



THE TOKELAU DIVORCE REGULATIONS 1987

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 2nd day of March 1987

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Tokelau Act 1948, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. **Title and commencement**—(1) These regulations may be cited as the Tokelau Divorce Regulations 1987.

(2) These regulations shall come into force on the 1st day of April 1987.

**2. Interpretation**—(1) In these regulations, unless the context otherwise requires,—

“Administrator” means the Administrator of Tokelau:

“Application” means an application made pursuant to regulation 4 (1) of these regulations for an order dissolving a marriage:

“Notice of defence” means a notice of defence lodged pursuant to regulation 7 of these regulations:

“Office for Tokelau Affairs” means the Office for Tokelau Affairs at Apia in Western Samoa.

(2) A reference to a numbered form is a reference to the form so numbered in the Schedule to these regulations.

**3. Grounds for dissolution of marriage**—An application for an order dissolving a marriage may be made only on one or more of the following grounds:

- (i) That the respondent has, since the solemnisation of the marriage, committed adultery:
- (ii) That the respondent has, since the solemnisation of the marriage, treated the applicant, or a child of the applicant, with cruelty:
- (iii) That the parties to the marriage are living apart, and have been living apart for the period of 3 years immediately preceding the lodging of the application.

**4. Application for dissolution of marriage**—(1) An application for an order dissolving a marriage may be made—

- (i) Where the application is made on the ground specified in regulation 3 (iii) of these regulations, by either party to the marriage or jointly by both parties:
- (ii) In any other case, by either party to the marriage.

(2) An application under subclause (1) of this regulation may be made only where one of the parties to the marriage—

- (i) Is a Tokelauan; and
- (ii) Ordinarily resides in Tokelau at the time of the lodging of the application.

**5. Lodging of application**—(1) An application made under regulation 4 (1) of these regulations shall, if made by one party, be in form 1, or if made by both parties jointly, be in form 2, and shall be lodged with the Office for Tokelau Affairs.

(2) Any facts stated in that application in support of the grounds on which the application is made shall be verified by affidavit.

(3) Every application so lodged shall be accompanied by—

- (i) The original or a certified copy of the certificate of the marriage to which that application relates; and
- (ii) Any affidavits required by subclause (2) of this regulation; and
- (iii) An application fee of \$10.

**6. Notice to respondent**—(1) Except where the application is made jointly by both parties to the marriage, the Office for Tokelau Affairs, on the lodging with it of an application under regulation 4 (1) of these

regulations, shall, in accordance with this regulation, give notice of the application to the respondent.

(2) Subject to subclause (4) (ii) of this regulation, every such notice shall be in form 3, and shall be accompanied by a copy of the application to which the notice relates, a copy of any affidavit lodged with that application, and a copy of these regulations.

(3) Where the respondent resides in Tokelau, notice of the application shall be personally delivered to the respondent, or brought to the respondent's notice if the respondent refuses to accept it.

(4) Where the respondent resides outside Tokelau, the Office for Tokelau Affairs shall,—

- (i) Where the respondent's address is known, send the notice to the respondent by registered post; or
- (ii) Where the respondent's address is not known, take such steps as are practicable in the circumstances to bring the notice to the knowledge of the respondent, either by advertisement or in some other manner.

(5) Where, in respect of any application made under regulation 4 (1) of these regulations, any notice is required to be given to the respondent under this regulation, that application shall not be considered by a Taupulega under regulation 9 of these regulations unless,—

- (i) Where subclause (3) of this regulation applies, the application is accompanied by an affidavit in form 4 showing that the notice has been personally delivered to, or brought to the notice of, the respondent;
- (ii) Where subclause (4) of this regulation applies, the application is accompanied by an affidavit in form 5 showing that the notice has been sent to the respondent by registered post, or showing the steps that have been taken to bring the notice to the knowledge of the respondent, or showing why it is not practicable in the circumstances to take any steps to bring the notice to the knowledge of the respondent.

**7. Respondent may lodge notice of defence**—(1) Any respondent to whom notice of an application is required to be given pursuant to regulation 6 of these regulations may—

- (i) Where subclause (3) of that regulation applies, within 30 days of the date of that notice; or
- (ii) Where subclause (4) of that regulation applies, within 3 months of the date of that notice—

lodge a notice of defence in form 6.

(2) Any facts stated in the notice of defence in rebuttal of, or in addition to, the facts stated in the application shall be verified by affidavit.

