

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

DIVORCE BILL

(As read a First Time)

(Introduced by the Minister of Justice)

BILL

To consolidate and reform the law on divorces relating to civil marriages; abolish the common law grounds for divorce as well as grounds for divorce which applied under legislation before the commencement of this Act; provide for custody, guardianship of, and access, to children of the marriage; provide for spousal maintenance, child maintenance, financial and other consequences of divorce; provide for periodical allowance, financial and other consequences of annulment of marriage; provide for forfeiture of patrimonial benefits; provide for privacy of certain proceedings; restrict access to publication of certain court proceedings; abolish orders for restitution of conjugal rights and judicial separation amend the High Court Act, 1990, so as to make certain consequential amendments; amend the Magistrates' Courts Act, 1944, so as to confer jurisdiction on a court established in terms of that Act to deal with divorces proceedings; and provide for incidental matters.

(Introduced by the Minister of Justice)

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BE IT ENACTED as passed by the Parliament, and assented to by the President of the Republic of Namibia as follows:

Definitions

1. (1) In this Act, unless the context otherwise indicates –

“assets” in relation to parties to the marriage, means assets to which a party to the marriage is, or the parties to the marriage are, entitled;

“annulment of marriage proceedings” means proceedings for an order for annulment of marriage;

“Child Care and Protection Act, 2015” means the Child Care and Protection Act, 2015 (Act No. 3 of 2015);

“child maintenance order” means an order issued in terms of section 16(3) of this Act for the maintenance of a child of the marriage;

“child of the marriage” means –

- (a) a child born to both parties to the marriage, irrespective of whether the child was born before or after the marriage;
- (b) a child adopted in terms of the adoption laws by both parties to the marriage; or
- (c) a child of one party to the marriage who has been adopted in terms of the adoption laws by the other party to the marriage;

“court” means —

- (a) the High Court; or
- (b) a court established in terms of the Magistrates’ Court Act, 1944 (Act No. 32 of 1944), and on which jurisdiction is conferred in terms of that Act to deal with divorce proceedings;

“disability” means a physical or mental impairment that alone, or in combination with social or environmental barriers, affects the ability of a person to carry out normal day to day activities;

“divorce” means the termination of a marriage by an order of court, but does not include termination of marriage by the death of a party or parties to the marriage or termination by an order for annulment of marriage;

“divorce proceedings” means a proceeding in a court in which either party to the marriage or both parties to the marriage jointly seek a divorce order alone or seek a divorce order together with an order for –

- (a) division of assets;
- (b) forfeiture of patrimonial benefits;
- (c) maintenance of a child of the marriage;
- (d) spousal maintenance;
- (e) periodical allowance; or
- (f) custody, guardianship of, or access to, a child of the marriage;

“interim child maintenance order” means an order issued in terms of section 16(4) for the maintenance of a child of the marriage pending the finalisation of divorce proceedings;

“interim spousal maintenance order” means an order issued in terms of section 10(3) for the maintenance of a party to the marriage pending the finalisation of divorce proceedings;

“interim periodical allowance order” means an order issued in terms of section 11(3) for the maintenance of a party to the marriage pending the finalisation of annulment of marriage proceedings;

“irretrievable breakdown of the marriage” means disintegration of the marriage relationship to the extent that there is no reasonable prospect of its restoration;

“marriage” means a marriage –

- (a) concluded and registered in Namibia in terms of the Marriage Act, 1961 (Act No. 25 of 1961); or
- (b) recognised in terms of the Recognition of Certain Marriages Act, 1991 (Act No. 18 of 1991);

“medical practitioner” means a person registered or regarded to be registered as a medical practitioner under the Medical and Dental Act, 2004 (Act No. 10 of 2004);

“Minister” means the Minister responsible for justice;

“party to the marriage” means either of the spouses who are married to each other;

“periodical allowance order” means an order issued in terms of section 11(2) for the maintenance of a party to a marriage which is annulled;

“rules of court”, in relation to divorce proceedings or annulment of marriage proceedings, means –

- (a) the rules made in terms of the High Court Act, 1990 (Act No. 16 of 1990); or
- (b) the rules made in terms of the Magistrates’ Court Act, 1944 (Act No. 32 of 1944);

“settlement agreement” means an agreement between the parties to a marriage, in which the parties agree to any or all of the following:

- (a) division of assets;
- (b) maintenance of a child of the marriage;
- (c) custody, guardianship of, or access to, a child of the marriage;
- (d) spousal maintenance;
- (e) periodical allowance;
- (f) any other matter the parties consider relevant to include;

social worker” means a social worker registered or regarded to be registered as a social worker in terms of the Social Work and Psychology Act, 2004 (Act No. 6 of 2004);

“spousal maintenance order” means an order issued in terms of section 10(2) for the maintenance of a party to the marriage.

(2) For the purpose of the definition of "child of the marriage" in subsection (1), the reference to child –

- (a) means a child who at the time of the relevant proceeding has not attained the age of 18 years; and
- (b) includes a child born from a marriage which is the subject of annulment of marriage proceedings.

Irretrievable breakdown of marriage to be sole ground for divorce

2. From the date of commencement of this Act –

- (a) the common law grounds for divorce as well as other grounds for divorce that applied in terms of a law before the commencement of this Act are abolished; and
- (b) the only ground for divorce is the irretrievable breakdown of marriage.

