

SAMOA

Arrangement of Provisions

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Short title and commencement 2. Principal Act 3. Repeal and substitution <ol style="list-style-type: none"> 2. Interpretation 4. Jurisdiction 5. Judicial Separation 6. Repeal and substitution <ol style="list-style-type: none"> 7. Grounds for divorce <ol style="list-style-type: none"> 7A. Meaning of separation 7B. Effect of resumption of cohabitation 7C. When decree of divorce takes effect 7D. Decree of divorce where children 7E. Possibility of reconciliation 7F. Rescission of divorce order where parties reconciled 7G. Decree of divorce where there is consent or no opposition 7. Repeal 8. Discretion of court where collusion proved | <ol style="list-style-type: none"> 9. Repeal 10. Alimony and maintenance 11. Insertion of new sections <ol style="list-style-type: none"> 22A. Orders relating to alimony and maintenance 22B. Declaration of interest in property 22C. Alteration of interest in property 22D. Setting aside of orders altering property interests 12. Insertion of new Part <ol style="list-style-type: none"> Part IIIA – Restraining Orders <ol style="list-style-type: none"> 26A. Interpretation 26B. Application for a restraining order 26C. Restraining order 26D. Duration of restraining order 26E. Intervention by Attorney-General 13. Affidavit verifying petition 14. Serving petition |
|---|---|
-

2010, No. 16**AN ACT to amend the Divorce and Matrimonial Causes
Ordinance 1961.** *[16th August 2010]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Divorce and Matrimonial Causes Amendment Act 2010.

(2) This Act commences on the date of assent by the Head of State.

2. Principal Act - In this Act, “Principal Act” means the Divorce and Matrimonial Causes Ordinance 1961.

3. Repeal and substitution – Section 2 of the Principal Act is repealed and the following section is substituted:

“2. Interpretation - In this Ordinance, unless the contrary intention appears:

“Court” means the Supreme Court of Samoa and in relation to any act or power which under this Ordinance may be taken by the Registrar, includes the Registrar;

“Registrar” means the Registrar of the Court and includes a Deputy Registrar and Assistant Registrar.”.

4. Jurisdiction - Section 3 of the Principal Act is amended by adding at the end the following subsection:

“(2) The powers and jurisdiction given to the Court in subsection (1) may be exercised by the Registrar in circumstances where a provision of this Ordinance so provides.”.

5. Judicial Separation - Section 4 of the Principal Act is amended by omitting “and on the ground of cruelty or adultery or desertion without just cause for not less than 2 years” and substituting “that the marriage has broken down irretrievably”.

6. Repeal and substitution – Section 7 of the Principal Act is repealed and the following sections are substituted:

“7. Grounds for divorce-(1) An application under this Ordinance for a decree of divorce in relation to a marriage must be based on the ground that the marriage has broken down irretrievably.

(2) Subject to subsections (3) and (4), in a proceeding instituted by such an application, the ground shall be held to have been established, and the divorce order shall be made, if, and only if, the court is satisfied that the parties separated and thereafter lived separately for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for the divorce order.

(3) Where the court is satisfied that a party to the marriage is the subject of domestic violence, the court may hold that the marriage has broken down irretrievably notwithstanding that the parties have not separated and thereafter lived separately for a continuous period of not less than 24 months.

(4) A decree of divorce shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

7A. Meaning of separation-(1) The parties to a marriage may be held to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one (1) only of the parties.

(2) The parties to a marriage may be held to have separated and to have lived separately and apart notwithstanding that they have continued to reside in the

same residence or that either party has rendered some household services to the other.

7B. Effect of resumption of cohabitation-(1) For the purposes of proceedings for a decree of divorce, where, after the parties to the marriage separated, they resumed cohabitation on one (1) occasion but, within a period of three (3) months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the date of the filing of the application, the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one (1) continuous period, but the period of cohabitation shall not be deemed to be part of the period of living separately and apart.

(2) For the purposes of subsection (1), a period of cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

7C. When decree of divorce takes effect-(1) Subject to this section, a decree of divorce made under this Ordinance takes effect by force of this section:

(a) at the expiration of a period of one (1) month from the making of the decree; or

(b) from the making of an order under section 7D, whichever is the later.

