



BERMUDA

MATRIMONIAL CAUSES (FAULTLESS DIVORCE) AMENDMENT ACT 2022

2022 : 4

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WHEREAS it is expedient to amend the Matrimonial Causes Act 1974 to reform the current legal process for obtaining a divorce, nullity of marriage or judicial separation; and for related matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Matrimonial Causes Act 1974 ("the principal Act") may be cited as the Matrimonial Causes (Faultless Divorce) Amendment Act 2022.

Amends section 1

2 Section 1 of the principal Act is amended—

- (a) in subsection (1) by inserting in the appropriate alphabetical order the following definition—

“Minister” means the Minister responsible for legal affairs;”;

- (b) in subsection (2) by inserting the following after paragraph (b)—

“(c) a reference to a divorce order includes a decree of divorce;

(d) a reference to a nullity of marriage order includes a decree of nullity of marriage;

(e) a reference to a judicial separation order includes a decree of judicial separation;

(f) a reference to an order being made final includes a decree being made absolute.”.

Amends section 2

3 Section 2 of the principal Act is amended—

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- (a) in subsection (1)(a), by deleting “divorce, judicial separation or nullity of marriage” and substituting “a divorce order, a nullity of marriage order or a judicial separation order”;
- (b) in subsection (3) by deleting “nullity of marriage” and substituting “a nullity of marriage order”;
- (c) in subsection (4), by deleting “petitioner” and substituting “applicant”;
- (d) in subsection (5), by deleting “divorce, judicial separation or nullity of marriage” and substituting “a divorce order, a nullity of marriage order or a judicial separation order”;
- (e) in subsection (8), by deleting “petition for divorce” and substituting “apply for a divorce order”.

Repeals and replaces section 5

4 Section 5 of the principal Act is repealed and replaced with the following—

“Divorce on breakdown of marriage

5 (1) Subject to section 7, either party to a marriage may apply to the court for an order (a “divorce order”) which dissolves the marriage on the ground that the marriage has broken down irretrievably.

(2) An application under subsection (1) shall be accompanied by a statement by the applicant that the marriage has broken down irretrievably.

(3) The court dealing with an application under subsection (1) shall—

- (a) take the statement to be conclusive evidence that the marriage has broken down irretrievably; and
- (b) make a divorce order.

(4) A divorce order—

- (a) is, in the first instance, a conditional order; and
- (b) may not be made final before the end of the period of eight weeks from the making of the conditional order.

(5) The court may not make a conditional order unless, the applicant has confirmed to the court, before the end of the period of twelve weeks from the start of proceedings, that they wish the application to continue.

(6) The Minister after consultation with the Chief Justice may amend this section by order to shorten or lengthen the period in subsection (4)(b) or (5).

(7) Under subsection (6), the period which would result in the total number of days in the periods in subsections (4)(b) and (5) (taken together) shall not exceed 20 weeks.

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(8) In a particular case, the court dealing with the case may by general order shorten the period that would otherwise be applicable in subsection (4)(b) or (5).

(9) An order made by the Minister under this section shall be subject to the negative resolution procedure.”.

Repeals section 6

5 Section 6 of the principal Act is hereby repealed.

Amends section 7

6 The principal Act is amended in section 7—

- (a) in the headnote by deleting “petitions for divorce” and substituting “applying for a divorce order”;
- (b) in subsection (1) by deleting “no petition for divorce shall be presented to the court” and substituting “an application for a divorce order shall not be made”;
- (c) in subsection (2)—
 - (i) by deleting “a petition for divorce” and substituting “an application for a divorce order”;
 - (ii) by deleting “petitioner” and substituting “applicant”;
- (d) in subsection (3)—
 - (i) by deleting “a petition for divorce” and substituting “an application for a divorce order”;
 - (ii) by deleting “petitioner” and substituting “applicant”;
- (e) in subsection (3)(a) by deleting “petition” wherever it appears and substituting “application”;
- (f) in subsection (3)(b)—
 - (i) by deleting “decree” and substituting “divorce order”;
 - (ii) by deleting “decree absolute” and substituting “divorce order final”;
- (g) in subsection (4) by deleting “a petition” and substituting “an application”.

Repeals sections 8 and 9

7 Sections 8 and 9 of the principal Act are hereby repealed.

Amends section 10

8 The principal Act is amended in section 10—

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- (a) in subsection (1) by deleting “a petitioner for divorce to certify whether he has discussed with the petitioner the possibility of a reconciliation and given him” and substituting “an applicant for a divorce order to certify whether he has discussed with the applicant the possibility of reconciliation and given the applicant”;
- (b) in subsection (2) by deleting “divorce” and substituting “a divorce order”.

