

1975/262



## THE TOKELAU ISLANDS DIVORCE REGULATIONS 1975

DENIS BLUNDELL, Governor-General

### ORDER IN COUNCIL

At the Government Buildings at Wellington this 6th day of November 1975

Present:

THE RIGHT HON. W. E. ROWLING PRESIDING IN COUNCIL

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

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#### REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Tokelau Islands Divorce Regulations 1975.

(2) These regulations shall come into force on the date of the commencement of Part I of the Tokelau Islands Amendment Act 1970.

**2. Jurisdiction of High Court of Niue**—(1) The High Court of Niue (in these regulations referred to as the High Court) shall have in the Tokelau Islands jurisdiction in divorce in accordance with these regulations.

(2) The High Court shall, in proceedings for nullity of marriage or for dissolution of a voidable marriage, have and exercise in the Tokelau Islands the same jurisdiction as is possessed for the time being in New Zealand by the Supreme Court of New Zealand.

(3) No decree shall be made by the High Court for a divorce *a mensa et thoro*, or for restitution of conjugal rights, nor shall any action be brought in the High Court for criminal conversation.

**3. Domicile of married woman who is a minor**—For the purposes of these regulations, the domicile of a married woman who is a minor shall be determined as if she were an adult.

**4. Grounds of divorce**—(1) Subject to the provisions of subclause (2) of this regulation, any married person (hereinafter in these regulations referred to as the petitioner) may take proceedings in the High Court for the dissolution of his or her marriage with the other party to the marriage (hereinafter in these regulations referred to as the respondent) on any one or more of the grounds specified in subclause (3) of this regulation.

(2) No proceedings for divorce may be taken in the High Court unless—

- (a) The petitioner or the respondent is, at the commencement of the proceedings, domiciled in the Tokelau Islands; and
- (b) Where the ground alleged in the petition is one of those specified in paragraphs (l), (m), and (n) of subclause (3) of this regulation, has been domiciled or resident in the Tokelau Islands for a period of at least 2 years immediately preceding the filing of the petition.
- (3) A petition for divorce may be presented to the High Court on any one or more of the following grounds, and on no other ground:
  - (a) That the respondent has, since the solemnisation of the marriage, committed adultery;
  - (b) That the respondent, being the wife of the petitioner, has since the solemnisation of the marriage and without the consent of the petitioner been artificially inseminated with the semen of some male person other than the petitioner;
  - (c) That the respondent has, without just cause, deserted the petitioner and, without just cause, has left the petitioner continuously so deserted for a period of at least 3 years;
  - (d) That the respondent—
    - (i) Being the petitioner's husband, has for a period of at least 3 years been a drug addict or an habitual drunkard, and has either habitually left the petitioner without means of support or habitually treated the petitioner with cruelty; or
    - (ii) Being the petitioner's wife, has for a like period been a drug addict or an habitual drunkard, and has either habitually neglected her domestic duties and rendered herself unfit to discharge them or habitually treated the petitioner with cruelty;
  - (e) That the respondent has, since the solemnisation of the marriage, been convicted of attempting to commit the murder of the petitioner or any child (of any age) of the petitioner or the respondent; or has been convicted of any offence under section 151 of the Niue Act 1966, section 191 of the Cook Islands Act 1915, or section 188, section 189, section 191, section 198, section 199, subsection (1) of section 200, or section 201 of the Crimes Act 1961, against the petitioner or any such child:

- (f) That the respondent has, since the solemnisation of the marriage, been convicted of incest, attempted rape or assault with intent to commit rape against any child (of any age) of the petitioner or the respondent, or of sexual intercourse, or attempted sexual intercourse with any such child under 15 years of age:
- (g) That the respondent, being the husband of the petitioner, has committed rape or buggery since the solemnisation of the marriage:
- (h) That the respondent has, since the solemnisation of the marriage, been convicted of murder:
- (i) That the respondent is a person of unsound mind and is unlikely to recover, and has been a patient for a period or periods of not less in the aggregate than 7 years within the period of 10 years immediately preceding the filing of the petition:
- (j) That the respondent is a person of unsound mind and is unlikely to recover, and has been continuously a person of unsound mind for a period of at least 7 years immediately preceding the filing of the petition, and has been a patient during the last 3 years of that period:
- (k) That the respondent is a person of unsound mind and is unlikely to recover, and has been a patient for a period of at least 5 years immediately preceding the filing of the petition:
- (l) That the petitioner and the respondent are parties to an agreement for separation, whether made in writing or otherwise, and that the agreement is in full force and has been in full force for a period of at least 3 years:
- (m) That—
  - (i) The petitioner and the respondent are parties to a decree of separation or a separation order made in New Zealand, the Tokelau Islands, Niue, or the Cook Islands, or to a decree, order, or judgment made in any other country if that decree, order, or judgment has in that country the effect that the parties are not bound to live together; and
  - (ii) That decree of separation, separation order, or other decree, order, or judgment is in full force and has been in full force for a period of at least 3 years:
- (n) That the petitioner and the respondent are living apart and are unlikely to be reconciled, and have been living apart for a period of at least 7 years:
- (4) Proof that the respondent has been convicted by any Court of any of the offences specified in paragraphs (e) to (h) of subclause (3) of this regulation shall, for the purposes of that subclause, be conclusive proof that the respondent has committed that offence.
- (5) In subclause (3) of this regulation, the term "patient" means a person detained under an order of medical custody made under Part XXVI of the Niue Act 1966 or under Part XXI of the Cook Islands Act 1915, or a person who is a committed patient or a special patient within the meaning of section 2 of the Mental Health Act 1969; and includes any person receiving care and treatment as a resident (otherwise than as an informal patient within the meaning of that section 2 or as a voluntary patient) in any hospital within the meaning of the said section 2, or in a like hospital in the Tokelau Islands, Niue.

