



home affairs

Department:
Home Affairs
REPUBLIC OF SOUTH AFRICA

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Ref: **Marriages Section**

**DEPARTMENT OF HOME AFFAIRS: HEAD OFFICE
FOREIGN OFFICES
PROVINCIAL OFFICES
REGIONAL AND DISTRICT OFFICES
ALL REGISTERING OFFICERS**

REGISTRATION OF MUSLIM MARRIAGES UNDER THE RECOGNITION OF CUSTOMARY THE MARRIAGE ACT, 1998 (ACT NO. 120 OF 1998)

In its judgment in the matter of the *President of the Republic of South Africa & Others v Women's Legal Centre Trust & Others; Minister of Justice and Constitutional Development v Faro & Others; Minister of Justice and Constitutional Development v Esau & Others 9(Case No. 61/19) [2020] ZASCA 177*, the Supreme Court of Appeal declared that the Marriage Act, 1961 (Act No. 25 of 1961) and the Divorce Act, 1979 (Act No. 70 of 1979) are inconsistent with sections 9, 10, 28 and 34 of the Constitution of the Republic of South Africa, 1996, in that they fail to recognise marriages solemnised in accordance with *Sharia* law (Muslim marriages) as valid marriages (which have not been registered as civil marriages) as being valid for all purposes in South Africa, and to regulate the consequences of such recognition, all registering officers.

Following the order, all registering officers, appointed in terms of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) (the "Recognition Act"), are

required to comply with the order and register Muslim marriages in accordance with the provisions of sections 3(1)(a), 3(3)(a) and 3(3)(b), 3(4)(a) and 3(4)(b), and 3(5) the Recognition Act **with the necessary modifications**.

Front Offices are, therefore, expected to register Muslim marriages in line with the processes followed in registering customary marriages including as follows:

- (a) For purposes of complying with the judgment, muslim marriages are to be registered as customary marriages and are only registered at the Department of Home Affairs offices, by DHA official,
- (b) The Official at the Front Office must be an appointed Customary Marriage Registrar to be able to complete and sign the Recognition of Customary Marriages Register (DHA-1699),
- (c) There must be two representatives during the registration of customary marriage, one from either family with certified copies of their 13 digits Identity card/documents and a sworn declaration from the South African Police Service ("SAPS") confirming details of the marriage celebration and their attendance,
- (d) a *Sharia* law marriage certificate commonly known as Muslim Marriage Certificate must be submitted for marriage registration,
- (e) Both spouses must consent to be married to each other under the Muslim marriage,
- (f) both spouses to the Muslim marriage must submit copies of their Identity documents to the Registering Officer for verification against the National Population Register,
- (g) Where one of the spouse is deceased, the surviving spouse must submit a sworn declaration from SAPS confirming the existence of their customary marriage. This will be accompanied by another sworn declaration attesting to knowledge of the marriage by another relative, preferable from the other side of the marriage.

In this regard, the Learning Academy will make the necessary arrangements to ensure that all registering officials are adequately trained to execute the function and line managers to provide support to those registering officers requiring assistance and support.

A copy of the judgment is available and obtainable from the Resource Centre of the Department and Website.

Should you have any enquiries regarding the above, please contact Mr. Richard Sikakane at (012) 300 8570 or email: Richard.Sikakane@dha.gov.za

Your urgent attention to this matter will be highly appreciated.

Kind regards



**MR L T MAKHODE
DIRECTOR-GENERAL**

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