(3) Every such notice of defence shall—

- (i) Be lodged with the Office for Tokelau Affairs, or with the Administration Officer on any island of Tokelau; and
- (ii) Be accompanied by any affidavits required by subclause (2) of this regulation.

**8. Application to be referred to Taupulega**—(1) The Administrator shall arrange for every application under regulation 4 (1) of these

regulations, any notice of defence to that application, any affidavits lodged with that application or that notice of defence, and any affidavit required by regulation 6 (5) of these regulations, to be referred to the appropriate Taupulega.

(2) Where the application is lodged jointly by both parties to a marriage, the application and other documents shall be referred under subclause (1) of this regulation as soon as practicable after the lodging of that application.

(3) Where the application is lodged by one party to the marriage, the application and other documents shall be referred under subclause (1) of this regulation as soon as practicable after the lodging of a notice of defence to the application, or, if no such notice of defence is lodged, the expiration of whichever of the periods specified in regulation 7 (1) of these regulations for the lodging of a notice of defence is applicable in the circumstances.

(4) For the purposes of subclause (1) of this regulation, the appropriate Taupulega is—

- (i) The Taupulega of the village in Tokelau where the applicant ordinarily resides; or
- (ii) Where the applicant does not ordinarily reside in Tokelau, the Taupulega of the village in Tokelau where the respondent ordinarily resides.

**9. Duties of Taupulega**—(1) A Taupulega shall, as soon as practicable after receiving an application referred to it pursuant to regulation 8 (1) of these regulations, consider the application, any notice of defence to that application, and any affidavits lodged with that application or that notice, and shall report in writing to the Administrator whether the marriage to which the application relates should be dissolved.

(2) In respect of every application referred to it, the Taupulega—

- (i) Shall consult the appropriate minister of religion associated with the parties to the application; and
- (ii) May consult the parties and any other person who, in its opinion, may be able to assist it in forming a view on the application.

(3) Subject to subclause (2) of this regulation, the Taupulega shall consider every application solely by reference to the documents referred to in regulation 8 (1) of these regulations, and no person shall be entitled to appear before or be heard by or make submissions to the Taupulega in respect of any application.

(4) Notwithstanding anything in this regulation, where the parties to an application are living in the same village of Tokelau when the Taupulega is considering that application, the Taupulega may, before reporting to the Administrator, seek a reconciliation between the parties through discussion with them.

**10. Order dissolving marriage**—(1) Where a Taupulega reports, pursuant to regulation 9 (1) of these regulations, that a marriage should be dissolved, the Administrator shall forthwith make an order dissolving that marriage, but shall otherwise refuse to make an order.

(2) An order dissolving a marriage shall be in form 7, and shall take effect on being made.

**11. Remarriage**—Where an order dissolving a marriage has been made by the Administrator, the parties to the marriage may marry again.

**12. Notification of decision of Administrator**—(1) The Administrator shall, as soon as practicable after making or refusing to make an order dissolving a marriage, notify the applicant for that order, and, where the respondent's address is known, the respondent, that the order has been made or refused, as the case may be.

(2) If the address of a person whose marriage has been dissolved is not known, the Administrator shall cause a notice of the dissolution to be displayed for at least 3 months in the Administration Office of each island of Tokelau, and to be published in *Te Vakai*.

(3) A copy of every order made pursuant to regulation 10 of these regulations shall be retained in the records of the Office for Tokelau Affairs.

**13. Ancillary orders**—(1) On or at any time after the making of an order dissolving a marriage, the Administrator may, at the request of either of the parties to that marriage, make such orders as the Administrator thinks fit relating to the following matters:

(i) The custody of any children of the marriage:

(ii) The payment, by one party to the marriage, of maintenance for the other party:

(iii) The payment of maintenance in respect of any child of the marriage by either party to the marriage:

(iv) The division, between the parties, of any property belonging to the parties to the marriage on its dissolution.

(2) An order made under subclause (1) of this regulation may be made subject to such terms and conditions as the Administrator thinks fit.

(3) A request made pursuant to subclause (1) of this regulation may be made with any application made pursuant to regulation 4 (1) of these regulations, or by separate letter addressed to the Administrator.

