A BILL FOR AN ORDINANCE

THE MARRIAGE ORDINANCE, 2016

Laid upon the Table, 9th December 2016

ST HELENA
A BILL
FOR
AN ORDINANCE

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

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

PART 1
PRELIMINARY

Short title

1. This Ordinance may be cited as the Marriage Ordinance, 2016 and will come into force on the date of publication.

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;
“**Marriage Notice Book**” means the book referred to in section 9(2)(c);
“**Marriage Register Book**” means the book referred to in section 22;
“**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;
“**Registrar**” means a person appointed by the Governor under section 4(2);
“**Registrar-General**” means a person appointed by the Governor under section 4(1);
“**religious marriage**” means a marriage solemnised by a Minister of religion.

PART 2
REGISTRAR-GENERAL’S OFFICE AND APPOINTMENTS

Registrar-General’s Office

3. There is to 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 must from time to time appoint a person to be Registrar-General.

(2) The Governor may appoint one or more Registrars of Marriages for St Helena who are work under the supervision of the Registrar-General.

PART 3 SOLEMNISATION OF MARRIAGES

Persons who may solemnise marriages

5. (1) 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 an approved place, this being —
 - (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 must 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 of St Helena, his or her appointee, the Vicar-General or, in his or her 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 for the purpose, in regard to any place of worship attached to such Church of the Province of South Africa.

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

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

(5) The St. James' church in Jamestown and St. Paul's Cathedral in St Paul's are deemed for the purposes of this Ordinance to be 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 of a building for solemnising marriages under section 6, it appears to the Registrar-General that the building is no longer used for public religious worship of the congregation on whose behalf it was so registered, the Registrar-General must cancel the registration.

(2) If it is proved to the satisfaction of the Registrar-General that the congregation mentioned in subsection (1) instead of the building there mentioned uses some other building for the purpose of public religious worship -

- (a) the Registrar-General may substitute and register such new place of worship, even if it has not been used for that purpose for one year;
- (b) such cancellation or substitution must be registered, certified and published as required by section 6; and
- (c) the party requiring such substitution must pay to the Registrar-General the prescribed fee at the time of the delivery of the certificate.

(3) After cancellation of a disused building under subsection (1), no marriage may be solemnised in the building.

Premises used for solemnisation of civil marriages

8. (1) Subject to section 5(2)(c), 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 must, when applying under subsection (2), submit the prescribed fee.

(4) The Registrar must—

- (a) publish notice of the application in the *Gazette* inviting representations from any person likely to be affected by approval of the 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) A person who wishes to make representations in relation to an application as provided by subsection (4) must submit them in writing to the Registrar within 30 days of publication of the notice.

(6) The Registrar-General, after taking into consideration any representations submitted under subsection (5), and if satisfied that any concerns raised have been addressed sufficiently, may approve the premises in question as a place for solemnisation of civil marriages, with or without any conditions.

(7) Approval of any premises as a place for solemnisation of civil marriages

remains valid for 12 months.

- (8) The Registrar-General may revoke approval in relation to any premises —
- (a) if the proprietor, tenant or person legally occupying the premises has failed to comply with one or more conditions of the approval; or
 - (b) if the use or structure of the premises has changed and the premises are no longer suitable for the purpose,

and if the approval is revoked, the Registrar-General must in writing notify the proprietor or other person.

PART 4 PROCEDURES FOR SOLEMNISATION OF MARRIAGES

Notice of intended marriages to be given to Registrar

9. (1) Whenever it is intended to solemnise a religious or civil marriage, one of the parties must give notice to a Registrar in the prescribed form.

- (2) The Registrar must, 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 of it until the issuing of a certificate under section 10; and
 - (c) enter a true copy of such notice, together with the date of entry 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.

Certificate of notice to issue after 21 days

10. (1) Subject to section 11, at any time not more than 3 months, nor less than 21 days after the entry of the notice under section 9, the Registrar must, on payment of the prescribed fee, issue a certificate in the prescribed form.

- (2) The Registrar must not issue a certificate under subsection (1) if—
- (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;
 - (c) for the purpose of this section, the fact that both parties are of the same gender is not a lawful impediment to 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. If 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 is required for the marriage, unless such party is a widow or widower.

Forbidding issue of certificate

13. (1) 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 -

- (a) writing the word "forbidden" opposite the entry of the notice of intended marriage in the Marriage Notice Book; and
- (b) 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.

(2) If a marriage has been forbidden as provided by subsection (1), any marriage certificate granted in relation to it is void and all other proceedings on the marriage are void, unless the marriage is authorised by the Chief Justice under section 14 or 15.

Court may consent to marriage in certain cases

14. If 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 -

- (a) the persons who wish to contract such marriage may apply by petition to the Chief Justice; and
- (b) if the proposed marriage 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 and such order is for the purposes of this Ordinance 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, 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 the caveat is founded, no certificate may be issued or granted until -

- (a) 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
- (b) the caveat is withdrawn by the party who entered it.

(3) In relation to the Registrar's function under subsection (2)(a) -

- (a) in the case of doubt, the Registrar may refer the matter of any such caveat to the Chief Justice who must decide upon the matter;
- (b) if the Registrar refuses the grant of the certificate, the person requiring such certificate may apply by petition to the Chief Justice, who must 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 in it, the Minister may solemnise a marriage in that building between the parties named in the certificate.

(2) A marriage under subsection (1) 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, and there must be no lawful impediment to the marriage of the parties.

(3) If the form of solemnisation is other than that of the Church of England, 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 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 [or husband]”:

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 in the presence of 2 witnesses at any place referred to in section 5(b), with open doors (where applicable) and being accessible to the public, and between the hours prescribed in section 16(2).

(2) The parties must make the declaration using the form of words prescribed in section 16(3) and there must be no lawful impediment to the marriage of the parties.

