

Proposed new circular repealing the circular of 6 January 2022, issued by the Director-General of the Department of Home Affairs, Mr L T Makhode, to be issued by the Department of Home Affairs in respect of the registration of Muslim marriages in the Republic of South Africa as an interim measure in compliance with of the judgment (defined below as "**the Order**") by the Constitutional Court of the Republic of South Africa in **Women's Legal Centre Trust v President of the Republic of South Africa and others (Commission for Gender Equality as Intervening Party, Muslim Assembly Cape and another as amici curiae)** 2023 (1) BCLR 80 (CC):



home affairs

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Home Affairs

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Ref: **Marriages Section**

DEPARTMENT OF HOME AFFAIRS: HEAD OFFICE

FOREIGN OFFICES

PROVINCIAL OFFICES

REGIONAL AND DISTRICT OFFICES

ALL REGISTERING OFFICERS

**RE: REGISTRATION OF MUSLIM MARRIAGES WITH THE DEPARTMENT
OF HOME AFFAIRS**

In the matter of the ***Women’s Legal Centre Trust v President of the Republic of South Africa and others (Commission for Gender Equality as Intervening Party, Muslim Assembly Cape and another as amici curiae)*** 2023 (1) BCLR 80 (CC) (“***the Order***”), the Constitutional Court 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 and another v Women’s Legal Centre Trust and others (United Ulama Council of South Africa and others as amici curiae) and related matters*** [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 sections 9, 10, 28 and 34 of the Constitution of the Republic of South Africa, 1996 (***Constitution***), in that these Acts fail 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 Constitutional Court also found in this judgment that the common law definition of a marriage is inconsistent with the Constitution to the extent that it excludes Muslim marriages.

Following the Order, all registering officers / officials / registrars, appointed in terms any law of South Africa to register the conclusion of a marriage or civil union with the Department of Home Affairs, are required to comply with the Order and register all Muslim marriages in accordance with the provisions of the Order, and in particular to persons under the age of 18 years, with the provisions of paragraphs 1.8 and 1.9 of the Order (i.e., the provisions of section 12(2) of the Children’s Act, 2005 (Act 38 of 2005), as amended, and sections 3(1)(a), 3(3)(a) and 3(3)(b), 3(4)(a) and 3(4)(b), and 3(5) of the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998), as amended, **with the necessary modifications.**

Front Offices are, therefore, expected to register all Muslim marriages, and issue the parties thereto with marriage certificates in respect thereof, in accordance with the processes followed in registering marriages including as follows:

- (a) For purposes of complying with the judgment, Muslim marriages are to be registered as a Muslim marriages with the Department of Home Affairs offices, by a registering official / officer / registrar, appointed by the Department of Home Affairs to complete and sign the Muslim marriage register (DHA-1699) at the Front Office,
- (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/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 to the Department of Home Affairs for marriage registration and the issuing of a marriage certificate;
- (d) Upon the registration of a valid Muslim marriage concluded in terms of Islamic law, the parties shall as the default marital regime be married each other out-of-community of property, without the operation of the accrual system;
- (e) The spouses to a Muslim marriage may at the time of registering their marriage complete a form to be signed by the parties to the marriage, confirming that they consented to either be married to each other out of community of property with the operation of the accrual system or in-community of property;
- (f) The spouses must consent to be married to each other in terms of Islamic law,
- (g) The spouses to the Muslim marriage must submit copies of their 13 digit identity documents to the registration official / officer/registrar for verification

against the National Population Register,

- (h) 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.

In this regard, the Learning Academy will make the necessary arrangements to ensure that all registering officers / officials / registrars of the Department of Home Affairs are adequately trained to execute their functions and line managers to provide support to these registering officers / officials / registrars requiring assistance and support.

