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14 May 2024

No. 50651

THE PRESIDENCY

No. 4821

14 May 2024

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 01 of 2024: Divorce Amendment, Act 2024

DIE PRESIDENSIE

No. 4821

14 Mei 2024

Hierby word gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 01 van 2024: Wysigingswet op Egskeiding, 2024





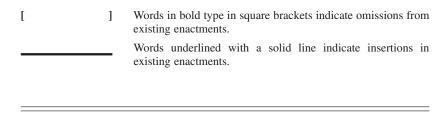


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Act No. 01 of 2024 Divorce Amendment Act, 2024

2

GENERAL EXPLANATORY NOTE:



(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:
 - "'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 10 the words preceding paragraph (a) of the following words:
 - "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—".

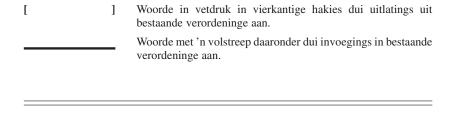
Amendment of section 6 of Act 70 of 1979, as amended by section 6 of Act 24 of 1987 15

- 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, 20 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

Wet No. 01 van 2024

3

ALGEMENE VERDUIDELIKENDE NOTA:



(Engelse teks deur die President geteken) (Goedgekeur op 06 Mei 2024)

WET

Tot wysiging van die Wet op Egskeiding, 1979, ten einde 'n omskrywing vir 'n Moslem-huwelik in te voeg; voorsiening te maak vir die beskerming en bewaring van die belange van afhanklike en minderjarige kinders uit 'n Moslem-huwelik, voorsiening te maak vir die herverdeling van bates by die ontbinding van 'n Moslem-huwelik; voorsiening te maak vir die verbeuring van vermoënsregtelike voordele van 'n Moslem-huwelik; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

D AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 70 van 1979, soos gewysig deur artikel 1 van Wet 7 van 1989, artikel 74 van Wet 120 van 1993, artikel 4 van Wet 65 van 1997 en artikel 10 van Wet 31 van 2008

1. Artikel 1 van die Wet op Egskeiding, 1979 (Wet No. 70 van 1979) (hierna die "Hoofwet" genoem), word hierby gewysig deur die volgende omskrywing na die omskrywing van "hof" in te voeg:

"'Moslem-huwelik' 'n huwelik aangegaan of gesluit ooreenkomstig die leerstellings van Islam;".

Wysiging van artikel 3 van Wet 70 van 1979

2. Artikel 3 van die Hoofwet word hierby gewysig deur in subartikel 3 die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

"'n Huwelik, met inbegrip van 'n Moslem-huwelik, kan deur 'n hof deur 'n egskeidingsbevel ontbind word en die enigste gronde waarop so 'n bevel verleen 15 kan word, is—".

Wysiging van artikel 6 van Wet 70 van 1979, soos gewysig deur artikel 6 van Wet 24 van 1987

3. Artikel 6 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang:

"(a) oortuig is dat die voorsiening wat vir die welsyn van 'n minderjarige of afhanklike kind uit die huwelik, met inbegrip van enige minderjarige of afhanklike kind uit 'n Moslem-huwelik, gemaak is of beoog word, bevredigend is of die beste is wat in die omstandighede bewerkstellig kan word; en"; en

10

Act No. 01 of 2024 Divorce Amendment Act, 2024

4

(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, 15 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 30 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) $\underline{\text{or}(3A)}$, 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 40 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: 45
 - "(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 50 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:

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(b) deur in subartikel (3) die volgende subartikel te vervang:

"(3) 'n Hof wat 'n egskeidingsbevel verleen, kan ten opsigte van die onderhoud van 'n afhanklike kind uit die huwelik, met inbegrip van 'n afhanklike kind uit 'n Moslem-huwelik, of die bewaring van of voogdy oor of toegang tot 'n minderjarige kind uit die huwelik, met inbegrip van 'n minderjarige kind uit 'n Moslem-huwelik, enige bevel gee wat die hof goedvind, en kan in die besonder, indien dit na die hof se oordeel in belang van so 'n minderjarige kind sou wees om dit te doen, die uitsluitlike voogdy oor die minderjarige (waarby inbegrepe is die bevoegdheid om tot die huwelik van die kind toe te stem) of die 10 uitsluitlike bewaring van die minderjarige, aan enige van die ouers toeken, en die hof kan gelas dat by die vooroorlye van die ouer aan wie die uitsluitlike voogdy oor die minderjarige toegeken word, 'n ander persoon as die langslewende ouer, hetsy gesamentlik met of met uitsluiting van die langslewende ouer, die voog oor die minderjarige sal 15 wees.".