Instituting divorce proceedings by both parties to the marriage

3. (1) Both parties to the marriage may, by way of action or application proceedings as may be prescribed in the rules of court, jointly institute divorce proceedings on the ground of the irretrievable breakdown of the marriage.

(2) If both parties to the marriage jointly institute divorce proceedings on the ground of irretrievable breakdown of marriage the court may grant a divorce.

Instituting divorce proceedings by either party to the marriage

4. (1) Either of the parties to the marriage may, by way of action or application proceedings as may be prescribed in the rules of court, institute divorce proceedings on the ground of the irretrievable breakdown of the marriage.

(2) If either of the parties to the marriage institute divorce proceedings on the ground of irretrievable breakdown of marriage and the other party to the marriage does not deny the irretrievable breakdown of the marriage, the court may grant a divorce.

(3) If either of the parties to the marriage institute divorce proceedings on the ground irretrievable breakdown of marriage and the other party to the marriage denies the irretrievable breakdown of the marriage, the court may –

- (a) grant a divorce; or
- (b) if it appears to the court that there are reasonable prospects of reconciliation between the parties to the marriage, postpone the divorce proceedings for a period not exceeding three months, but in making such a decision the court must be guided by the circumstances of the case before it and factors such as domestic violence, the welfare of the parties and that of children to the marriage.

(4) If, at the expiry of the period referred to in subsection (3)(b), the party to the marriage who instituted the divorce proceeding wishes to continue with the divorce proceedings the court must grant the divorce.

Resolution of disputes

5. (1) Before applying for an order for the division of assets, custody, guardianship of, or access to, a child of the marriage and the maintenance of a child of the marriage in terms of this Act, the parties to the marriage have the duty to attempt to resolve matters relating to the division of assets, custody, guardianship of, or access to, a child of the marriage and the maintenance of a child of the marriage, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so.

(2) A legal practitioner who represents a party or parties to the marriage in divorce proceedings must –

- (a) inform the party or parties of the availability of mediation to resolve the matters relating to division of assets, custody, guardianship of, or access to, a child of the marriage and the maintenance of a child of the marriage; and
 - (b) encourage the party or parties to attempt to resolve the matters relating to division of assets, custody, guardianship of, or access to, a child of the marriage and the maintenance of a child of the marriage, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so.
- (3) In divorce proceedings the court may –
- (a) on application by either of the parties to the marriage or both parties to the marriage jointly, refer the party or parties to mediation offered by the court or to a private mediation if the party or parties wish to make use of private mediation at own cost; or
 - (b) at its own initiative, refer the party to the marriage or parties to the marriage to mediation offered by the court or to private mediation at own cost, if in the opinion of the court this will be in the best interest of the parties or a child of the marriage, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so.

Safeguards in respect of diminished mental capacity or continuous unconsciousness

6. (1) In divorce proceedings or annulment of marriage proceedings, the court must appoint a *curator ad litem* for the party to the marriage who –

- (a) is admitted to an institution used for the care of mentally ill persons in terms of a reception order referred to in Chapter 3 of the Mental Health Act, 1973 (Act No. 18 of 1973);
- (b) is being detained as a President's patient at an institution used for the care of mentally ill persons;
- (c) is being detained as a mentally ill convicted prisoner at an institution used for this purpose; or

- (d) lacks the mental capacity to conduct his or her own legal affairs, on the basis of the evidence of at least two medical practitioners who have conducted recent examinations on the party, with one of them where practicable, being a psychiatrist.
- (2) In divorce proceedings or annulment of marriage proceedings, the court must appoint a *curator ad litem* for a party to the marriage who –
- (a) is in a state of continued unconsciousness; and
 - (b) has, on the basis of the evidence of at least two medical practitioners, one of whom the court must appoint, no reasonable prospect of regaining consciousness in the near future.
- (3) The court may in divorce proceedings or proceedings for annulment of marriage order a party to the marriage to pay the costs associated with the appointment of a *curator ad litem* in terms of subsection (1) or (2).
- (4) If this section applies, the court may make any order it considers appropriate with regard to the furnishing of security by the party to the marriage in respect of any patrimonial benefits to which the party to the marriage may be entitled by reason of the divorce or annulment of marriage.

Settlement agreements

7. (1) In divorce proceedings, the court may make a settlement agreement between the parties to the marriage an order of court.
- (2) In considering whether to make a settlement agreement an order of the court, the court must have regard to all of the following:
- (a) whether the agreement was freely entered into by the parties to the marriage;
 - (b) whether the terms of agreement are capable both from a legal and practical point of being included in a court order;
 - (c) whether the agreement is contrary to public policy;
 - (d) any change of circumstances since the agreement was entered into; and
 - (e) any other factor which the court, in each case, might determine to be relevant.
- (3) The legal practitioner representing a party or parties to the marriage in divorce proceedings has the duty to inform the party or parties of his or her or their rights and obligations in terms of a settlement agreement and the consequences and remedies available to the parties where a settlement agreement which is made an order of court is not complied with.

Division of assets

8. (1) In divorce proceedings, either party to the marriage or both parties to the marriage jointly may apply to the court for an order relating to the division of assets.

(2) For the purpose of making an order in terms of this section, the court may order either of the parties to the marriage to provide details of his or her assets and liabilities, including any order made in respect of an asset in terms of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004) or any other law.

