

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to on 06 May 2024)

ACT

To amend the Divorce Act, 1979, so as to insert a definition for a Muslim marriage; to provide for the protection and to safeguard the interests of dependent and minor children of a Muslim marriage; to provide for the redistribution of assets on the dissolution of a Muslim marriage; to provide for the forfeiture of patrimonial benefits of a Muslim marriage; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 70 of 1979, as amended by section 1 of Act 7 of 1989, section 74 of Act 120 of 1993, section 4 of Act 65 of 1997 and section 10 of Act 31 of 2008

1. Section 1 of the Divorce Act, 1979 (Act No. 70 of 1979) (hereinafter referred to as the “principal Act”) is hereby amended by the insertion after the definition of “Family Advocate” of the following definition: 5

“**‘Muslim marriage’** means a marriage entered into or concluded in accordance with the tenets of Islam;”.

Amendment of section 3 of Act 70 of 1979

2. Section 3 of the principal Act is hereby amended by the substitution in section 3 for the words preceding paragraph (a) of the following words: 10

“A marriage, including a Muslim marriage, may be dissolved by a court by a decree of divorce and the only grounds on which such a decree may be granted are—”.

Amendment of section 6 of Act 70 of 1979, as amended by section 6 of Act 24 of 1987 15

3. Section 6 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) is satisfied that the provisions made or contemplated with regard to the welfare of any minor or dependent child of the marriage, including any minor or dependent child of a Muslim marriage, are satisfactory or are the best that can be effected in the circumstances; and”; and 20

(b) by the substitution for subsection (3) of the following subsection:

“(3) A court granting a decree of divorce may, in regard to the maintenance of a dependent child of the marriage, including a dependent child of a Muslim marriage, or the custody or guardianship of, or access to, a minor child of the marriage, including a minor child of a Muslim marriage, make any order which it may deem fit, and may in particular, if in its opinion it would be in the interests of such minor child to do so, grant to either parent the sole guardianship (which shall include the power to consent to the marriage of the child) or the sole custody of the minor, and the court may order that, on the predecease of the parent to whom the sole guardianship of the minor is granted, a person other than the surviving parent shall be the guardian of the minor, either jointly with or to the exclusion of the surviving parent.”

Amendment of section 7 of Act 70 of 1979, as amended by section 36 of Act 88 of 1984, section 2 of Act 3 of 1988, section 2 of Act 7 of 1989, section 1 of Act 44 of 1992, section 11 of Act 55 of 2003 and section 1 of Act 12 of 2020

4. Section 7 of the principal Act is hereby amended—

(a) by the insertion after subsection (3) of the following subsection:

“(3A) A court granting a decree of divorce in respect of a Muslim marriage, may, subject to the provisions of subsections (4), (5) and (6), on application by one of the parties to that marriage, in the absence of any agreement between them regarding the division of their assets, order that such assets, or such part of the assets, of the other party as the court may deem just, be transferred to the first-mentioned party.”

(b) by the substitution for subsection (4) of the following subsection:

“(4) An order under subsection (3) or (3A) shall not be granted unless the court is satisfied that it is equitable and just by reason of the fact that the party in whose favour the order is granted, contributed directly or indirectly to the maintenance or increase of the estate of the other party during the subsistence of the marriage, either by the rendering of services, or the saving of expenses which would otherwise have been incurred, or in any other manner.”

(c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“In the determination of the assets or part of the assets to be transferred as contemplated in subsection (3) or (3A), the court shall, apart from any direct or indirect contribution made by the party concerned to the maintenance or increase of the estate of the other party as contemplated in subsection (4), also take into account—”

(d) by the insertion in subsection (5) after paragraph (a) of the following paragraph:

“(aA) any contract or agreement between the parties in a Muslim marriage, where the husband is a spouse in more than one Muslim marriage;” and

(e) by the substitution for subsection (6) of the following subsection:

“(6) A court granting an order under subsection (3) or (3A) may, on application by the party against whom the order is granted, order that satisfaction of the order be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments, and the delivery or transfer of specified assets, as the court may deem just.”

Amendment of section 9 of Act 70 of 1979

5. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) When a decree of divorce is granted on the ground of the irretrievable break-down of a marriage, including a Muslim marriage, the court may make an order that the patrimonial benefits of the marriage be forfeited by one party in favour of the other, either wholly or in part, if the court, having regard to the duration of the marriage, the circumstances which gave rise to the break-down thereof and any substantial misconduct on the part of either of the parties, is satisfied that, if the order for forfeiture is not made, the one party will in relation to the other be unduly benefited.” 5

Application

6. This Act applies to all subsisting Muslim marriages, including a Muslim marriage— 10

- (a) which was terminated or dissolved in accordance with the tenets of Islam and where legal proceedings for the dissolution of the said Muslim marriage in terms of the Divorce Act, 1979 (Act No. 70 of 1979) have been instituted but not yet finalised; and 15
- (b) which subsisted as at 15 December 2014.

Short title

7. This Act is called the Divorce Amendment Act, 2024.