

**SUBORDINATE LEGISLATION IN RESPECT OF THE
RECOGNITION OF CUSTOMARY MARRIAGES ACT, 1998 (ACT 120
OF 1998)**

A. Regulations in terms of Section 11 of the Act published in Government Notice No. R. 1101 of 1 November 2000 (Government Gazette No. 21700) as amended by Government Notice No. R. 359 of 14 March 2003 (Government Gazette No. 25023):

“The Minister of Justice, in consultation with the Minister of Home Affairs, has under section 11 of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these Regulations, a word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it, and unless the context otherwise indicates –

“civil marriage” means a marriage contracted in terms of the Marriage Act, 1961 (Act No. 25 of 1961);

“Director-General” means the Director-General: Home Affairs or any person acting by virtue of delegation or by direction of the Director-General: Home Affairs;

“Department” means the Department of Home Affairs;

“designated person” means a person designated by the Director-General for the purposes of regulation 2;

“identity number” means an identity number allocated in terms of the Identification Act, 1997 (Act No. 68 of 1997);

“population register” means the population register referred to in section 5 of the Identification Act, 1997 (Act No. 68 of 1997);

“the Act” means the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998).

Registration of customary marriages

2.(1) An application for the registration of a customary marriage must substantially correspond with Form A of the Annexure, duly confirmed and signed before a –

- (a) registering officer; or
- (b) designated person, who has been designated as such by the Director-General to perform functions in terms of this regulations.

(2) An application referred to in subregulation (1) must be lodged with a registering officer or designated person who must issue the applicant with an acknowledgment of receipt which substantially corresponds with Form B of the Annexure.

(3) The designated person with whom an application is lodged must without delay forward the application referred to in subregulation (1) to the nearest regional or district office of the Department.

(4) The registering officer –

- (a) who is not an official of the Department must, after registration of the customary marriage, without delay forward the application referred to in subregulation (1) to the nearest regional or district office of the Department for inclusion of the particulars of the customary marriage in the population register; and
- (b) who is an official of the Department must, without delay, include or cause to be included the particulars of the customary marriage in the population register.

(5)(a) The certificate of registration contemplated in section 4(4)(b) of the Act must substantially correspond with Form C of the Annexure.

- 9 (b) The Director-General may on application-
- (i) issue a duplicate of the customary marriage certificate;
 - (ii) issue an extract from the customary marriage register; or
 - (iii) furnish a reproduction of the customary marriage register or of any supporting documentation in relation to the register.
- (6) The registering officer must, when he or she refuses to register a customary marriage as contemplated in section 4(6) of the Act –
- (a) inform the applicant of –
 - (i) the refusal; and
 - (ii) the reasons for the refusal; and
 - (b) where the registering officer is not an official of the Department, without delay forward the application form to the nearest regional or district office of the Department.

Enquiry into existence of customary marriage

3.(1) An application in terms of section 4(5) of the Act to a registering officer to enquire into the existence of a customary marriage must be in the form and contain substantially the information set out in Form A of the Annexure.

(2) The provisions of regulation 2 must in respect of an application contemplated in subregulation (1) apply with the necessary changes; required by the context.

Consent to marriage by commissioner of child welfare

4. (1) An application for the consent of a commissioner of child welfare referred to in section 3(3)(b) of the Act, must substantially correspond with Form D of the Annexure.

(2) The consent of the commissioner of child welfare must be recorded on the appropriate space provided for in Form D of the Annexure.

Determination of age of minor

5.(1) When the age of a person who allegedly is a minor is uncertain or in dispute, the registering officer must –

- (a) complete the relevant parts of the forms which must substantially correspond with Forms E and F of the Annexure and hand the completed forms to the person whose age must be determined;
 - (b) refer the said person for an examination in order to assess his or her age to a medical doctor who is in the service of the State who must complete the relevant part of the form which corresponds with Form F of the Annexure; and
 - (c) refer the said person, after he or she had been examined by the said medical doctor, to the magistrate's court of the district in which the application for the registration of the customary marriage is lodged.
- (2) The person whose age must be determined must –
- (a) furnish to the magistrate's court the completed forms which correspond with Forms E and F of the Annexure; and
 - (b) appear before a magistrate who will determine his or her age.
- (3) (a) A magistrate may determine the age of the person by his or her appearance or from any written or oral information which is available and thereafter issue the certificate, contemplated in section 5(2) of the Act, on a form which substantially corresponds with Form G of the Annexure.
- (b) The certificate referred to in paragraph (a) must be submitted to the registering officer concerned as soon as possible.