(3) The orders the court may make in terms of subsection (1) include but are not limited to the following –

- (a) an order for the sale of assets;
- (b) an order for the transfer of assets to either of the parties;
- (c) an order for the payment of a capital sum of money;
- (d) an order concerning the occupation of the matrimonial home; or
- (e) an order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order.

(4) In making an order for the division of assets the court must have regard to the marital property regime of the parties to the marriage or the provisions of any ante-nuptial contract, and the court must take into account the following factors –

- (a) any settlement agreement or other agreement of either of the parties to the marriage or both parties to the marriage;
- (b) the duration of the marriage;
- (c) any financial contribution made, directly or indirectly, by or on behalf of a party to the marriage, to the acquisition, conservation or improvement of any of the assets of the parties to the marriage or either of the parties to the marriage;
- (d) any contribution other than a financial contribution made, directly or indirectly, by or on behalf of a party to the marriage, to the acquisition, conservation or improvement of any of the assets of either of the parties to the marriage or both parties to the marriage;
- (e) any contribution made directly or indirectly by each party to the marriage to the wellbeing of the family, the children of the marriage and the extended family including contributions made by attending to domestic duties such as looking after the family home and caring for children of the marriage or extended family members;
- (f) the economic circumstances of each party to the marriage at the time of the instituting of the divorce proceedings, including the age, income, earning capacity, assets and other financial resources of each party, and the respective financial obligations and responsibilities of each party to the marriage;
- (g) which party to the marriage is to have custody of any child of the marriage;
- (h) any maintenance that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a party to the marriage or a child of the marriage;

- (i) the value to a party to the marriage or a child of the marriage of any medical aid benefit, pension interest, or a benefit in terms of a pension or life insurance policy which a party to the marriage or a child of the marriage loses or may lose as a result of the divorce;
- (j) any adjustment to be made, where section 8 of the Married Persons Equality Act, 1996 (Act No. 1 of 1996) applies; or
- (k) any other factor which the court, in each case, might determine to be relevant.

(5) In applying the factors referred to in subsection (4), the court may not take into account the conduct of either party to the marriage unless the conduct has adversely affected the financial resources of the parties.

(6) Any order for the division of assets must, where it is relevant and practicable, include, at a minimum, provisions for the disposition of the following assets and liabilities –

- (a) immovable property;
- (b) shares, stocks, debentures, debenture bonds, insurance policies, mortgage bonds, fixed deposits or similar assets or any investment held in a financial institution;
- (c) furniture or other effects of the common household;
- (d) credit agreements as defined in the Credit Agreements Act, 1980 (Act No. 75 of 1980), where either party to the marriage is a credit receiver;
- (e) contracts as defined in the Sale of Land on Instalments Act, 1971 (Act No. 72 of 1971) and to which the provisions of that Act apply, where either party to the marriage is a purchaser in terms of such a contract;
- (a) any other outstanding indebtedness which affects the assets; and
- (b) any costs and professional fees incurred in the division of assets and liabilities under this section.

(7) A person who contravenes or fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding N\$ 100 000 or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(8) Unless the context otherwise indicates, this section applies, with the changes required by the context, to annulment of marriage proceedings.

Forfeiture of benefits

9. (1) In divorce proceedings, either party to the marriage may apply to the court for an order of forfeiture of patrimonial benefits.

(2) The court may make an order of forfeiture of patrimonial benefits, only if it makes a decision to grant a divorce.

(3) The court may make an order that the patrimonial benefits of the marriage be forfeited by one party to the marriage in favour of the other party to the marriage and may make a general or specific forfeiture order.

(4) The court may only grant an order for forfeiture in terms of this section if the court is satisfied that the party against who the order is sought will, based on the factors stated in subsection (5), derive an undue benefit if the order is not granted.

(5) The court must make an order for forfeiture that is just and equitable, taking into account the following factors –

- (a) the misconduct of the parties which led to the breakdown of the marriage, and in this regard the court must assess the extent, nature and gravity of the conduct which gave rise to the breakdown of the marriage;
- (b) the circumstances of the irretrievable breakdown; and
- (c) the duration of the marriage,

and the court must consider these factors cumulatively.

(6) In making an order for forfeiture of patrimonial benefits the court must have regard to any division of assets made in terms of section 8 for purposes of adjusting that order to give effect to the order for forfeiture of patrimonial benefits.

Spousal maintenance

10. (1) In divorce proceedings, either of the parties to the marriage may apply to the court for a spousal maintenance order or an interim spousal maintenance order.

(2) The court may make a spousal maintenance order requiring either of the parties to the marriage to secure or pay such periodic sums to the other party as the court considers appropriate as spousal maintenance.

(3) The court may make an interim spousal maintenance order requiring either of the parties to the marriage to secure or pay such periodic sums as the court considers appropriate as interim spousal maintenance, pending the determination of the divorce proceedings.

(4) The court may substitute the payment of periodical sums for a lump sum, depending on the circumstances of the case before the court.

(5) A spousal maintenance order or an interim spousal maintenance order may be for a definite or indefinite period or until the happening of an event and the court may impose such other conditions as it considers appropriate and just.