(4) The Administrator may, in relation to any such request,—

(i) Require notice of that request to be given to any person:

(ii) Order either party to the marriage in relation to which the request is made to provide such further information relating to that request as the Administrator may require:

(iii) Consult with the parties, or with any other person who, in the Administrator's opinion, may be able to assist the Administrator in determining the request.

(5) Subject to subclause (4) of this regulation, no person shall be entitled to appear before or be heard by or make submissions to the Administrator in respect of any request made pursuant to this regulation.

(6) Any order made by the Administrator under subclause (1) of this regulation may be enforced as if it were an order of a Court made in a civil matter.

**14. Decision of Administrator final**—No appeal shall lie to any Court from any order made by the Administrator pursuant to these regulations.

**15. Recognition of dissolutions made outside Tokelau**—The validity of a decree or order or legislative enactment for divorce or dissolution or

nullity of marriage made (whether before or after the commencement of these regulations) by a Court or legislature or public authority of any country outside Tokelau shall, by virtue of this regulation, be recognised by all the Courts of Tokelau, where the decree or order or enactment is recognised as valid in the Courts of a country with which one of the parties to the marriage—

- (i) Has a real and substantial connection; or
- (ii) Had, at the time of the making of the decree or order or enactment, a real and substantial connection.

**16. Revocation**—The Tokelau Divorce Regulations 1975\* are hereby revoked.

\*S.R. 1975/262

## SCHEDULE

### Form 1

Reg. 5 (1)

#### APPLICATION FOR ORDER DISSOLVING A MARRIAGE

To: The Administrator of Tokelau

I, [Full name], of [Place of residence], [Occupation] apply for an order dissolving my marriage to [Full name of respondent].

This application is made on the ground that:

(1) The respondent has, since the solemnisation of our marriage, committed adultery.

OR

(2) The respondent has, since the solemnisation of our marriage, treated me (or my child or both my child and me) with cruelty.

OR

(3) I am living apart from the respondent, and we will, at the lodging of this application, have been living apart for the period of 3 years immediately preceding the lodging of this application.

I say:

1. I am a Tokelauan and I ordinarily reside in Tokelau in the village of [Name of village].

OR

1. The respondent is a Tokelauan and he (or she) ordinarily resides in Tokelau in the village of [Name of village].

OR

1. The respondent and I are both Tokelauans and we both ordinarily reside in Tokelau.

2. The respondent has, since the solemnisation of our marriage, committed adultery: [Give details].

OR

2. The respondent has, since the solemnisation of our marriage, treated me (or my child [Full name] or both my child [Full name] and me) with cruelty [Give details].

OR

2. (1) I am living apart from the respondent, and we will, at the lodging of this application, have been living apart for the period of 3 years immediately preceding the lodging of this application.

(2) We ceased living together on [Insert date].

3. There are no children of our marriage.

OR

3. We have the following natural and adopted children of our marriage:

Full name of each child	Age at application	Name of person with whom each child is living at the time of application, and the relationship (if any) of that person to the child
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. The respondent's address is [Insert address, if known].

Signature of Applicant .....

Sworn at [Place] this ..... day of ..... 19...., before me—

.....  
Commissioner [or other person authorised under the Tokelau Affidavits and Declarations Regulations 1986 to take an affidavit.]

Notes

Documents to accompany this application. At the time of the lodging of this application, it must be accompanied by—

- (i) The original or a certified copy of the certificate of the marriage to which it relates; and
- (ii) Affidavits verifying any facts stated in the application in support of the grounds on which it is made.

Application fee. An application fee of \$10 must accompany this application.

Form 2

Reg. 5 (1)

JOINT APPLICATION FOR ORDER DISSOLVING A MARRIAGE

To: The Administrator of Tokelau

We, [Full name], of [Place of residence], [Occupation] and [Full name], of [Place of residence], [Occupation] jointly apply for an order dissolving our marriage.

This application is made on the ground that we are living apart, and we will, at the lodging of this application, have been living apart for the period of 3 years immediately preceding the lodging of this application.

We say:

1. We are both Tokelauans and we both ordinarily reside in Tokelau.

OR

1. I, [Give full name of one of the applicants] am a Tokelauan and I ordinarily reside in Tokelau in the village of [Name of village].

2. We are living apart.

3. We will, at the lodging of this application, have been living apart for the period of 3 years immediately preceding the lodging of this application.

