

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

**Position Paper No. 6**

**Court Exemptions**

**September 2004**

## **1 Introduction.**

- 1.1 The Inter-Departmental Committee, as part of its remit, is undertaking a review of all aspects of current marriage procedures.
- 1.2 The Family Law Act 1995 imposed a universal obligation on parties intending marriage to notify the Registrar of their intention to marry (Section 32). It also imposed 18 years as the minimum age for marriage (Section 31). Both these provisions are substantive requirements for a valid marriage and apply equally to all marriages. A person can apply to the Courts for an exemption to these requirements under Section 33 of the Family Law Act 1995.
- 1.3 At present, persons intending to marry either by civil or religious ceremony must give three months notification in writing to a registrar. There is no prescribed form for marriage notification. The registrar acknowledges the notification and this acknowledgement must be produced on request to the person solemnising the marriage
- 1.4 An area of concern that has been brought to the attention of the Committee is the high level of recourse to the Courts for exemptions from the requirement to give three months notification of intention to marry. The main focus of this paper, therefore, is in relation to the three-month notification requirement.

## 2 Current Provisions – Exemptions.

- 2.1 There is provision in the Family Law Act 1995 (Section 33) for an application to the Courts for an exemption to the requirements of Section 31 - the minimum age of 18 for marriage and Section 32 – notification of intention to marry. The intention behind the exemption provisions was to facilitate persons in exceptional circumstances.
- 2.2 Section 33 and 38(4) of the Family Law Act 1995 Act, at first cumulatively required that, where an exemption was sought from the Circuit Family Court, it could only be granted by a judge of the Circuit in which either of the parties “ordinarily resides or carries out any business, profession or occupation”. In a significant number of cases, exemptions were obtained from judges not fitting the description outlined in section 38(4) and thus exemptions were invalid for want of jurisdiction. Section 3(2) of the Family Law (Miscellaneous Provisions) Act 1997 (No 18 of 1997), however, stipulates that no marriage shall be deemed invalid by reason only that exemption was issued by a Circuit Court judge who is not authorised by S.38(4) to grant such exemption.
- 2.3 There is concern at the level of recourse to the Courts for exemptions. It is understood that the majority of applications for exemptions are in respect of the three-month written notification requirement.
- 2.4 The following table shows the number of exemptions sought, granted and refused for the years 2000, 2001 and 2002.

<u>Year</u>	<u>Lodged</u>	<u>Granted</u>	<u>Refused</u>
2000	1,181	1,150	31
2001	1,210	1,160	23
2002	959	910	26

Note: The number of exemptions granted/refused may include applications made in the previous year.

- 2.5 The number of marriages in each of those years was as follows:

<u>2000</u>	<u>2001</u>	<u>2002</u>
19,168	19,246	20,047

The number of exemptions sought represents some 6% of marriages for each of the years 2000 and 2001 with 2002 showing a decrease to just under 5%.

2.6

The reason exemptions were sought is unclear. Anecdotal evidence would seem to suggest a lack of knowledge with regard to procedures on the part of the couple as the main reason.

### **3 Proposed Future Approach.**

- 3.1 A variety of measures will be undertaken to reduce recourse to the Courts for exemptions, particularly in relation to the three-month notification requirement.
- 3.2 The new Civil Registration Act provides for the introduction of formal civil preliminaries for marriage. The three-month minimum notification requirement remains. In future, couples intending to marry will be required to jointly submit a prescribed written notification of marriage in person to a registrar a minimum of three months in advance of the intended date of marriage.
- 3.3 In certain circumstances e.g. where a couple is working/living abroad, a notification may be submitted by post. However, in all such cases the couple will be required to attend at a registrar's office a minimum of five days prior to the date of the marriage to complete all civil preliminaries.
- 3.4 A provision for the granting of exemptions by the Circuit Family Court or the High Court, to the requirement to submit the three-month notification of intention to marry, will continue. However, even where an exemption to the three-month notification requirement is granted, the couple will still be required to attend at a registrar's office not less than five days before the date of the wedding to complete the remaining civil preliminaries i.e. sign a declaration that there is no impediment to the marriage and present other evidence as required by the registrar.
- 3.5 It is considered that standard procedures should apply when an application for an exemption is being submitted to a court. This issue will be raised with the Courts Service.
- 3.6 As lack of knowledge/awareness of procedures is stated to be a key factor in the high level of recourse to the Courts. The following measures will be taken to highlight the new procedural requirements for marriage:
- A national publicity campaign will be undertaken to highlight the new requirements following the commencement of the provisions of the Civil Registration Act 2004.
  - An annual information campaign will be carried out to maintain public awareness of marriage formalities/procedures.
  - Superintendent Registrars will be required to carry out local information campaigns. This will involve providing information/briefing sessions for

local community groups and availing of local opportunities to maintain public awareness.

- Information leaflets and posters will be made available to all registered marriage solemnisers.
- The General Register Office website will provide comprehensive information on procedures to be followed.
- Groups which provide pre-marriage courses will be asked to feature marriage procedures in their courses and literature.
- COMHAIRLE will be asked to carry out a special information campaign and to include details of the procedures to be followed in all future information sessions.