Amends section 11

9 Section 11 of the principal Act is amended—

- (a) by deleting “either before or after the presentation of a petition for divorce” and substituting “when proceedings for a divorce order are contemplated or have begun”;
- (b) by deleting “for divorce which are contemplated or, as the case may be, have begun,”.

Amends section 12

10 Section 12 of the principal Act is amended—

- (a) in subsection (1) by deleting “a petition for divorce” and substituting “an application for a divorce order”;
- (b) in subsection (1)(b) by deleting “decree nisi is made absolute” and substituting “divorce order is made final”;
- (c) in subsection (2) by deleting “decree nisi in any proceedings for divorce” and substituting “conditional order in any proceedings for a divorce order”.

Amends section 13

11 Section 13 of the principal Act is amended—

- (a) in the headnote by deleting “after decree nisi” and substituting “before divorce order has been made final”;
- (b) in subsection (1)—
 - (i) by deleting “decree of divorce has been granted but not made absolute” and substituting “divorce order has been made but not made final”;
 - (ii) by deleting “decree should not be made absolute” and substituting “divorce order should not be made final”;
- (c) in subsection (1)(a)—
 - (i) by deleting “5(5)” and substituting “5(4)”;
 - (ii) by deleting “decree absolute” and substituting “divorce order final”;
- (d) in subsection (1)(b) by deleting “decree” and substituting “divorce order”;

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- (e) in subsection (2)—
 - (i) by deleting “decree of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted” and substituting “divorce order has been made on an application by a party to a marriage and the applicant has not applied for the order to be made final”;
 - (ii) by deleting “the party against whom it was granted” and substituting “the other party to the marriage”.

Repeals and replaces section 14

12 Section 14 of the principal Act is repealed and replaced with the following—

“Proceedings before divorce order made final: special protection for respondent

- 14 (1) The following provisions of this section apply where—
- (a) on an application for a divorce order a conditional order has been made and is in favour of one party to a marriage; and
 - (b) the respondent has applied to the court for a determination under subsection (3) of their financial position after the divorce.
- (2) Subject to subsection (4), the court hearing an application by the respondent under subsection (1)(b) shall not make the divorce order final unless it is satisfied—
- (a) that the applicant should not be required to make any financial provision for the respondent; or
 - (b) that the financial provision made by the applicant for the respondent is reasonable and fair or the best that can be made in the circumstances.
- (3) In making a determination under subsection (2) the court shall consider all the circumstances including—
- (a) the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties to the marriage; and
 - (b) the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the applicant should that person die first.
- (4) The court may if it thinks fit make the divorce final notwithstanding the requirements of subsection (3) if—
- (a) it appears that there are circumstances making it desirable that the order should be made final without delay; and

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- (b) the court has obtained a satisfactory undertaking from the applicant that they will make such financial provision for the respondent as the court may approve.”.

Inserts section 16A

13 The principal Act is amended by inserting the following after section 16—

“Period before nullity of marriage orders may be made final

16A (1) An order that annuls a marriage which is void or voidable (a “nullity of marriage order”)—

- (a) is, in the first instance, a conditional order; and
- (b) may not be made final before the end of the period of four weeks from the making of the conditional order.

(2) The period in subsection (1)(b) shall not be lengthened that it exceeds twelve weeks.

(3) The Minister after consultation with the Chief Justice may amend this section by order so as to shorten or lengthen the period for the purposes of subsection (1)(b).

(4) An order made under this section shall be subject to the negative resolution procedure.”.

Amends section 17

14 Section 17 of the principal Act is amended—

- (a) in subsection (1) by deleting “grant a decree of nullity” and substituting “make a nullity of marriage order”;
- (b) in subsection (1)(a) by deleting “petitioner” and substituting “applicant”;
- (c) in subsection (1)(b) by deleting “grant the decree” and substituting “make the order”;
- (d) in subsection (2) by deleting “grant a decree of nullity” and substituting “make a nullity of marriage order”;
- (e) in subsection (3)—
 - (i) by deleting “grant a decree of nullity” and substituting “make a nullity of marriage order”;
 - (ii) by deleting “petitioner” and substituting “applicant”.