(6) The objectives of a spousal maintenance order are to –

- (a) recognise any economic advantages or disadvantages to the parties either to the marriage arising from the marriage or its breakdown;
- (b) alleviate economic hardship of the parties to the marriage as a result of the breakdown of marriage; and

- (c) promote, insofar as is practicable and based on the circumstances of the case, economic in-sufficiency of either party to the marriage within a reasonable period of time.

(7) When determining an application for spousal maintenance or interim spousal maintenance and the amount of maintenance payable and period of maintenance the court must take into account the following factors –

- (a) whether the party who is claiming maintenance is in need of it, and the ability of the party against whom it is claimed to pay the spousal maintenance;
- (b) the terms of a court order made or an order to be made under section 9;
- (c) a court order or any agreement relating to maintenance of either party to the marriage;
- (d) age of the parties;
- (e) the duration of the marriage;
- (f) the economic circumstances of each party to the marriage at the time of the institution of the divorce proceedings, including duration and extent of dependency of a party on the other party prior to the institution of divorce;
- (g) their respective income, earning capacity, assets and other financial resources, and their respective financial obligations and responsibilities;
- (h) any impairment of the present or future earning capacity of the party seeking maintenance due to that party having in the past devoted time to domestic duties or having foregone or delayed education, training, employment or career opportunities due to the marriage;
- (i) non-financial contributions made by a party such as contributions to the education, training, employment, career or career potential of the other party;
- (j) which party to the marriage is to have custody of any children of the marriage, taking into account any financial consequences arising from the daily responsibility for the care of a child of the marriage including caring for a party to a marriage where that party to the marriage is a person with disability or for caring for a child of the marriage who is a person with disability; and
- (k) any other factor which the court, in each case before it, might determine to be relevant.

(8) In applying the factors referred to in subsection (7), the court may not take into account the conduct of either party to the marriage.

Periodical allowance in annulment of marriage proceedings

11. (1) In annulment of marriage proceedings either party to the proceedings may apply to the court for a periodical allowance order or an interim periodical allowance order.

(2) The court may make a periodical allowance order requiring either party to the annulment of marriage proceedings to secure or pay such periodic sums, as the court considers appropriate for the maintenance of the other party.

(3) The court may make an interim periodical allowance order requiring either of the parties to the annulment of marriage proceedings to secure or pay such periodic sums as the court considers appropriate for the maintenance of the other party pending the determination of the proceedings for annulment of marriage.

(4) The court may substitute the payment of periodical sums for a lump sum, depending on the circumstances of the case before the court.

(5) Unless the context otherwise indicates, the provisions of section 10(4), (5), (6), (7) and (8) apply with changes required by the context, to proceedings for a periodical allowance order or an interim periodical allowance order made in terms of this section.

Where there is a child of the marriage

12. (1) In divorce proceedings where there is a child of the marriage, the court may not grant a divorce unless the court is satisfied that arrangements have been made for the custody, guardianship of, or access to, a child of the marriage or the maintenance of a child of the marriage and the arrangements are in the best interest of that child.

(2) Despite subsection (1), section 13(1), 14(1) and 15(1), the court may grant a divorce if –

- (a) in the court's opinion the arrangements referred to subsection (1) are satisfactory or the best that could be made in the circumstances; or
- (b) there are circumstances that justify the granting of a divorce in the absence of arrangements referred to in subsection (1).

Custody and guardianship of, or access to, children

13. (1) In divorce proceedings or annulment of marriage proceedings the court may, on application by either party to the marriage or both parties to the marriage jointly, make an order with respect to the custody, guardianship of, or access to, any or all the children of the marriage, and in making a decision the court must take into account the best interest of the child.

(2) In divorce proceedings or annulment of marriage proceedings, the court may, on application made by either party to the marriage or both parties to the marriage jointly, make an interim order in respect of the custody or guardianship of, or access to, a child of the marriage pending the determination of the application under subsection (1).

(3) When deciding what is in the best interest of a child of the marriage, for purposes of custody, access and guardianship the court must have regard to the factors set out in section 3 and section 96(1) of the Child Care and Protection Act, 2015, which apply with changes required in the context to this section.

(4) If the court has not made an order in terms of this Act granting sole guardianship of a child of the marriage to either party to the marriage, both parties continue to exercise equal powers of guardianship after the divorce or the granting of an order for the annulment of marriage.

Joint custody

14. (1) In divorce proceedings or annulment of marriage proceedings the court may, on application made jointly by both parties to the marriage, make an order for the joint custody of a child of the marriage, and in making a decision the court must have regard to the best interest of the child.

(2) If the court makes an order for joint custody in terms of subsection (1), that order must specify that both parties have equal powers of guardianship.

(3) In making an order in terms of this section the court must take into account the following factors –

- (a) whether the parties seeking joint custody are fit to take care of the child;
- (b) whether the parties seeking joint custody desire continuous contact with the child;
- (c) whether the parties seeking joint custody are perceived by the child as sources of emotional support;
- (d) whether the parties seeking joint custody are able to communicate and cooperate in promoting the best interest of the child; and
- (e) whether the parties seeking joint custody live in sufficiently close physical proximity to make joint custody feasible.

(4) The court may on application grant joint custody to divorced parties or parties in respect of whose marriage the court previously made an order of annulment of marriage only if the parties can demonstrate to the court that circumstances have changed since the divorce order or the order of annulment of marriage.