(3) The parties to a marriage solemnised in the presence of the Registrar or the Registrar-General must pay the prescribed fee.

Certificate of notice or licence void after three months from notice

18. If a marriage is not solemnised within three calendar 3 months after notice of it was entered in the Marriage Notice Book -

- (a) the notice and any licence or certificate which was granted on it and all other proceedings on that notice are void; and
- (b) no person may proceed to solemnise the marriage, nor may any Registrar register any such marriage, until new notice has been given and entry made and a certificate of entry has been given at the time and in the manner provided in sections 9 and 10.

No evidence of consent necessary after marriage

19. After any marriage has been contracted, it is not 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 is compellable to solemnise marriage—
- (a) between persons either of whom is not a member of his or her own communion or denomination;
 - (b) otherwise than according to the rules or custom of that communion or denomination; or
 - (c) unless the Minister 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. (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 such place of worship, a statement of the marriage in the prescribed form and comprising the prescribed particulars.

(2) The entry required by subsection (1) must be signed by the Minister and by the parties married, and by 2 credible witnesses to the marriage, and the Minister must submit to the Registrar a duplicate of the statement similarly signed, and all such statements must be filed by the Registrar and duly preserved in the office of the Registrar-General

Registration of marriages

22. (1) A Registrar must enter the particulars of every marriage contracted in his or her presence, and (with the word “copy” prefixed) all statements of marriages submitted to him or her under section 21 in a Marriage Register Book, which must be made out in the prescribed form.

(2) Every entry in the Marriage Register Book of a marriage solemnised in the presence of the Registrar must be signed by him or her, and by the parties married, and by 2 credible witnesses, and every such entry made by a Registrar, and any copy certified by the Registrar-General, is 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-relates.

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

Marriages *in articulo mortis*

23. (1) A Minister or Registrar may perform the ceremony of marriage at any place and at any time between any persons, without notice given of the intended marriage under section 9 or without a certificate issued by the Registrar under section 10, if—

- (a) both the parties between whom the ceremony of marriage is to be performed are, at the time of the ceremony, of full age and legally competent to contract marriage and able to signify their consent to marriage; and
- (b) one of them, to the best of the knowledge and belief of such Minister or Registrar 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, in the case of

a marriage performed by a Minister, such dying person is a member of the religious communion or denomination to which the Minister belongs.

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

(3) The certificate submitted under subsection (2) must be filed by the Registrar-General in a register to be specially kept for the purpose.

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

(5) A marriage solemnised under this section does not operate as a revocation of any will.

Registers may be searched

24. Any person may, in the presence of the Registrar-General, at all reasonable times and on payment of the prescribed fee, search the entries in the Marriage Register Books and the files of statements made for the purpose of such entries, 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 under this Ordinance is null and void if the parties knowingly and wilfully contract it—

- (a) in any place other than the place specified in the notice and certificate under sections 9 and 10;
- (b) without due notice being given under section 9, or without a certificate of such notice being duly issued under section 10; or
- (c) if 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 is void.

Frivolous entry of caveat

27. A 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, is liable for the costs of the proceedings and for damages, which may 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

28. (1) 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 commits an offence.

Penalty: A fine of £5,000 or imprisonment for 3 months, or both.

(2) A Registrar who -

(a) fails to register any marriage within one week of receiving a statement about the marriage transmitted by a Minister under section 21; or

(b) fails to register any marriage contracted before him or her on the day on which it was contracted, commits an offence.

Penalty: A fine of £5,000 or imprisonment for 3 months, or both

False declarations

29. It is an offence for a person to—

(a) knowingly and wilfully make any false declaration, or sign any false notice or certificate required by this Ordinance, for the purpose of procuring any marriage; or

(b) forbid the issue of any Registrar's certificate for a marriage 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.

Penalty: A fine of £5,000 or imprisonment for 3 months, or both.

Irregular procedure

30. (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 such marriage;

(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 more than 3 months after the entry of such notice.

Penalty: A fine of £5,000 or imprisonment for 3 months, or both.

(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, or any certificate the issue of which is forbidden by any person authorised so to forbid such marriage; or

(b) register or allow to be contracted in the Registrar's presence any marriage declared by this Ordinance to be null and void.

Penalty: A fine of £5,000 or imprisonment for 3 months, or both.

Destruction and forgery of documents

31. It is an offence for a person to—

- (a) unlawfully and maliciously erase, obliterate or destroy, or knowingly and wilfully forge or alter or falsely make or procure to be forged, altered or falsely made, any notice, licence, certificate, entry or statement mentioned in this Ordinance or any certified copy of such an item; or
- (b) knowingly and wilfully utter or publish as true any such forged, false or altered copy.

Penalty: A fine of £5,000 or imprisonment for 3 months, or both.

PART 6 MISCELLANEOUS

Certified copies of extracts to be issued by Registrar-General

32. Every certified copy of an extract from the Marriage Register Book and from the Marriage Notice Book for delivery to any member of the public must be issued and signed by the Registrar-General or a Registrar.

Regulations

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

(2) Without limiting 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 under it.

References in legislation to husband and wife

34. Where any reference is made in legislation to the husband or wife in a marriage, that reference shall, where possible, be construed as a general reference to a spouse in that marriage.

Repeal and transitional provisions

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

(2) Notwithstanding the repeal of the Marriage Ordinance, Cap. 80 by subsection (1), the following apply:

- (a) any religious building registered under that Ordinance prior to its repeal is deemed to be registered as such under section 6 of this Ordinance;
- (b) any marriages solemnised under the repealed Ordinance remain valid;
- (c) any records, books, certificates and other documents created, kept or issued under the repealed Ordinance remain in effect as if created, kept and issued under this Ordinance.

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.