

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

Position Paper No. 8

Procedural Irregularities – Penalties/Sanctions

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. As part of its remit, it also seeks to establish the fundamental concepts which will underpin this framework.
- 1.2 Marriage formalities/procedures are set down in statute to ensure that a marriage ceremony is easily distinguished from other interactions of everyday life so that persons do not marry by accident. Marriage law also provides penalties/sanctions where persons fail to comply with statutory requirements.

2 Current Procedural Irregularities – Penalties/Sanctions.

2.1 Penalties/sanctions in relation to procedural irregularities for marriage are set out in the Marriages (Ireland) Act 1844, Marriage Law (Ireland) Amendment Act 1863, The Registration of Marriages (Ireland) Act 1863, Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870, Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1871 and the Family Law Act 1995.

2.2 Where a procedural irregularity occurs it is necessary to determine whether the irregularity is deliberate or accidental which will therefore dictate the appropriate penalty/sanction. This gives rise to a degree of uncertainty in distinguishing between those which:

- a) Affect the validity of marriage;
- b) Incur a penalty but which do not affect the validity of the marriage;
- c) Do not give rise to a specific consequence or do not attract a penalty.

Procedural irregularities which affect the validity of a marriage

2.3 There are two substantive requirements for a valid marriage:

- Both parties must be over 18 years of age.
- Both parties must give three months written notification of the intended marriage to a registrar.

2.4 With the exception of non-compliance with the above mentioned substantive requirements for a valid marriage, there is a general principle that the non-observance of a formality will not invalidate a marriage unless both parties were aware of the defect at the time of the marriage ceremony.

2.5 A marriage may be void due to the wilful and deliberate act of the parties getting married if the marriage:

- a) Takes place without:
 - Serving of notice on a registrar, thus obtaining a registrar's certificate or a registrar's licence

or

- Obtaining a licence issued by a person authorised to issue such licence by a religious body - either an ordinary licence or a special licence, where such licences or certificate is required,
or
 - Reading of Banns.
- b) Is not solemnised in the presence of two or more credible witnesses with open doors between 8am and 5pm.
- c) Takes place in a place other than the church or registered building which had been specified in a notice, licence or registrar's certificate.
- d) Takes place by religious ceremony in a building registered for the solemnisation of marriages under the provisions of section 27 of the Marriages Ireland Act 1844 without the attendance of a registrar, whose attendance is required to register such marriages.

Note: The restrictions in relation to c) and d) on place or time of marriage do not apply in relation to the marriage of two Roman Catholics or to a marriage where a special licence has been issued by a person authorised to do so under the provisions of sections 36 and 37 of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870.

Procedural Irregularities which do not affect the validity of the marriage

2.6

A marriage will not be void, but an offence will be committed where:

- a) A person wilfully makes or causes a false statement to be made for the purpose of having false information entered in the register of marriage. S/he shall be subject to the penalties for perjury.
- b) A person makes a false declaration when serving notice of marriage. S/he shall be subject to the penalties for perjury.
- c) A husband fails to return:
- A signed marriage certificate to the registrar within 3 days of a marriage according to the rites and ceremonies of the Roman Catholic Church, or
 - A certificate for the registration of a marriage by special licence issued under sections 36 and 37 of the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870.

He may be subject to a penalty of €12.69 (IR£10.).

2.7 Irregularities caused by the person solemnising a marriage, which do not of themselves affect the validity of the marriage, but do incur penalties/sanctions. These are:

- a) A solemniser/registrars who knowingly and wilfully solemnises a marriage:
- Without the appropriate licence or registrar's certificate.
 - Without two or more credible witnesses being present.
 - Without open doors
 - Without the presence of the registrar of marriages if the building is registered under section 27 of the Marriages Ireland Act 1844.
 - In a place other than in the church or registered building specified in the licence, notice or registrar's certificate.
 - Outside the time period 8am to 5pm.