Other access

15. (1) In divorce proceedings or proceedings for annulment of marriage the court may, on application made by either party to the marriage, make an order in respect of access to a child of the marriage by a person other than the parent of the child and in making a decision the court must have regard to the best interests of the child.

(2) Before deciding on an application referred to in subsection (1), the court must order a report by a social worker.

(3) In making a decision in terms of subsection (1), the court must be guided by the best interest of the child standard.

(4) An order in terms of subsection (1) may be for a definite or an indefinite period or until the happening of a specified event and the court may impose such other conditions as it considers appropriate and just.

Child maintenance

16. (1) For the purpose of proceedings relating to child maintenance in terms of this Act, the reference to a child, includes a child to whom the parties to the marriage owe the legal duty to maintain, despite the age of that child.

(2) In divorce proceedings or annulment of marriage proceedings either party to the marriage may apply for an order of maintenance in respect of a child of the marriage.

(3) The court may, on application made by either party to the marriage or both parties to the marriage jointly, make an order requiring one party to secure or pay to the other party such periodic sums as the court considers appropriate for the maintenance in respect of any or all of the children of the marriage.

(4) On application by either party to the marriage or both parties to the marriage, the court may make an interim child maintenance order requiring one party to secure or pay such periodic sums, as the court considers appropriate for the maintenance of any or all of the children of the marriage, pending the determination of the application in terms of subsection (1).

(5) A child maintenance order or an interim child maintenance order may be for a definite or an indefinite period or until the happening of a specified event and the court may impose such other terms, conditions or restrictions as it considers appropriate and just.

(6) The court may substitute the payment of periodical sums for a lump sum, depending on the circumstances of the case before the court.

(7) In making a child maintenance order or an interim child maintenance order in terms of this section the court must take into account –

- (a) the principles referred to in section 4 and 16 of the Maintenance Act, 2003 (Act No. 9 of 2003), which apply with changes required in the context, to this section;
- (b) an order of court or agreement relating to maintenance of a child of the marriage;
- (c) any other factor the courts considers to be relevant.

Reports as to children

17. (1) In proceedings under this Act relating to a child, the court may –

- (a) request a social worker to submit to the court a written report on the arrangements that are proposed by the parties to the proceedings, or either of them, for custody, guardianship of, access to, or maintenance, and on any other matter that is relevant to the child in the proceedings; or
- (b) may require the parties to the marriage or either party to the marriage to obtain a social worker's report on the arrangements that are proposed by the parties or either of them, for custody, guardianship of, access to,

or maintenance, and on any other matter that is relevant to the child in the proceedings.

(2) Any party to the marriage may give evidence on any matter referred to in the report submitted in terms of subsection (1).

(3) At the request of the court, the social worker who submitted the report in terms of subsection (1) must appear as a witness in respect of any matter referred to in or arising out of the report referred to in this section.

Variation or rescission of court orders

18. The court may vary or rescind a child maintenance order, an interim child maintenance order, an interim periodical allowance, an interim spousal maintenance order, an interim periodical allowance a periodical allowance order, a spousal maintenance order, or an order for custody, guardianship of, or access to a child of the marriage.

Privacy of certain proceedings

19. At the initiative of the court or on application made by either party to the marriage or by both parties to the marriage jointly, or by any person who can show interest, the court may make an order –

- (a) directing that divorce proceedings or proceedings for annulment of marriage or certain parts of such proceedings be held behind closed doors; and
- (b) that no person other than the party or parties to the marriage and the legal practitioners acting on behalf of the party or parties to the marriage, the required court officials and persons whose presence is necessary, be present at the divorce proceedings or annulment of marriage proceedings,

if the court is satisfied that it is in the interest of justice or there is a likelihood that harm may result to a child of the marriage or any other child connected to the proceedings as a result of hearing any evidence.

Restriction on publication of certain court proceedings

20. (1) For the purpose of this section “publish” means disseminate or provide access to the public or a section of the public information by any means, including by –

- (a) publication in a book, newspaper, magazine or other written publication;
- (b) broadcast by radio or television;
- (c) public exhibition;
- (d) broadcast or publication by means of the internet; or
- (e) other electronic communication.

(2) A person may not publish for information of the public, or a section of the public, an account of proceedings in terms of this Act, which reveals or may reveal the name or identity of a child who is or was a party or a witness in the proceedings.

(3) A person may not publish for information of public, or a section of the public, an account of proceedings in terms of this Act that reveals or may reveal the identity of a party to the proceeding, but the following information may be published:

- (a) the initials of the parties to the proceedings, except the initials of a child; and
- (b) that proceedings between the parties whose initials are indicated are pending in a court of law.

(4) Subsection (2) or (3) does not apply to the publication of particulars or information in respect of divorce proceedings or annulment of marriage proceedings –

- (a) for the purposes of the administration of justice; or
- (b) in a *bona fide* law report which does not form part of any publication, other than a series of reports of the proceedings in courts of law or a collection of the judgments of courts of law.

(5) A person who contravenes subsection (2), (3) or (4) commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

(6) Subsections (1), (2), (3), (4) and (5) apply to proceedings for enforcement and proceedings for variation and rescission of orders in terms of this Act.