Repeals and replaces section 19

15 Section 19 of the principal Act is repealed and replaced with the following—

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“Application of sections 12 and 13 to proceedings for a nullity of marriage order

19 Sections 12 (intervention of Attorney-General) and 13 (proceedings before divorce order is made final: general powers of the court) shall apply in relation to proceedings for a nullity of marriage order as if for any reference in those sections to a divorce order there were substituted a reference to a nullity of marriage order.”.

Amends section 20

16 Section 20 of the principal Act is amended—

- (a) in the headnote by deleting “decree of nullity” and substituting “annulment”;
- (b) by deleting “decree has been made absolute” and substituting “order has been made final”;
- (c) by deleting “decree” and substituting “order”.

Amends section 21

17 The principal Act is amended in section 21—

- (a) by deleting subsection (1) and substituting the following—

“(1) Either party to a marriage may apply to the court for an order (“a judicial separation order”) which provides for the separation of the parties to a marriage.”;

- (b) by repealing subsection (2);
- (c) by inserting the following after the repealed subsection (2)—

“(2A) An application under subsection (1) shall be accompanied by a statement by that person that they seek to be judicially separated from the other party to the marriage.

(2B) The court dealing with an application under subsection (1) shall make a judicial separation order.”;

- (d) in subsection (3)—
 - (i) by deleting “judicial separation” wherever it appears and substituting “a judicial separation order”;
 - (ii) by deleting “divorce” and substituting “a divorce order”.

Amends section 22

18 Section 22 of the principal Act is amended—

- (a) by repealing subsection (1);

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- (b) in subsections (2) and (3) by inserting “or judicial separation order” after “judicial separation”.

Amends section 23

19 Section 23 of the principal Act is amended—

- (a) in subsection (1) —
 - (i) by deleting “present a petition” and substituting “make an application”;
 - (ii) by deleting “grant a decree of presumption of death” and substituting “make a presumption of death”;
 - (iii) by inserting “order” after “of the marriage”;
- (b) in subsection (2) by deleting “petitioner” where it appears twice and substituting “applicant”;
- (c) in subsection (3)—
 - (i) by deleting “5(5),”;
 - (ii) by deleting “a petition and a decree” and substituting “an application for an order”;
 - (iii) by deleting “a petition for divorce and a decree of divorce respectively” and substituting “a divorce order”;
- (d) in subsection (4)—
 - (i) by deleting “petitioner” and substituting “applicant”;
 - (ii) by deleting “grant of a decree” and substituting “making of an order”.

Repeals section 24

20 Section 24 of the principal Act is hereby repealed.

Amends section 25

21 Section 25(2) of the principal Act is amended by deleting “grant of a decree of divorce, nullity of marriage or judicial separation” and substituting “making of a divorce order, nullity of marriage order or judicial separation order”.

Amends section 26

22 Section 26 of the principal Act is amended—

- (a) by deleting “a petition for divorce, nullity of marriage or judicial separation” and substituting “an application for a divorce order, nullity of marriage order or judicial separation order”;
- (b) by deleting “presentation of the petition” and substituting “making of the application”.

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Amends section 27

23 Section 27 of the principal Act is amended—

- (a) in subsection (1) by deleting “On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute)” and substituting “On making a divorce order, nullity of marriage order or judicial separation order or at any time after making such an order (whether, in the case of a divorce order or nullity of marriage order, before or after the order is made final”);
- (b) in subsection (2)(a) by deleting “granting a decree” and substituting “making a divorce order, nullity of marriage order or judicial separation order (as the case may be)”;
- (c) in subsection (5) by deleting “granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute” and substituting “making a divorce order or nullity of marriage order, neither the order under subsection (1)(a), (b) or (c) nor any settlement made in pursuance of it is to take effect unless the divorce order or nullity of marriage order has been made final”.

Amends section 28

24 Section 28 of the principal Act is amended—

- (a) in subsection (1) by deleting “On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute)” and substituting “On making a divorce order, nullity of marriage order or judicial separation order or at any time after making such an order (whether, in the case of a divorce order or nullity of marriage order, before or after the order is made final”);
- (b) in subsection (3) by deleting “granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute” and substituting “making a divorce order or nullity of marriage order, neither the order under this section nor any settlement made in pursuance of it is to take effect unless the divorce order or nullity of marriage order has been made final”.