(2) If an appeal is instituted the decree of divorce order, unless reversed or rescinded, takes effect by force of this section:

(a) at the expiration of a period of one (1) month from the day on which the appeal is determined or discontinued; or

(b) on the day on which the decree of divorce would have taken effect under subsection (1) if no appeal had been instituted,

whichever is the later.

7D. Decree of divorce and children - A decree of divorce in relation to a marriage does not take effect unless the Court has, by order, declared that it is satisfied:

- (a) that there are no children of the marriage who have not attained 18 years of age; or
- (b) that the only children of the marriage who have not attained 18 years of age are the children specified in the order and that -
 - (i) proper arrangements in all the circumstances have been made for the care, welfare and development of those children; or
 - (ii) there are circumstances by reason of which the divorce order should take effect even though the court is not satisfied that such arrangements have been made.

7E. Possibility of reconciliation-(1) Where an application under this Ordinance for a decree of divorce has been made it is the duty of the Court and of every legal practitioner representing a party, to give consideration, from time to time, to the possibility of a reconciliation of the parties.

(2) Where the Court considers that there may be a possibility of reconciliation it may require the parties to undergo marriage counselling if appropriate.

7F. Rescission of divorce order where parties reconciled – Despite anything contained in this Ordinance, if a decree of divorce has been made in relation to a marriage, the Court may, at any time before the decree of divorce takes effect, upon the application of the parties to the marriage, rescind the divorce order on the ground that the parties have become reconciled.

7G. Decree of divorce where there is consent or no opposition-(1) When an application under this Ordinance for a decree of divorce is made and the respondent either:

- (a) consents in writing to the application; or
- (b) does not otherwise oppose the making of the decree of divorce,

the Court or a Registrar may make a decree of divorce.

(2) Sections 12 to 15 and 32 do not apply in relation to an application considered by a Registrar under this section.

(3) On application by the respondent and before the decree takes effect, an order of a Registrar under subsection (1) may be set aside by a Judge of the Court who may make such orders as are appropriate.”.

7. Repeal - Sections 10 and 11 of the Principal Act are repealed.

8. Discretion of court where collusion proved - Section 13 of the Principal Act is amended by omitting “, except in cases in which relief is sought on the ground of adultery”.

9. Repeal - Sections 14, 16, 18, 21 and 29 of the Principal Act are repealed.

10. Alimony and maintenance - Section 22 of the Principal Act is amended by omitting subsection (1) and substituting:

“(1) In any proceedings for a decree of divorce or nullity of marriage, the Court may make such orders as it considers appropriate for the provision of alimony and maintenance and the Court may for that purpose order that it shall be referred to the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties, and may, if it thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.”.

11. Insertion of new sections - After section 22 of the Principal Act, the following sections are inserted:

“22A. Orders relating to alimony and maintenance-

- (1) In considering under section 22 what orders may be appropriate for the provision of alimony and maintenance the Court must take into account the following matters:
- (a) the age and state of health of the parties;
 - (b) the proper needs of each party to the marriage having regard to -
 - (i) the age of the person; and
 - (ii) any special needs of the person;and
 - (c) the income, earning capacity, property and financial resources of the person to be paid maintenance having regard to -
 - (i) to the capacity of the person to earn or derive income, including any assets of, under the control of or held for the benefit of the person that do not produce, but are capable of producing, income; and
 - (ii) disregard the income, earning capacity, property and financial resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them; and
 - (d) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage; and
 - (e) the commitments of each party to the marriage that are necessary to enable that party to support himself or herself or any other person that the party has a duty to maintain; and
 - (f) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

22B. Declaration of interest in property-(1) In proceedings between the parties to a marriage with respect to existing title or rights in respect of property, the court may declare the title or rights, if any, that a party has in respect of the property.

(2) Where a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

22C. Alteration of interest in property-(1) In proceedings with respect to the property of the parties to a marriage, the court may make such order as it considers appropriate altering the interests of the parties in the property, including:

- (a) an order for a settlement of property in substitution for any interest in the property; and
- (b) an order requiring either or both of the parties to make, for the benefit of either or both of the parties or a child of the marriage, such settlement or transfer of property as the court determines.