4. We ceased living together on [Insert date].

5. There are no children of our marriage.

OR

5. We have the following natural and adopted children of our marriage:

Full name of each child	Age at application	Name of person with whom each child is living at the time of application, and the relationship (if any) of that person to the child
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signatures of Applicants .....

Severally sworn at [Place] this ..... day of ..... 19...., before me—

.....  
Commissioner [or other person authorised under the Tokelau Affidavits and Declarations Regulations 1986 to take an affidavit.]



*Notes*

*Documents to accompany this application.* At the time of the lodging of this application, it must be accompanied by the original or a certified copy of the certificate of the marriage to which it relates.

*Application fee.* An application fee of \$10 must accompany this application.

Reg. 6

Form 3

NOTICE TO RESPONDENT OF APPLICATION FOR ORDER DISSOLVING A  
MARRIAGE

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Your [*Wife or husband*], [*Insert name*], has lodged with the Administrator of Tokelau an application for an order dissolving your marriage under the Tokelau Divorce Regulations 1987. Copies of that application, those regulations, and of any relevant affidavits, are attached for your information.

*Notice of defence*

If you wish to make a statement in answer to anything contained in the application, you may do so by means of a notice of defence.

The notice of defence must be in form 6 in the Schedule to the Tokelau Divorce Regulations 1987 (see page 3 of the attached copy of those regulations). Any facts stated in that notice must be supported by a sworn affidavit, which should accompany the notice.

*Time for lodging notice of defence*

If you reside in Tokelau, you must lodge your notice of defence (and any supporting affidavits) within 30 days after the date of this notice.

If you reside outside Tokelau, you must lodge your notice of defence (and any supporting affidavits) within 3 months after the date of this notice.

You may lodge your notice of defence with—

- (i) The Office for Tokelau Affairs at Apia in Western Samoa; or
- (ii) The Administration Officer on any island of Tokelau.

*Method of lodging notice of defence*

Your notice of defence may be lodged by delivering it by hand or by sending it by registered airmail.

*Consideration of application by Taupulega*

As soon as possible after the receipt of your notice of defence, or after the time for lodging a notice of defence has expired, the application for an order dissolving your marriage will be considered by the Taupulega on the

relevant island of Tokelau. The Taupulega will then report to the Administrator of Tokelau on whether your marriage should be dissolved.

*Making or refusal of order dissolving marriage*

An order under the Tokelau Divorce Regulations 1987 dissolving a marriage becomes effective on being made. You will be notified if an order is made or refused.

*Power of Administrator of Tokelau to make other orders*

You may also request the Administrator of Tokelau to make orders in relation to certain matters, including the custody of your children (if any), and the division of any property owned by you and your spouse, if your marriage is dissolved. The matters on which such orders may be made are set out in regulation 13 of the attached copy of the Tokelau Divorce Regulations 1987. If you wish to make a request, you should write to the Administrator of Tokelau without delay.

Signed: .....

Date: .....

\_\_\_\_\_

Form 4

Reg. 6 (5) (i)

AFFIDAVIT OF GIVING OF NOTICE TO RESPONDENT RESIDING IN TOKELAU

*Tokelau Divorce Regulations 1987*

Application No. ....

Applicant

*[Give full name, place of residence, and occupation]*

Respondent

*[Give full name, place of residence, and occupation]*

I, *[Full name]*, of *[Place of residence]*, *[Occupation]* swear:

1. On *[Insert date]* I delivered to the respondent a copy of the notice annexed to this affidavit and marked with the letter "A" by delivering it to the respondent personally at *[Address]*.

2. At the same time I delivered to the respondent—

(i) A copy of the application annexed to this affidavit and marked with the letter "B"; and

(ii) A copy of the affidavit lodged with that application (a copy of which affidavit is annexed to this affidavit and marked with the letter "C"); and

(iii) A copy of the Tokelau Divorce Regulations 1987—

by delivering them personally to the respondent at *[Address]*.

3. The respondent is personally known to me by reason of the following facts, namely, *[State the facts establishing personal knowledge]*.

OR

3. The respondent is not personally known to me, but I believe that the person to whom I delivered the above documents is the respondent by reason of the following facts, namely, [*State the facts relied on*].

.....  
(Signature of person making the affidavit)

Sworn at [*Place*] this ..... day of ..... 19 ....., before me—

.....  
(Signature of person taking the affidavit)

Commissioner [*or other person authorised under the Tokelau Affidavits and Declarations Regulations 1986 to take an affidavit.*]

\_\_\_\_\_

## Form 5

Reg. 6 (5) (ii)

AFFIDAVIT OF GIVING OF NOTICE TO RESPONDENT RESIDING OUTSIDE  
TOKELAU*Tokelau Divorce Regulations 1987*

Application No. ....