Custody of records of customary marriages

6. The Director-General must be the custodian of all –

- 9 (a) documents relating to the registration of customary marriages required to be furnished under the Act or any other law; and
- (b) records regarding the registration of any customary marriage preserved, prior to the commencement of the Act, in terms of Acts repealed by the Act.

Reproduction of documents

7. The Director-General may reproduce any document or record referred to in regulation 6 on microfilm, in accordance with the code of practice of the South African Bureau of Standards for the processing, testing and storage of silver gelatine microfilm for archive purposes.

Verification, supplementation and rectification of particulars

8. (1) The Director-General may –

- (a) require the person who has furnished any particulars in terms of these regulations to furnish the Director-General with proof of the correctness of such particulars; and
- (b) investigate or cause to be investigated any matter in respect of which particulars are to be included in the population register.

(2) The Director-General may, if any particulars in respect of any document submitted or preserved in terms of these regulations or included in the population register are not correctly reflected, supplement and correct such particulars after consultation with the person concerned.

(3) Any person who is in possession of a certificate or other document purporting to be issued in terms of these regulations, which does not correctly reflect the particulars in any document referred to in subregulation (2) or in the population register, the person or the guardian of such person, if he or she or his or her guardian has been requested to do so, shall hand over or send by

registered post such certificate or document to the Director-General within 30 days from date of such request.

Offences and penalties

9. Any person who –

- (a) without reasonable cause fails to furnish any notice, information, statement or certificate required by these regulations;
- (b) having the custody of any document or record mentioned in these Regulations or a reproduction thereof, loses, damages or destroys it or allows it to be damaged or destroyed; or
- (c) charges or receives fees for any act performed or to be performed in accordance with the provisions of these regulations which are higher than the fees payable in terms of these regulations for such act, or where no fees are payable in terms of these regulations for such act, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding one year.

Fees

10.(1) The following fees are payable to the Department:

- (a) Duplicate customary marriage certificate: R6, 00
- (b) Search and reproduction of customary marriage register or of any supporting documentation in relation to the register: Provided that if needed for official purposes by a Government institution it is free of charge: R40, 00
- (c) Furnishing of an extract from the customary marriage register: R40, 00

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(2) A fee of R10 is payable to a designated person in respect of an application for registration of a customary marriage lodged with the designated person.

Commencement

11. These Regulations comes into operation on 15 November 2000.

ANNEXURE
FORM A
APPLICATION FOR REGISTRATION/ENQUIRY INTO EXISTENCE
OF CUSTOMARY MARRIAGE

(Regulation 2)

* Delete whichever is not applicable

A. PARTICULARS OF HUSBAND

Identity number:

Surname:

Forenames in full:

Date of Birth:

Marital Status:

Name of husband's father:

Name of husband's mother:

Name of traditional leader:

B. DECLARATION BY HUSBAND

I, the undersigned, hereby declare that:

(1) I consented to the customary marriage between myself and the woman whose particulars are set out hereunder.

(2) The marriage was contracted in accordance with the laws and customs of the traditional community.

(3) I was not a partner in a civil marriage when I contracted the aforesaid customary marriage.

*(4) At the time of the aforesaid customary marriage I was married by customary law to the following woman/women, namely:

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Full names

Date of marriage

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(5) The above particulars are to the best of my knowledge and belief, true, complete and correct.

Signature of declarant:

Date:

Contact Address:

Postal Code:

The above declaration was duly confirmed and signed before me.

Signature: *Registering officer/*designated person:

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Initials, surname and appointment number of designated person:

.....