(2) In considering what orders may be appropriate with respect to any property of the parties to a marriage the Court may take into account the following matters:

- (a) the matters referred to in section 22A(1); and
- (b) the financial or other contribution made directly or indirectly by or on behalf of a party to the acquisition or improvement of any of the property of the parties to the marriage; and
- (c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent; and

(d) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(3) Subject to subsection (4), for the purposes of subsection (2) the contribution of the parties to a marriage is presumed to be equal, but the presumption may be rebutted if a court considers a finding of equal contribution is on the facts of the case not appropriate.

(4) The presumption in subsection (3) does not apply in the circumstances of a marriage of less than three (3) years duration.

(5) For the purposes of subsection (2), the property of each party brought into the marriage is not to be considered property of the marriage unless it would be inequitable not to do so.

(6) The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

22D. Setting aside of orders altering property interests - If, on application by a person affected by an order made by a court under section 22C in proceedings with respect to the property of the parties to a marriage or either of them, the court is satisfied that:

(a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance; or

(b) in the circumstances that have arisen since the order was made it is impracticable for the order or a part of it to be carried out,

the court may, in its direction, vary the order or set the order aside and, if it considers appropriate, make another order under section 22C in substitution for the order so set aside.”.

12. Insertion of new Part - After section 26 of the Principal Act, the following Part is inserted:

“Part IIIA - Restraining Orders**26A. Interpretation** – In this Part:

“aggrieved person” means a person who is the subject of domestic violence;

“domestic violence” means conduct that:

- (a) causes physical, psychological or personal injury to a relevant person; or
- (b) causes damage to the property of a relevant person; or
- (c) is a threat, made to a relevant person, to do anything in relation to the relevant person or another relevant person that, if done, would fall under paragraph (a), or (b); or
- (d) is harassing or offensive to a relevant person.

“relevant person” means a spouse or child of a person and includes a step child of that person.

26B. Application for a restraining order-(1) In any proceedings under this Ordinance, the Court or a Registrar may make such restraining orders as it considers appropriate.

(2) In deciding an application for a restraining order, the Court or Registrar must give primary consideration to the need to ensure that the aggrieved person, and any child at risk of exposure to domestic violence, is protected from such domestic violence.

26C. Restraining order-(1) A restraining order restrains the respondent from engaging in conduct that constitutes domestic violence in relation to the aggrieved person and may be subject to such conditions or restrictions as the Court or Registrar consider appropriate.

(2) Without limiting subsection (1), the restraining order may do one (1) or more of the following:

- (a) prohibit the person who is the subject of the order from being within a particular distance from the aggrieved person; or

- (b) prohibit the person who is the subject of the order from contacting, harassing, threatening or intimidating the aggrieved person or a child of the aggrieved person; or
- (c) state the conditions on which the person who is the subject of the order may -
 - (i) be on particular premises; or
 - (ii) be in a particular place; or
 - (iii) approach or contact a particular person.

(3) If a person engages in conduct that contravenes a restraining order (including a condition of the order) the person commits an offence and is liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding 20 penalty units or to both.

26D. Duration of restraining order-(1) A restraining order made by the Court remains in force for two (2) years or such shorter period as is stated in the order.

(2) A restraining order made by a Registrar remains in force for seven (7) days or such shorter period as is stated in the order and any extension of that order may only be granted by the Court.

(3) However, the Court may make a restraining order that remains in force for longer than two (2) years if satisfied that there are special or exceptional circumstances that justify the longer period.

26E. Intervention by Attorney-General-(1) The Attorney-General may intervene in, and contest or argue any question arising in:

- (a) any proceedings under this Ordinance where the Court requests the Attorney-General to do so or a matter arises that affects the public interest; or
- (b) any proceedings under this Ordinance for or in relation to an order relating to the welfare of a child.

(2) Where the Attorney-General intervenes in any proceedings, the Attorney-General shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.”.

13. Affidavit verifying petition – Section 27 of the Principal Act is amended by omitting “, and also, in every case where adultery is alleged, that there is not any connivance between the deponent and the other party to the marriage”.

14. Serving petition – Section 28 of the Principal Act is amended by adding at the end the following subsection:

“(2) In the case of a petition before a Registrar under section 7F, the power and jurisdiction of the Court to authorise service of a petition outside Samoa may be exercised by the Registrar.”.

**The Divorce and Matrimonial Causes Amendment Act 2010
is administered by the Ministry of Justice and Courts
Administration.**