Applicant

*[Give full name, place of residence, and occupation]*

Respondent

*[Give full name, place of residence, and occupation]*I, *[Full name]*, of *[Place of residence]*, *[Occupation]* swear:On *[Insert date]* I sent to the respondent, by registered post, addressed to him (or her) at *[State address]*,—

- (i) A copy of the notice annexed to this affidavit and marked with the letter "A"; and
- (ii) A copy of the application annexed to this affidavit and marked with the letter "B"; and
- (iii) A copy of the affidavit lodged with that application (a copy of which affidavit is annexed to this affidavit and marked with the letter "C"); and
- (iv) A copy of the Tokelau Divorce Regulations 1987.

OR

1. I am *[Give details of occupation, etc.]*.2. I have taken the following steps to bring to the notice of the respondent the application by the applicant for an order dissolving the marriage between the applicant and the respondent: *[State the steps taken. If notice has been given by advertisement in any newspaper, state the name of the newspaper, where it is published, and the date of publication, and annex extracts taken from the newspaper which contain such advertisement.]*

OR

2. The respondent's address outside Tokelau is unknown, and it is not practicable, by reason of the following facts, to take any steps to bring to the notice of the respondent the application by the applicant for an order dissolving the marriage between the applicant and the respondent: [*State the facts relied on.*]

.....  
(Signature of person making the affidavit)

Sworn at [*Place*] this ..... day of ..... 19 ....., before me—

.....  
(Signature of person taking the affidavit)

Commissioner [*or other person authorised under the Tokelau Affidavits and Declarations Regulations 1986 to take an affidavit.*]

\_\_\_\_\_

Form 6

Reg. 7

NOTICE OF DEFENCE TO APPLICATION FOR ORDER  
DISSOLVING A MARRIAGE

To: The Administrator of Tokelau

I, [Full name], of [Place of residence], [Occupation], wish to make the following statement in answer to the application by my spouse, [Insert name], for an order dissolving our marriage.

I say, in answer to the applicant,—

- 1. The following facts stated in the application are accepted by me as correct: [*Here set out the facts accepted as correct.*]
- 2. The following facts stated in the application are not accepted by me as correct: [*Here set out the facts not accepted as correct.*]
- 3. [*Here set out any other facts relating to the application or to the circumstances which have existed or are existing between the parties which the Administrator of Tokelau should be told about.*]

Signature of Respondent .....

Sworn at [Place] this ..... day of ..... 19...., before me—

.....  
Commissioner [*or other person authorised under the Tokelau Affidavits and Declarations Regulations 1986 to take an affidavit.*]

*Note*

*Documents to accompany this notice.* At the time of the lodging of this notice, it must be accompanied by affidavits verifying any facts stated by the respondent in the notice.



Reg. 10

## Form 7

## ORDER DISSOLVING MARRIAGE

Upon application made under the Tokelau Divorce Regulations 1987, I, the Administrator of Tokelau, by this order, dissolve the marriage that took place on the ..... day of ..... 19.... at [State Church, or other place at which the marriage took place] in [Name of village, etc.] between [Names of the parties to the application].

.....  
Administrator of Tokelau.

.....  
Date

*Note*

This order takes effect on being made.

P. G. MILLEN,  
Clerk of the Executive Council.

## EXPLANATORY NOTE

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 April 1987, make provision for the dissolution of marriages in Tokelau and other ancillary matters. They are in substitution for the Tokelau Divorce Regulations 1975, which are consequentially revoked.

The regulations confer the power to make orders dissolving marriages in Tokelau on the Administrator of Tokelau. However, applications for such orders are to be referred in the first instance to the relevant Taupulega (village council), which is to consider the application and report to the Administrator whether the marriage should be dissolved. The Administrator shall make an order dissolving a marriage where the Taupulega so recommends.

The regulations also provide for the Administrator, on dissolving a marriage or at any time thereafter, to make such ancillary orders as the Administrator thinks fit relating to the custody of any children of the marriage, the payment of maintenance, and the division of matrimonial property.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 5 March 1987.

These regulations are administered in the Ministry of Foreign Affairs.