Date:

Take note:

If a husband enters into a second or consecutive marriage after 15 November 2000, the written contract which will regulate the future

matrimonial property system of his marriage together with the order of court which approved such contract, must be annexed to this form. A further customary marriage cannot be registered if the aforementioned contract or order of court is not attached.

C. PARTICULARS OF WIFE

Identity number:

Surname:

Forenames in full:

Date of Birth:

Marital Status:

Name of wife's father:

Name of wife's mother:

Name of traditional leader:

D. DECLARATION BY WIFE

I, the undersigned, hereby declare that:

(1) I consented to the customary marriage between myself and the man whose particulars are set out above.

(2) I was not a partner in a civil or customary marriage when I contracted the aforesaid customary marriage.

(3) The above particulars are to the best of my knowledge and belief true, complete and correct.

Signature of declarant:

Date:

Contact Address:

Postal Code:

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The above declaration was duly confirmed and signed before me.

Signature: *Registering officer/*designated person:

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Initials, surname and appointment number of designated person:.....

.....

Date:

Take note:

In terms of section 26(1) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), a women after her marriage may –

- (a) assume her husband’s surname;**
- (b) resume a surname which she bore at any prior time;**
- (c) join her maiden surname or a previous married surname with that of her husband; or**
- (d) retain her maiden name.**

Please indicate in writing the surname which you wish to be recorded in the population register:

E. PARTICULARS OF CUSTOMARY MARRIAGE AND LOBOLO AGREEMENT

Date of celebration of customary marriage:

Place of customary marriage:

Particulars of lobolo agreement:

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F. DECLARATION BY TRADITIONAL LEADER OR HIS/HER DELEGATE (WHERE POSSIBLE)

The customary marriage mentioned in paragraph E was legally contracted in accordance with the laws and customs of the traditional community and the particulars under A, C, and E are to the best of my knowledge and belief true and correct.

Signature: *Traditional Leader/*Delegate:

Surname:

Full Name:

Identity Number:

Date:

Address:

Postal Code:

Telephone No:

Dialling Code:

G. DECLARATION BY REPRESENTATIVES

We, the undersigned, hereby declare that –

- we were present at the above marriage.
- the information in paragraphs A, C, and E is to the best of our knowledge and belief true and correct.
- the required consent to the marriage was given.
- the marriage was legally contracted in accordance with the laws and customs of the traditional community.

Signature of representative of husband:

Surname:

Forenames in full:

Identity Number:

Relationship to husband:

Address:

Postal Code:

Signature of representative of wife:

Surname:

Forenames in full:

Identity Number:

Relationship to wife:

Address:

Postal Code:

The above declaration was duly confirmed and signed before me:

Signature: *Registering officer/*designated person:

Initials, surname and appointment number of designated person:

Date:

H. CONSENT TO MARRIAGE: MINORS AT TIME OF MARRIAGE

(Completion compulsory in respect of marriages concluded after 15 November 2000)

1. We, the undersigned, consented to the marriage above:

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Signature: Father of minor husband

Signature: Mother of minor husband

Date:

Date:

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Signature: Legal guardian of minor husband

Surname:

Forenames in full:

Identity Number:

Date:

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Signature: Father of minor wife

Signature: Mother of minor wife

Date:

Date:

.....

Signature: Legal guardian of minor wife

Surname:

Forenames in full:

Identity Number:

Date:

2. Consent by commissioner of child welfare: Attached

3. Consent by Minister or his/her delegate: Attached

4. Remarks: Registering officer:

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I) DECLARATION BY REGISTERING OFFICER

*Registration approved/not approved for the following reasons:

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Signature: Registering officer

Initials and surname:

Rank:

Persal Number:

Date:

OFFICE STAMP

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**FORM B
ACKNOWLEDGEMENT OF RECEIPT OF APPLICATION FOR
REGISTRATION OF CUSTOMARY MARRIAGE**

(Regulation 2(2))

An application for the registration of the customary marriage between the parties below has been received:

HUSBAND:

Identity Number:

Surname:

Forenames in full:

Date of Birth:

WIFE:

Identity Number:

Surname:

Forenames in full:

Date of Birth:

Date of Customary Marriage:

Place of Customary Marriage:

.....