Wysiging van artikel 7 van Wet 70 van 1979, soos gewysig deur artikel 36 van Wet 88 van 1984, artikel 2 van Wet 3 van 1988, artikel 2 van Wet 7 van 1989, artikel 1 van Wet 44 van 1992, artikel 11 van Wet 55 van 2003 en artikel 1 van Wet 12 van 2020

20

- 4. Artikel 7 van die Hoofwet word hierby gewysig—
 - (a) deur die volgende subartikel na subartikel in te voeg:

"(3A) 'n Hof wat 'n egskeidingsbevel ten opsigte van 'n Moslemhuwelik gee, kan, behoudens die bepalings van subartikels (4), (5) en (6), by aansoek deur een van die partye in daardie huwelik, by gebrek aan enige ooreenkoms tussen hulle oor die verdeling van hul bates, beveel dat sodanige bates, of sodanige gedeelte van die bates, van die ander party soos die hof regverdig ag, aan die eersgenoemde party oorgedra word.";

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(b) deur subartikel (4) deur die volgende subartikel te vervang:

"(4) 'n Bevel kragtens subartikel (3) of (3A) word nie gegee nie tensy die hof oortuig is dat dit billik en regverdig is op grond daarvan dat die party ten gunste van wie die bevel gegee word tydens die duur van die huwelik direk of indirek bygedra het tot die instandhouding of groei van die boedel van die ander party, hetsy deur die lewering van dienste, of die 35 besparing van uitgawes wat andersins aangegaan sou moes word, of op enige ander wyse.";

(c) deur in subartikel (5) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

"By die bepaling van die bates of die gedeelte van die bates wat oorgedra 40 moet word soos in subartikel (3) of (3A) beoog, neem die hof, benewens enige direkte of indirekte bydrae deur die betrokke party tot die instandhouding of groei van die boedel van die ander party gelewer soos in subartikel (4) beoog, ook in aanmerking—";

- (d) deur in subartikel (5) die volgende paragraaf na paragraaf (a) in te voeg: 45 "(aA) enige kontrak of ooreenkoms tussen die partye in 'n Moslemhuwelik, waar die man 'n gade in meer as een Moslem-huwelik is;"; en
- (e) deur subartikel (6) deur die volgende subartikel te vervang:

"(6) 'n Hof wat 'n bevel kragtens subartikel (3) of (3A) gee, kan, op aansoek deur die party teen wie die bevel gegee word, gelas dat 50 voldoening aan die bevel uitgestel word op dié voorwaardes, met inbegrip van voorwaardes betreffende die stel van sekerheid, die betaling van rente, die betaling van paaiemente, en die lewering of oordrag van bepaalde bates, wat die hof billik ag.".

Wysiging van artikel 9 van Wet 70 van 1979

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5. Artikel 9 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

Act No. 01 of 2024 Divorce Amendment Act, 2024

6

"(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.".

Application

- $\pmb{6.}$ This Act applies to all subsisting Muslim marriages, including a Muslim 10 marriage—
 - (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.

Wysigingswet op Egskeiding, 2024

Wet No. 01 van 2024

"(1) Wanneer 'n egskeidingsbevel op grond van die onherstelbare verbrokkeling van 'n huwelik, met inbegrip van 'n Moslem-huwelik, verleen word, kan die hof 'n bevel gee dat die vermoënsregtelike voordele van die huwelik in die geheel of gedeeltelik deur die een party ten gunste van die ander verbeur word, indien die hof, met inagneming van die duur van die huwelik, die omstandighede wat tot die verbrokkeling daarvan aanleiding gegee het en enige wesenlike wangedrag aan die kant van enigeen van die partye, oortuig is dat, as die verbeuringsbevel nie gegee word nie, die een party met betrekking tot die ander onbehoorlik bevoordeel sal word."

Toepassing 10

6. Hierdie Wet is van toepassing op alle bestaande Moslem-huwelike, met inbegrip van 'n Moslem-huwelik—

- (a) wat ooreenkomstig die leerstellings van Islam beëindig of ontbind is en waar regsverrigtinge vir die ontbinding van die vermelde Moslem-huwelik ingevolge die Wet op Egskeiding, 1979 (Wet No. 70 van 1979), ingestel is 15 maar nog nie afgehandel is nie; en
- (b) wat met ingang van 15 Desember 2014 bestaan het.

Kort titel

7. Hierdie Wet heet die Wysigingswet op Egskeiding, 2024.

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