

**Inter-Departmental Committee on
Reform of Marriage Law**

Position Paper No. 4

Solemnisation of Marriages

December 2003

1 Introduction.

1.1 The Inter-Departmental Committee has been established by Government to review current marriage procedures and to bring forward a universally applicable framework of clear and simple procedures, which will underpin the solemnity of the marriage contract.

1.2 The key objectives are to:

- Provide a universal system/framework that recognises and underpins marriage as a solemn contract.
- Streamline procedures.
- Provide clarity on formalities to be observed.

1.3 The State recognises the validity of marriages solemnised as part of a religious ceremony or by a registrar of marriages in a civil ceremony and provides for the registration of such marriages. The majority of marriages in the State are solemnised by a solemniser of a church/registered building as part of a religious service. There are groups in society who are not adequately catered for by current arrangements. This paper discusses current procedures and issues in relation to the solemnisation of marriage and sets out proposals for reform.

2 Current Provisions in Relation to Solemnisation of Marriage.

2.1 Marriage may be solemnised by:

- Registrars of marriage appointed under the Marriages Ireland Act 1844.
- Clergy of the Church of Ireland.
- Ministers of the Presbyterian Church.
- Roman Catholic priests (under common law).
- Solemnisers of church buildings used for public worship and registered by the An tArd-Chláraitheoir.

2.2 The Marriage Acts do not regulate who solemnises the marriages of Quakers or Jews but provides that the marriages shall be registered by:

- Registering officers of the Religious Society of Friends.
- Secretaries of Synagogues in respect of Jewish marriages.

Declaratory wording

2.3 The format for the marriage ceremony is set out in the Marriage Acts for marriage by a registrar, and for religious marriage ceremonies in registered buildings, but it is not set out for all marriages. The format set out in the Acts consists of two steps.

1. A solemn declaration by each party to the marriage, as part of the marriage ceremony, that s/he does not know of any impediment to the proposed marriage.
2. A specified form of words i.e.

“I call upon these persons here present to witness that I AB take thee CD to be my lawful wedded wife/husband”.

2.4 In practice, the wording used for the solemnisation of marriages by religious ceremony has been largely a matter for the churches concerned. It is understood that alternative formulae have been in use over the years and these have been updated to reflect modern approach to marriage vows.

Open doors and time of marriage.

- 2.5 The statutory provisions of the Marriage Acts provide that marriage should be with open doors during specified hours - currently 8am to 5pm. Marriages before the registrar may take place on any day except Sunday. The days on which religious marriages may be solemnised are not controlled by statute and in practice are determined by the religious body concerned.

Witnesses to the marriage.

- 2.6 Marriages must be solemnised in the presence of at least two witnesses. The fact that the required qualifications for witnesses are not set out in the Acts, gives rise to difficulties from time to time. Parties may request that children of very young ages act as witnesses. The consistent advice of an tArd-Chláraitheoir in such cases is that the witnesses must be of an age and have the capacity to give evidence in court on the issue if required.

Language.

- 2.7 Marriages are currently conducted in Irish or English. There has been an emerging problem in recent years in ensuring that all the parties to a marriage – couple, solemniser, and witnesses - are sufficiently fluent in English (mainly), in order that they can understand and discharge their respective responsibilities. The current practice for marriage by a registrar of marriages is that the ability of the bride and groom is assessed when notice is being given and, if necessary, the couple are obliged to furnish an interpreter who also acts as a witness to the marriage. This problem may also arise in respect of religious ceremonies. However, the incidence and the procedure adopted to overcome the difficulty is unknown.

Registration of marriages.

- 2.8 The Marriage Acts provide two different procedures for the registration of a marriage:
1. Signing the register at the church or place at which the marriage is solemnised.
 2. Signing a marriage certificate which is returned to a registrar of marriages for entry in the marriage register.

- 2.9 The signing of the entry in the register or the signing of the marriage certificate takes place in the presence of all the parties present or in a separate room in the presence of the solemniser and the witnesses.

3 Recommended Future Approach.

3.1 Marriage law in relation to the solemnisation of marriage is complex, uneven, and not easily understood by the public or those involved in its administration.

It is however important to ensure that marriage continues to be a public act and that the safeguards and strengths of the current system are retained.

3.2 The recommended future approach will:

- Standardise the rules and procedures for the solemnisation of all marriages through the introduction of universally applicable requirements.
- Ensure that the importance, legal significance and obligations of marriage are clearly understood by the couple, the witnesses and by society in general.
- Continue to recognise religious as well as civil marriage.
- Recognise the traditions of religious bodies provided that they do not conflict with statutory requirements.
- Extend the power to solemnise marriage to recognised solemnisers of groups in society not adequately catered for by a present system. Investigations to-date indicate that there may be significant difficulties in giving legislative effect to this proposal.

3.3 The recommended universal requirements for the solemnisation of marriage are as follows:

Marriage Requirements

- Both parties to the marriage must be present at the ceremony.
- Marriage must be solemnised by a registered solemniser.
- Two credible witnesses aged 18 years or over must be present.
- Marriage must be open to public witness.
- Marriage must be solemnised in a form of ceremony which has been approved by An tArd-Chláraitheoir.
- Marriage may take place at a time agreed between the couple and the solemniser.

- 3.4 If the couple, the witnesses or the solemniser do not have sufficient fluency in the language in which the marriage is to be solemnised, the services of a qualified interpreter(s) must be employed by the couple so as to ensure that all parties to the marriage fully understand the solemn nature of the commitment being made by the couple.

Marriage Ceremony

- 3.5 The solemniser should ensure that the couple and the witnesses understand the nature and significance of the marriage ceremony and that any required interpretation is provided.

- 3.6 The marriage ceremony must include:

- a) A formal public declaration by the couple that there is no legal impediment to the marriage.
- b) A declaration by the couple to the effect that they accept each other as husband and wife, calling on others to witness their marriage. For example,

"I call upon these persons here present to witness that I AB take thee CD to be my lawful wedded wife/husband".

- c) The completion of the Marriage Registration Form by all parties to the marriage, preferably in public view.

Marriage Registration

- 3.7 The couple will be responsible for returning the Marriage Registration Form to a registrar within one month of the marriage ceremony. A marriage certificate cannot be issued until the completed Marriage Registration Form is received and the marriage has been registered by a registrar.