Donations and gifts

21. Subject to the provisions of the Insolvency Act, 1936 (Act No. 24 of 1936) –

- (a) a transaction effected before or after the commencement of this Act is not void or voidable because it amounts to a donation between the parties to the marriage; and
- (b) a gift given in anticipation of a marriage becomes part of the assets of the person who received it.

Transitional provisions

22. (1) A court may not make an order for the restitution of conjugal rights or judicial separation, in respect of divorce proceedings instituted after the commencement of this Act.

- (2) This Act does not apply with reference to pending –
 - (a) divorce proceedings;
 - (b) annulment of marriage proceedings;

- (c) proceedings for the restitution of conjugal rights;
- (d) proceedings for forfeiture of patrimonial benefits;
- (e) proceedings for judicial separation;
- (f) proceedings for variation or rescission of orders; or
- (g) reviews or appeals in respect of proceedings referred to in paragraph (a), (b), (c), (d) or (e),

and such proceedings must be dealt with in accordance with the law which applied before the commencement of this Act.

(3) For purposes of subsection (2), pending refers to proceedings instituted before the commencement of this Act and not finalised at the date of commencement of this Act.

Repeal and amendment of laws

23. (1) The laws specified column 1 and 2 of Schedule 1 are repealed to the extent specified in the third column of that Schedule.

(2) The laws specified in Schedule 2 are amended to the extent specified in that Schedule.

Short title and commencement

24. (1) This Act is called the Divorce Act, 2024 and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

SCHEDULE 1 LAWS REPEALED

No. and year of law	Short title	Extend of repeal
Ordinance No. 18 of 1935	Divorce Laws Amendment Ordinance, 1935	The repeal of the whole.
Ordinance No. 25 of 1955	Matrimonial Affairs Ordinance, 1955	The repeal of the whole.
Ordinance No. 9 of 1967	Matrimonial Affairs Amendment Ordinance, 1967	The repeal of the whole.
Act No. 22 of 1939	Matrimonial Causes Jurisdiction Act, 1939	The repeal of the whole.
Act No. 17 of 1943	Matrimonial Causes Jurisdiction Amendment Act, 1943	The repeal of the whole.

Act No. 35 of 1945	Matrimonial Causes Jurisdiction Amendment Act, 1945	The repeal of the whole.
Act No. 37 of 1953	Matrimonial Affairs Act, 1953	The repeal of the whole.
Act No. 70 of 1968	General Law Amendment Act, 1968	The repeal of the whole.

SCHEDULE 2 LAWS AMENDED

The laws specified are amended to the extend set out in this Schedule:

1. High Court Act No. 16 of 1990

Amendment of section 1 of Act No. 16 of 1990

1. Section 1 of the High Court Act, 1990 (Act No. 16 of 1990) (hereafter referred to as the principal Act) is amended –

- (a) by the substitution of the introductory sentence to section (1) for the following introductory sentence:

“(1) In this Act, except where the context otherwise indicates –”;

- (b) by the insertion before the definition of “Chief Justice” of the following definition:

“ “annulment of marriage proceedings” means annulment of marriage proceedings as defined in section 1 of the Divorce Act; “;

- (c) by the insertion after the definition of “deputy sheriff” of the following definitions:

“ “Divorce Act” means the Divorce Act, 2024 (Act No. of 2024);

“divorce proceedings” means divorce proceedings as defined in section 1 of the Divorce Act;”; and

- (d) by the insertion of the following subsection after subsection (1):

“(2) The phrases “child maintenance, “interim child maintenance, “interim periodical allowance”, “interim spousal maintenance”, “marriage”, “ parties to the marriage, periodical allowance” and “spousal maintenance” unless the context otherwise indicates, have the meaning assigned to the phrases in section 1 of the Divorce Act.”.

Substitution of section 16 of Act No. 16 of 1990 as amended by section 2 of Act No. 10 of 2001

2. The principal Act is amended by the substitution for section 16 of the following section:

“Persons over whom and matters in relation to which the High Court has jurisdiction

16. (1) The High Court shall have jurisdiction over all persons residing or being in and in relation to all causes arising and all offences triable within Namibia and all other matters of which it may according to law take cognisance, and shall, in addition to any powers of jurisdiction which may be vested in it by law, have power –

- (a) to hear and determine appeals from all lower courts in Namibia;
- (b) to review the proceedings of all such courts; and
- (c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

(2) In divorce proceedings and annulment of marriage proceedings the High Court shall have jurisdiction if either of the parties to the marriage is or if both parties to the marriage are –

- (a) domiciled in the area of jurisdiction of the court on the date on which proceedings are instituted; or
- (b) ordinarily resident in the area of jurisdiction of the court on the date on the date on which proceedings are instituted and has or have been ordinarily resident in Namibia for a period of not less than one year immediately prior to that date.”.

Amendment of section 18 of Act No. 16 of 1990 as amended by section 3 of Act No. 10 of 2001

3. The principal Act is amended by the substitution for subsection (7) of section 18 of the following subsection:

“(7) Notwithstanding anything to the contrary in any law contained, no appeal shall lie from a judgment or order of the High Court in proceedings in connection with an application –

- (a) by one spouse against the other for **[maintenance pendente lite]** interim child maintenance, interim periodical allowance or interim spousal maintenance;
- (b) for contribution towards the costs of pending **[matrimonial action]** divorce proceedings or annulment of marriage proceedings;
- (c) for the interim custody of a child when **[matrimonial action]** divorce proceedings or annulment of marriage proceedings between the parents **[is]** are pending or **[is]** are about to be instituted;
- (d) by one parent against the other for interim access to a child when **[matrimonial action]** divorce proceedings or annulment of marriage proceedings between the parents **[is]** are pending or **[is]** are about to be instituted.”.