Designated person/Registering Officer

OFFICE STAMP

This document is not a customary marriage certificate. At the registration of the customary marriage a certificate will be issued to the

parties to the customary marriage.

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**FORM C
CUSTOMARY MARRIAGE CERTIFICATE**

(Regulation 2(5)(a))

HUSBAND:

Identity Number:

Surname:

Forenames in full:

Date of Birth:

WIFE:

Identity Number:

Surname:

Forenames in full:

Date of Birth:

Date of Customary Marriage:

Place of Customary Marriage:

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Registering officer

OFFICIAL DATE STAMP

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FORM D
APPLICATION FOR THE CONSENT OF A COMMISSIONER OF
CHILD WELFARE

(Regulation 4)

A. PARTICULARS OF APPLICANT:	
Identity Number:	
Surname:	
Forenames in full:	
Date of Birth:	
Marital status:	
Address:	
	Postal Code:
Contact Address:	
B. PARTICULARS OF PROSPECTIVE HUSBAND/WIFE:	
Identity Number:	
Surname:	
Forenames in full:	
Date of Birth:	
Contact Address:	
	Postal Code:
C. REASONS WHY CONSENT OF PARENT/GUARDIAN CANNOT BE OBTAINED:	
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I hereby certify that the particulars given above are true and correct and apply for consent to marry the person mentioned under B above.

Date:

Signature of Applicant:

Consent granted in terms of section 3(3)(b) of the Recognition of Customary Marriage Act, 1998 (Act No. 120 of 1998), read with section 25 of the Marriage Act, 1961 (Act No. 25 of 1961).

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Commissioner of Child Welfare

OFFICIAL DATE STAMP

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.....The medical assessment of age by the medical doctor and the following documents are attached: (e.g. sworn statements relating to the age of the above-mentioned person)

Signed at this day of

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Signature of registering officer

Forename(s) and surname of registering officer:

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.....Address of registering officer:

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Telephone number:

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FORM F
ASSESSMENT OF AGE BY MEDICAL DOCTOR FOR PURPOSES
OF SECTION 5 OF THE RECOGNITION OF CUSTOMARY
MARRIAGES ACT, 1998 (ACT No. 120 OF 1998)

(Regulation 5)

* Delete whichever is not applicable

To doctor:

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A. You are hereby requested to –

(i) assess the age of the undermentioned person; and

**(ii) hand this form, completed by you, to the said person for
submission to the Magistrate’s court**

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B. Particulars of person:

Forename(s) and surname:

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Sex: *male/*female.

Alleged age:

Address:
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Telephone number:

Remarks by registering officer:

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.....Signed at this day
of

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Signature of registering officer

Forename(s) and surname of registering officer:

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.....Address of registering officer:

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Telephone number:

C. MEDICAL ASSESSMENT OF AGE BY DOCTOR

To the Magistrate:

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Ref

No:

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I, (name and surname), a medical doctor, examined the above-mentioned person and records the following information:

HEIGHT:

WEIGHT:

BREASTS:

MOLAR TEETH:

PUBIC HAIR:

AXILLARY:

FACIAL:

GENITALS:

OPINION: On the grounds of the above-examination, and *his/her general appearance, *his/her age is assessed at being between - andMost probable age: years.

REMARKS:

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Signed at this day of

.....

Signature of doctor

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FORM G

**CERTIFICATE REGARDING THE AGE OF A PERSON FOR THE
PURPOSES OF SECTION 5 OF THE RECOGNITION OF
CUSTOMARY MARRIAGES ACT, 1998 (ACT 120 OF 1998)**

(Regulation 5(4))

In the Magistrate’s Court for the district of

Held at

To: The registering officer

It is hereby certified that the age of

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.....

(the full names and surname of person whose age is to be determined), was
determined to be years.

Signed at this day of

.....

Signature and full names of magistrate

Official stamp

NOTE
This document is not an official birth certificate