Amends section 29

25 Section 29 of the principal Act is amended by deleting the proviso to subsection (1).

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Amends section 30

26 Section 30 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by deleting “a petition for divorce, nullity of marriage or judicial separation has been presented” and substituting “an application for a divorce order, nullity of marriage order or judicial separation order has been made”;
 - (ii) by deleting “presentation of the petition” and substituting “presentation of the application”;
- (b) in subsection 2(a) by deleting “petition or answer” and substituting “application or response”;
- (c) in subsection 2(b) by deleting “presentation of the petition or filing of the answer” and substituting “presentation of the application or filing of the response”.

Amends section 32

27 Section 32 of the principal Act is amended—

- (a) in subsection (1)(a)—
 - (i) by deleting “grant of a decree of divorce or nullity of marriage” and substituting “making of a divorce order or nullity of marriage order”;
 - (ii) by inserting “periodical payments” after “whose favour the”;
- (b) in subsection (1)(b)—
 - (i) by deleting “grant of such a decree” and substituting “making of a divorce order or nullity of marriage order”;
 - (ii) by inserting “secured periodical payments” after the words “whose favour the”;
- (c) in subsection (2)—
 - (i) by deleting “grant of a decree of divorce or nullity of marriage” and substituting “making of a divorce order or a nullity of marriage order”;
 - (ii) by deleting “order continues in force, the order” and substituting “periodical payments or secured periodical payments order continues in force, that order”;
- (d) in subsection (3)—
 - (i) by deleting “grant of a decree” and substituting “grant or making of a decree or order”;
 - (ii) by deleting “grant of that decree” and substituting “grant or making of that decree or order”.

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Amends section 34

28 Section 34 of the principal Act is amended in paragraph (b) by deleting “grant of the decree in question” and substituting “making of the divorce order, nullity of marriage order or judicial separation order”.

Amends section 35

29 Section 35 of the principal Act is amended—

- (a) in subsection (2)(e) by deleting “grant of a decree of judicial separation” and substituting “making of a judicial separation order”;
- (b) in subsection (4)(a) by deleting “decree of judicial separation” and substituting “judicial separation order”.

Amends section 45

30 Section 45 of the principal Act is amended—

- (a) in the headnote by deleting “decrees” and substituting “orders”;
- (b) in subsection (1) by deleting “absolute a decree of divorce or of nullity of marriage or grant a decree of judicial separation” and substituting “a final divorce order or a nullity of marriage order or a judicial separation order”;
- (c) in subsection (1)(c) by deleting “decree should be made absolute” and substituting “order should be made final”;
- (d) in subsection (3)—
 - (i) by deleting “absolute a decree of divorce or of nullity of marriage, or grants a decree of judicial separation” and substituting “final a divorce order, a nullity of marriage order or grants a judicial separation order”;
 - (ii) by deleting “decree” where it appears twice and substituting “order”.

Amends section 46

31 Section 46 of the principal Act is amended—

- (a) in subsection (1)(a)—
 - (i) by deleting “a decree” and substituting “an order”;
 - (ii) by deleting “decree of divorce or nullity of marriage” and substituting “divorce order or a nullity of marriage order”;
 - (iii) by deleting “decree is made absolute” and substituting “order is made final”;
- (b) in subsection (3)—

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- (i) by deleting “absolute decree of divorce” and substituting “a divorce order final”;
- (ii) by deleting “decree of judicial separation” and substituting “judicial separation order”;
- (iii) by deleting “the decree” and substituting “the order”;
- (c) in subsection (4) by deleting “decree of divorce or of judicial separation” and substituting “divorce order or judicial separation order”.

Amends section 50

32 Section 50(1) of the principal Act is amended by deleting “a petition for divorce or judicial separation” and substituting “an application for a divorce order or a judicial separation order”.

Amends Schedule 1

33 Schedule 1 to the principal Act is amended—

- (a) in paragraph 2(d) by deleting “petitioner” and substituting “applicant”;
- (b) in paragraph 7 by deleting “answer” and substituting “response”.

Amends Schedule 2

34 Schedule 2 to the principal Act is amended in paragraphs 6(1)(d), 6(3)(a) and 6(3)(c) by deleting “petitioner” and substituting “applicant”.

Consequential amendments

35 (1) The Minors Act 1950 is amended in section 16—

- (a) by deleting the headnote and substituting “Divorce order or judicial separation order; declaration in order that a parent is unfit to have custody of the minor children”;
- (b) by deleting “decree of judicial separation, or a decree either nisi, or absolute, of divorce, is pronounced, the court pronouncing the decree” and substituting “judicial separation order or a divorce order is made, the court making the order”;
- (c) by deleting “decree” and substituting “order”.