Amendment of section 39 of Act No. 16 of 1990 as amended by section 1 Act No. 12 of 2013

4. Section 39 of the principal Act is amended in subsection (1) –
 - (a) by the substitution for the introductory sentence of the following introductory sentence:
 - (1) The Judge-President [, **with the approval of the President,**] may make rules –;”;
 - (b) by the substitution for paragraph (xvi) of the following paragraph:
 - (xvi) the tariff of fees chargeable by legal practitioners, and for purposes of fees chargeable in respect of divorce proceedings and annulment of marriage proceedings the rules may set a limit on fees chargeable by legal practitioners in respect of such proceedings as well as on costs that may be awarded to a successful party in divorce proceedings and annulment of marriage proceedings;”;
 - (c) by insertion of the following subparagraphs after subparagraph (xv) of paragraph (a):
 - “(xvA) determine when divorce proceedings or annulment of marriage proceedings may be brought by way of action or application proceedings;
 - (xvB) keeping of records of orders made in terms of the Divorce Act and access to such records;
 - (xvC) the transfer of divorce proceedings between the court referred to in section 2(gA) of the Magistrates’ Court Act, 1944 (Act No. 32 of 1944) and the High Court;
 - (xvD) the transfer of certain matters relating to divorce proceedings from the court referred to in section 2(gA) of the Magistrates’ Court Act, 1944 (Act No. 32 of 1944) to the High Court;
 - (xvE) the form and manner for application for mediation during divorce proceedings and other matters related to mediation;
 - (xvF) the circumstances in which divorce orders can be granted in the absence of the parties to the marriage;
 - (xvG) appeals against orders of court established under section 2(gA) of the Magistrates’ Court Act, 1944 (Act No. 32 of 1944), to deal with divorce proceedings;”.

2. Magistrates’ Courts Act, 1944 (Act No. 32 of 1944)

Amendment of section 1 of Act No. 32 of 1944 as substituted by section 1 of Act No. 53 of 1970, as amended by section 1 of Act No. 29 of 1985, section 1 of Act No. 9 of 1990 and section 1 of Act No. 3 of 2003

1. Section 1 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), (hereafter referred to as the “principal Act) is amended –
 - (a) by the substitution of the introductory sentence to section (1) for the following introductory sentence:

“(1) In this Act, except where the context otherwise indicates –”;

- (b) by the insertion after the definition of “court” of the following definition:

“ “Commission” means the Magistrates’ Commission as defined in section 1 of the Magistrates Act, 2003 (Act No. 3 of 2003);”;

- (c) by the substitution for the definition of court of the following definition:

“ “court” –

(a) in relation to a civil matter referred to in section 29A, a court established under section 2(gA);

(b) in relation to any other civil matter, means a magistrate’s court; and

(c) in respect of any other matter a court of a regional division and a magistrate’s court;”.

- (d) by the insertion before the definition of “court of appeal” of the following definition:

“ “Divorce Act ” means the Divorce Act, 2024 (Act No. of 2024);

“divorce proceedings” means divorce proceedings as defined in section 1 of the Divorce Act;”;

- (e) by the insertion of the following definitions after the definition of “practitioner”:

“ “regional magistrate” means a regional magistrate as defined in section 1 of the Magistrates Act, 2003 (Act No. 3 of 2003);

“ “regional court magistrate” means a regional court magistrate as defined in section 1 of the Magistrates Act, 2003 (Act No. 3 of 2003);”;
and

- (f) by the insertion of the following subsection after subsection (1):

“(2) The phrases “child maintenance, “interim child maintenance, “interim periodical allowance”, “interim spousal maintenance”, “marriage”, “parties to the marriage”, periodical allowance” and “spousal maintenance” unless the context otherwise indicates, have the meaning assigned to the phrases in section 1 of the Divorce Act.”.

Amendment of section 2 of Act No. 32 of 1944 as substituted by section 2 of Act No. 53 of 1970 as amended by section 7 of Act No. 102 of 1972 and section 1 of Act No. 11 of 1985

2. Section 2 of the principal Act is amended by the insertion of the following paragraph after paragraph (g):

“(gA) establish a court to adjudicate suits or proceedings contemplated in section 29A.”;

Insertion of section 8A in Act No. 32 of 1944

3. The following section is inserted after section 8 of the principal Act:

“8A. (1) Only a regional magistrate who is specifically authorised in writing by the Commission may adjudicate civil suits or proceedings contemplated in section 29A.

(2) The Commission may withdraw the authorisation referred to in subsection (1), by written notice to the regional magistrate authorised as contemplated in subsection that subsection.”.