Note: The restrictions on place and time do not apply to a marriage by special licence, a marriage between two Roman Catholics by ecclesiastical licence, or marriages by the usages of the Society of Friends or usages of the Jewish religion.

- b) A registrar who knowingly and wilfully:
- Issues a licence or certificate before the expiration of the waiting periods set down in statute, or.
 - Registers a marriage which is null and void
- c) A religious solemniser, who is not a Minister of the Church or denomination to which one party to the marriage belongs, who knowingly and wilfully solemnises his/her marriage.

The solemniser or registrar is guilty of an offence.

Other Offenses.

2.8 Where the damage to or the false alteration of a register of marriages is due to a wilful act, the person concerned is guilty of an offence.

2.9 A registrar or solemniser of a marriage who refuses without reasonable cause to register a marriage solemnised by him/her which s/he ought to register. The registrar/solemniser is liable to a penalty of €50.80 (IR£40).

- 2.10 A person who loses or damages a register in his/her custody through want of care is liable to a penalty of €63.48 (IR£50). The penalty is (IR£10) €12.69 in respect of a register of Roman Catholic marriages.
- 2.11 A registrar who fails to send a copy of a notice of marriage to the church where the parties attend public worship is liable to a penalty of €63.48 (IR£40).
- 2.12 It should be noted that the monetary value of the penalties referred to were significant when set down in primary legislation between 1844 and 1880. The passage of time has eroded the value of these penalties to such extent as to render them meaningless.

3 Proposed Future Approach.

3.1 The objective of reform of marriage law is to introduce universal and easily understood procedures/formalities for marriage and to clearly set out the consequences of non-compliance with them. The proposed streamlining of the marriage notification and registration processes will remove many of the present requirements which give rise to misunderstanding and consequent procedural irregularity.

3.2 The proposals for reform of procedural preliminaries, solemnisation of and venues for marriage are set out in Discussion Papers 2, 3 and 4. Accordingly, the consequences of non-compliance with the proposed future procedures must also be addressed and underpinned by legislation.

Valid Marriage.

3.3 To contract a valid marriage both parties must:

- Be free to marry.
- Fulfil all civil preliminaries.
- Fulfil the requirements for the solemnisation of marriage.
- Complete the Marriage Registration Form.

Procedural Irregularities - Offences and Penalties.

3.4 The following offences are provided for in the Civil Registration Act 2004:

- a) Unauthorised deletion, alteration by a registrar or other person of information on registers held.
- b) Giving false information to a registrar.
- c) Making a false declaration in the presence of a registrar.
- d) Refusal to comply with a requirement in a notice served on a person to attend at the office of a registrar to furnish a copy of a signed Marriage Registration Form.
- e) Refusal by a registrar to register a marriage.
- f) Refusal by a registrar, without reasonable cause, to issue a Marriage Registration Form where all requirements have been met.

- g) Solemnisation of a marriage in a format other than that approved by An tArd-Chláraitheoir
- h) Solemnisation of a marriage by a person other than by a registered solemniser or a person granted temporary authorisation to do so.
- i) Solemnisation of a marriage without a valid Marriage Registration Form.
- j) Solemnisation of a marriage by a registrar at a venue which has not been approved by the registration authority.
- k) Registrar or solemniser or parties to a marriage who knowingly proceed with a marriage which will not be valid in law.
- l) Lodging a malicious objection to a marriage.

Penalties

3.5 The Civil Registration Act 2004 provides for:

- a) In the case of a), b), or c) above:
 - A fine on summary conviction not exceeding €2000 or imprisonment for a term not exceeding 6 months, or both.
 - A fine on conviction on indictment not exceeding €10,000 or imprisonment for a term not exceeding 5 years, or both, in respect of deletion or alteration of information in the register.
- b) In the case of d), e), or f) above:
 - A fine on summary conviction not exceeding €2000 or imprisonment for a term not exceeding 6 months, or both.

3.6 A fine on summary conviction not exceeding €2000 or imprisonment for a term not exceeding 6 months, or both, is proposed for other offences.