

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

Position Paper No. 7

United Nations Convention No. 7525

**(Consent to Marriage, Minimum Age for Marriage
and Registration of Marriages)**

September 2004

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 to underpin the solemnity of the marriage contract.
- 1.2 As part of its remit, it has been asked to consider the ratification by Ireland of the United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.
- 1.3 The Convention entered into force on 9 December 1984 and there are currently 51 States Parties and 16 Signatories to the Convention. A copy of the Convention is given at Appendix 1.
- 1.4 This paper discusses how the relevant articles of the UN Convention have or are being addressed in the context of proposals for reform of marriage law.

2 UN Convention - Main Provisions.

Article 1

(1) No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law.

- 2.1 The giving of full, free and informed consent is a key principle of existing Marriage Law in Ireland. Contravention of this requirement renders a marriage void. This requirement was further enhanced by the provisions of the Family Law Act 1995 (Section 32) which requires that all couples intending to marry must give a minimum of three months notification to a registrar of their intention to marry.
- 2.2 The Inter-Departmental Committee in its review of current marriage procedures is recommending:
- That the notification provision be further strengthened by the introduction of formal civil preliminaries for marriage;
 - The introduction of statutory forms for the notification and registration of marriages;
 - The introduction of universal requirements for the solemnisation of marriage;
 - That a list of all marriage notifications received by registrars be published on the General Register Office (GRO) website www.groireland.ie for a period of up to three months prior to the intended date of marriage.
- 2.3 The commencement of the provisions of the Civil Registration Act 2004 will give effect to these proposals.

Article 1

(2) Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such a

manner as may be prescribed by law, expressed and not withdrawn consent.

- 2.4 The Inter-Departmental Committee is recommending the introduction of universal requirements for the solemnisation of marriage. These will be substantive requirements for a valid marriage. One of the key requirements is that both parties to the marriage must be present at the marriage ceremony.

Article 2

States parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

- 2.5 The age at which persons may marry is regulated by the Family Law Act 1995 (Section 31). The rule is that both parties to a marriage must be at least 18 years of age. The minimum age requirement applies to all marriages celebrated within the State and to all marriages wherever celebrated where either one or both of the parties at the time of the marriage is/are ordinarily resident in the State.
- 2.6 A limited exception to the minimum age requirement is contained in Section 33 of the Family Law Act, 1995. Persons under the age of 18 years can marry where an exemption is granted by either the Circuit Court or the High Court. Such exemptions to the statutory minimum age requirements may only be granted by the Circuit Court or High Court on application being made by, or on behalf of, both parties prior to the solemnisation of the marriage. A court may not grant such exemption lightly. It must be shown that the exemption is “justified by serious reasons and is in the interest of the parties to the intended marriage”.
- 2.7 The Civil Registration Act 2004 retains the provisions in relation to minimum age requirements and exemptions.

Article 3

All marriages shall be registered in an appropriate official register by the competent authority.

- 2.8 All marriages solemnised in the State are required to be registered in the marriage register maintained by An tArd-Chláraitheoir (Registrar General). In addition, the provisions in the Civil Registration Act 2004 impose a duty on couples to ensure that their marriage is registered.

3 Proposals for Reform.

- 3.1 As indicated above, the key provisions of the convention have already been implemented or will be addressed in the context of proposals for reform of marriage law.
- 3.2 However, in relation to Article 1, paragraph 2, it currently is, and will continue to be a requirement for a valid marriage that both parties to a marriage be present at the ceremony. It will therefore be necessary to enter a reservation in relation to Article 1, paragraph 2.
- 3.3 Many States Parties to the Convention have entered reservations to the effect that Article 1, paragraph 2 shall not apply to their marriage legislation.
- 3.4 The Committee recommends that the process of ratification of the convention should proceed with a reservation in relation to Article 1, paragraph 2.

Appendix 1

No. 7525. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. Opened for Signature at New York, on 10 December 1962

Preamble

The Contracting States

Desiring, in conformity with the Charter of the United Nations, to promote universal respect for, and observance of, human rights and fundamental freedom for all, without distinction as to race, sex, language or religion.

Recalling that Article 16 of the Universal Declaration of Human Rights states that:

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry or found a family. They are entitled to equal rights as to the marriage, during marriage and at dissolution.

(2) "Marriage shall be entered into only with the free and full consent of the intending spouses."

Recalling further that the General Assembly of the United Nations declared, by resolution 843 (IX) of 17th December 1954, that certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights.

Reaffirming that all States, including those which have or assume responsibility for the administration of Non – Self Governing and Trust Territories until their achievement of independence, should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, inter alia, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil or other register in which all marriages will be recorded.

Hereby agree as hereinafter provided:

Article 1

(1) No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law.

(2) Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such a manner as may be prescribed by law, expressed and not withdrawn consent.

Article 2

States parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

Article 3

All marriages shall be registered in an appropriate official register by the competent authority.

Article 4

(1) The present convention shall, until 31 December 1963, be open for signature on behalf of all States Members of the United Nations or members of any of 6 the specialised agencies, and of any other State invited by the General Assembly of the United Nations to become party to the Convention.

(2) The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary General of the United Nations.

Article 5

(1) The present Convention shall be open for accession to all States referred to in Article 4, paragraph 1.

(2) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 6

(1) The present Convention shall come into force on the ninetieth day following the date of deposit of the eight instrument of ratification or accession.

(2) For each State ratifying or acceding to the Convention after the deposit of the eight instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit of the eight instrument of ratification or accession.

Article 7

(1) Any Contracting State may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

(2) The present Convention shall cease to be in force as from the date when the denunciation which reduces the number of parties to less than eight becomes effective.

Article 8

Any dispute which may arise between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of all the parties to the dispute, be referred to the International Court of Justice for decision, unless the parties agree to another mode of settlement.

Article 9

The Secretary-General of the United Nations shall notify all States Members of the United Nations and the non – member States contemplated in article 4, paragraph 1, of the present Convention of the following:

- a) Signatures and instruments of ratification received in accordance with Article 4;
- b) Instruments of accession received in accordance with Article 5;
- c) The date upon which the Convention enters into force in accordance with Article 6;
- d) Notifications of denunciation received in accordance with Article 7, paragraph 1;
- e) Abrogation in accordance with Article 7, paragraph 2.

Article 10

(1) The present Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

(2) The Secretary-General of the United Nations shall transmit a certified copy of the Convention to all States Members of the United Nations and to the non-member States contemplated in Article 4, paragraph 1.

In faith whereof the undersigned, being duly authorised, have signed on behalf of their respective Governments, the present Convention which was opened for signature at the Headquarters of the United Nations, New York on the tenth day of December, one thousand nine hundred and sixty-two.