Amendment of section 25 of Act No. 32 of 1944 as amended by section 19 of Act No. 50 of 1956, section 2 of Act No. 93 of 1963, section 2 of Act No. 101 of 1969, section 8 of Act No. 53 of 1970, section 5 of Act No. 11 of 1985 and section 1 of Act No. 6 of 2009

4. Section 25 of the principal Act is amended –

- (a) in subsection (3), by the substitution for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) fees and costs and the Rules Board with the concurrence of the Judge President, may set a limit on fees chargeable by legal practitioners in respect of divorce proceedings as well as on costs that may be awarded to a successful party in divorce proceedings;”;

- (b) in subsection (3), by the insertion of the following subparagraphs after subparagraph (v) of paragraph (a):

(vA) when divorce proceedings may be brought by way of action or application;

(vB) form and manner of applications to be made in terms of the Divorce Act;

(vC) particulars to be included in a summons or application relating to divorce proceedings;

(vD) form and manner of application for mediation during divorce proceedings, and other matters relating to mediation;

(vE) keeping of records of orders made in terms of the Divorce Act, and access to such records;

(vF) circumstances in which divorce orders can be granted in the absence of the parties to the marriage;

(vG) transfer of certain matters relating to divorce proceedings to the High Court;”; and

- (c) by the substitution for subsection (5) of the following subsection:

“(5) No new rule or any alteration or rescission of a rule shall take effect unless it has been [confirmed by the Cabinet and] published in the Official Gazette at least one month before the day upon which it is expressed to take effect.”.

Amendment of section 28 of Act No. 32 of 1944 as amended by section 12 of Act No. 40 of 1952

5. Section 28 of the principal Act is amended by the insertion after subsection (1) of the following subsection:

“(1A). In divorce proceedings, a court established in terms of section 2(gA) has jurisdiction if either of the parties to the marriage is or both parties to the marriage are –

- (a) domiciled in the area of jurisdiction of the court on the date on which proceedings are instituted; or
- (b) ordinarily resident in the area of jurisdiction of the court on the date on the date on which proceedings are instituted and has or have been ordinarily resident in Namibia for a period of not less than one year immediately prior to that date.”.

Amendment of section 29 of Act No. 32 of 1944 as substituted by section 1 of Act No. 9 of 1997

6. Section 29 of the principal Act is amended by the insertion of the following section after section 29 –

Jurisdiction of court to adjudicate certain civil suits or proceeding

“29A. (1) Subject to section 8A, a court established in terms of subsection (gA) of section 2 has jurisdiction –

- (a) to hear and determine divorce proceedings;
- (b) to grant a divorce order;
- (c) to hear and determine a question relating to the domicile of a party or parties to the marriage where such parties have instituted divorce proceedings;
- (d) to grant an order for the division of assets as contemplated in the Divorce Act, irrespective of the value of assets;
- (e) to grant an order for the forfeiture of patrimonial benefits as contemplated in the Divorce Act;
- (f) to grant an order relating to the custody and guardianship of, or access to, any or all children of the marriage as contemplated in the Divorce Act;
- (g) to grant an order for the transfer of assets or the payment of money, regardless of the value of the assets or money in question, if such order relates to a divorce proceeding;
- (h) to appoint a *curator ad litem* as contemplated in section 8 of the Divorce Act and make orders for costs as contemplated in that section;

- (i) to grant an order for child maintenance or interim child maintenance as contemplated in the Divorce Act;
- (j) to grant an order for spousal maintenance or interim spousal maintenance as contemplated in the Divorce Act;
- (k) to hear and determine proceedings for orders for variation or rescission of orders made in terms of the Divorce Act and make orders of variation or rescission of its judgement or orders;
- (l) to hear and determine proceedings for contempt of court in respect of failure to comply with an order or judgment it made in terms of the Divorce Act, and make orders for contempt of court;
- (m) to order parties to the marriage or a party to the marriage to attend mediation in divorce proceedings;
- (n) to order social worker reports as contemplated in the Divorce Act; and
- (o) to grant any other order that the High Court is entitled to make, whether under the common law, a statute or other law or the rules of the High Court, if such order relates to or is incidental or is in relation to an procedural matter with regard to an order referred to in this subsection.

(2) Notwithstanding subsection (1), a court established in terms of section 2(gA) does not have jurisdiction to determine proceedings relating to annulment of marriage, validity of a marriage, recognition of foreign divorces or recognition of foreign annulment of marriages.

(3) Notwithstanding the power of the court established in terms of section 2(gA) to vary or rescind the judgement or orders it has made in terms of the Divorce Act, where the variation or rescission relates to –

- (a) the custody and guardianship of, or access to, any or all children of the marriage or children of divorced parents, the children's court defined in section 1 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) is the only competent court to vary and rescind such orders; or
- (b) maintenance of a child, the court referred to in section 1 of the Maintenance Act, 2003 (Act No. 9 of 2003) is the only competent court to vary and rescind such judgement or orders.”.

Repeal of subsection 1 of section 46 of Act No. 32 of 1944

7. Subsection (1) of section 46 of the principal Act is repealed.

3. Child Care and Protection Act 2015 (Act No. 3 of 2015)

1. Section 97 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) is amended by substituting section 97 with the following section:

“Procedures for certain orders apply to children of divorced or estranged parents

97. The procedures for orders pertaining to custody in section 100, orders pertaining to guardianship in section 101(3) to ~~[(7)]~~ (10), orders restricting or denying access to a parent not having custody of a child in section 102(5) to ~~[(8)]~~ (9), orders for other access in section 103 and orders dealing with the unreasonable denial or restriction of access in section 102(12) and (13) apply with necessary changes to children of divorced or estranged parents.”.