(2) The Court of Appeal Act 1964 is amended by deleting section 12(3) and substituting—

“(3) In respect of matrimonial causes, no appeal shall lie from a decree absolute for the dissolution or nullity of marriage or a final order for the dissolution or nullity of marriage where the person against whom such decree or order is made has had the time and opportunity to appeal from the decree nisi prior to its being made absolute or the conditional order prior to its being made final and has not appealed from the decree nisi or the conditional order.”.

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(3) The Succession Act 1974 is amended—

(a) in section 15(2)—

(i) by inserting “or judicial separation order” after “judicial separation”;

(ii) by inserting “or a divorce order” after “decree of divorce”;

(b) by repealing section 23B and replacing it with the following—

“Where no financial relief was granted in divorce proceedings

23B (1) Where a party to a marriage dies within twelve months from the date on which—

(a) a decree of divorce or nullity of marriage has been made absolute;

(b) a decree of judicial separation has been granted;

(c) a divorce order, nullity of marriage order or a judicial separation order has been made;

(d) an application for a financial provision order under section 27 of the Matrimonial Causes Act 1974 or a property adjustment order under section 28 of that Act has not been made by the other party to that marriage; or

(e) an application mentioned in paragraph (d) has been made but the proceedings thereon have not been determined at the time of death of the deceased,

then, if an application for an order under section 14 is made by that other party, the Court shall, notwithstanding anything in section 13 or section 15, have power, if it thinks it just to do so, to treat that party for the purposes of that application as if the decree of divorce or nullity of marriage had not been made absolute or the decree of judicial separation had not been granted, as the case may be.

(2) This section does not apply in relation to a decree of judicial separation or a judicial separation order unless at the date of the death of the deceased the decree or order was in force and the separation was continuing.”;

(c) in section 23C—

(i) in subsection (1) by inserting “or the making of a divorce order, nullity of marriage order or judicial separation order” after “judicial separation”;

(ii) by inserting the following after subsection (2)—

“(2A) In the case of a divorce order or a nullity of marriage order, an order may be made under subsection (1) before or after the order is final, but if it is

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made before the order is made final it shall not take effect unless the order is made final.”;

(iii) in subsection (3) by inserting “or an order of divorce or nullity of marriage” after “nullity of marriage”;

(iv) in subsection (4)—

(A) by inserting “or the making of a judicial separation order” after “judicial separation”;

(B) by inserting “or order” after “the decree”.

(4) The Stamp Duties Act 1976 is amended in section 38A(1)—

(a) in paragraph (a) by deleting “decree of divorce, nullity of marriage or judicial separation” and substituting “divorce order, nullity of marriage order or a judicial separation order”;

(b) in paragraph (b) by deleting “a decree” and substituting “an order”.

(5) The Rules of the Supreme Court 1985 are amended in the Schedule to Order 62 (Rule 32)—

(a) by deleting paragraphs 47 and 48 and substituting—

“47A On application for hearing of a divorce (including order for directions and the hearing): \$150.00”;

(b) in paragraph 49 by deleting “petition” and substituting “application”.

(6) The Children Act 1998 is amended in section 36G by deleting “a petition for divorce” and substituting “an application for a divorce order”.

(7) The Domestic Partnership Act 2018 is amended in section 41—

(a) in subsection (1) by deleting “the Matrimonial Causes Act 1974 (“the Act”), the Matrimonial Causes Rules 1974 (“the Rules”) and the Matrimonial Causes (Decree Absolute) Order 1974” and substituting “the Matrimonial Causes Act 1974 (“the Act”) and the Matrimonial Causes Rules 1974 (“the Rules)”;

(b) in subsection (3) by deleting “5(2)(a),”.

(8) The Matrimonial Causes (Decree Absolute) General Order 1974 is hereby revoked.

Transitional

36 The amendments made by this Act to the principal Act shall not apply to proceedings for a divorce, nullity of marriage or judicial separation that started before the coming into operation of this Act.

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Minister may make regulations

37 (1) The Minister may make regulations for such transitional, incidental, supplementary or consequential provision as appears to the Minister to be necessary or expedient.

(2) Regulations made under subsection (1) shall be subject to the negative resolution procedure.

Commencement

38 This Act shall come into operation on such day as the Minister may appoint by notice in the Gazette.

[Assent Date: 09 March 2022]

[Operative Date: 13 March 2023]