



home affairs

Department:
Home Affairs
REPUBLIC OF SOUTH AFRICA

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HEAD OFFICE

PROVINCIAL MANAGERS

DISTRICT MANAGERS: OPERATIONS

OFFICE MANAGERS

DEPARTMENTAL CIRCULAR No: 2 OF 2023

ADDENDUM: REGISTRATION OF MUSLIM MARRIAGES

1. On 06 January 2022, the Director-General signed a Circular, which Circular provided Front Offices with guidance on how to register Muslim marriages. A copy of the Circular is attached herein for ease of reference.
2. For the sake of completeness, the Constitutional Court (the "ConCourt"), in *Women's Legal Centre Trust & others v President of the Republic of South Africa & Another* 2023 (1) BCLR 80 (CC), confirmed the declaration by the Supreme Court of Appeal of the Republic of South Africa in the matter of the President of the Republic of South Africa & Another v Women's Legal Centre Trust & others [2021] 1 All SA 802 (SCA), that the Marriage Act, 1961 (Act No. 25 of 1961) and the Divorce Act, 1979 (Act No. 70 of 1979) are inconsistent with section 9, 10, 28 and 34 of the Constitution of the Republic of South Africa, 1996 (the "Constitution"), in that these Acts failed to recognise marriages solemnised in accordance with Sharia law (Muslim marriages) as valid marriages (which have not been registered as civil marriages) for all purposes and to regulate the consequences of the solemnisation and dissolution of Muslim marriages in South Africa. The ConCourt also found that the common law definition of a marriage is inconsistent with the Constitution to the extent that it excludes Muslim marriages.

3. Following the order, all registering officers or officials, appointed in terms of any law to register marriages, are required to comply with the order and register all Muslim marriages in accordance with the order. Registering officers or officials are reminded to comply with paragraphs 1.8 and 1.9 of the order, in particular, the provisions of sections 12(2) of the Children's Act, 2005 (Act No. 38 of 2005) and sections 3(1)(a), 3(3)(a), 3(3)(b), 3(4)(a), 3(4)(b) and 3(5) of the Recognition of Customary Marriages Act, 1998 (Act NO. 120 of 1998) (the "Act"), with the necessary modifications.
4. Front Offices are, therefore, expected to register all Muslim marriages, and issue to the parties a marriage certificate, in accordance with the processes followed in registering marriages, including the following:
 - (a) The official at the Front Office, must be an appointed registering officer to be able to complete and sign the register ("DHA-1699");
 - (b) There must be two representatives during the registration of a Muslim marriage, one from either family with certified copies of their 13-digits identity card or documents and a sworn declaration from the South African Police Service ("**SAPS**") confirming the details of the marriage celebration and their attendance;
 - (c) A *Sharia* / Islamic law (Muslim) marriage certificate, commonly known as a *Nikah* or Muslim Marriage Certificate, must be submitted for marriage registration and the issuing of a marriage certificate;
 - (d) The spouses must consent to be married to each other in terms of Islamic law;
 - (e) Both spouses must submit, to the registering officer, copies of their identity cards or documents for verification against the National Population Register; and
 - (f) Where one of the spouses is deceased, the surviving spouse must submit a sworn declaration from SAPS confirming the prior existence and details of their Muslim marriage. This will be accompanied by another sworn declaration by another relative that

was present when the *Nikah* was concluded attesting to have knowledge of the prior existence and details of the Muslim marriage.

5. Further, it has come to the attention of the Department that some members of the Muslim community are experiencing challenges with the registration of their marriages that may have taken place before the judgment. In this case, one of the spouses is deceased and as a result the status of the surviving spouse reflects as “never married” or “single”. In this regard, Front Offices must, when the surviving spouse approaches the office to register his or her Muslim marriages:
 - (a) receive the application, together with all the relevant attachments; and
 - (b) send the application, together with the attachments, to Head Office (BVR).
6. Head Office (BVR) will, when the application is received, amend the particulars as they appear on the NPR, in order to note the death of the other spouse, and advise the relevant Offices accordingly.
7. In this regard, the Learning Academy will make the necessary arrangements to ensure that all Registering Officers are adequately trained to register Muslim marriages and ensure that line managers provide support to those Registering Officers who require assistance and support.
8. Should you have any queries, please don't hesitate to contact: Patrick Williams at Patrick.Williams@dha.gov.za.
9. Please ensure that the contents of this Circular is brought to the attention of all officials within your area of control.



L.T. MAKHODE
DIRECTOR-GENERAL

DATE: 27 June 2023