the Cook Islands, or any country outside New Zealand; and also includes any person detained in any like hospital under the provisions of the law, corresponding to the Mental Health Act 1969, of the Tokelau Islands, Niue, the Cook Islands, or any country outside New Zealand.

**5. Grounds for refusal of divorce**—If the High Court is of the opinion—

- (a) That, in the case of a petition based on a matrimonial wrong, the petitioner's own habits or conduct induced or contributed to the matrimonial wrong complained of so as to disentitle the petitioner to a divorce, or the petitioner has condoned the matrimonial wrong; or
- (b) That, in the case of the adultery of the respondent, the petitioner has been, in any manner, accessory to or has connived at the adultery,—

the Court shall dismiss the petition but, subject to regulation 6 of these regulations, in all other cases, if the Court is satisfied that the case of the petitioner has been established, the Court shall pronounce a decree of divorce.

**6. Discretion to refuse decree**—(1) Where a petition for divorce is presented on any of the grounds specified in paragraph (l), paragraph (m), or paragraph (n) of subclause (3) of regulation 4 of these regulations, and the petitioner has proved his or her case, the High Court shall have a discretion whether or not to grant a decree of divorce:

Provided that the Court shall not, in the exercise of its discretion, refuse to grant a decree by reason only of the adultery of either party after their separation.

(2) The High Court may dismiss any petition for divorce if there has been collusion between the petitioner and the respondent with intent to cause a perversion of justice.

**7. Co-respondent**—In any proceedings in the High Court for divorce on the ground of adultery, the Court may, if it thinks fit, make the person with whom the respondent is alleged to have committed adultery a co-respondent in the proceedings.

**8. Intervention**—By leave of the High Court, any person may intervene in proceedings for divorce to oppose the making of a decree of divorce.

**9. Agreement no bar**—No covenant or agreement made between any parties to proceedings for divorce shall operate as a bar to the institution or prosecution of the proceedings.

**10. No appeal**—No appeal shall lie to the Supreme Court of New Zealand from any decree of the High Court for divorce or of dissolution of a voidable marriage.

**11. Remarriage**—Where a decree of divorce or dissolution of a voidable marriage has been made by the High Court, it shall be lawful for the parties to the marriage to marry again as if the former marriage had been dissolved by death.

**12. Costs**—In any proceedings under these regulations, the High Court may make such order as it thinks fit for the payment of the costs of the proceedings, or any part thereof, by or to the petitioner, the respondent, co-respondent, or any person intervening in the proceedings.

**13. Maintenance of divorced wife**—(1) Where a decree of divorce or dissolution of a voidable marriage is made by the High Court, the Court may, if it thinks fit, in and by the decree, order the husband to pay towards the future maintenance of the wife (whether she is the petitioner or the respondent), so long as she remains unmarried, a reasonable sum at such times and in such manner as the Court thinks fit:

Provided that while the wife is living and unmarried the Court may, if it thinks fit, on the application of the petitioner or the respondent, cancel any such order or, from time to time, vary or suspend the order.

(2) Every such order shall be capable of being enforced as if it were a maintenance order made under the provisions of Part XXIII of the Niue Act 1966 and as if all the provisions of sections 559, 560, 565, and 568 of that Act were in force in the Tokelau Islands.

(3) In addition to or instead of making an order under subclause (1) of this regulation, the High Court may, when making any such decree, order the husband to pay to the wife such capital sum as the Court thinks fit.

**14. Custody of children**—(1) The High Court may, in and by any decree of divorce or dissolution of a voidable marriage, or at any time and from time to time thereafter, make such order as it thinks fit as to the custody of the children of the marriage.

(2) The High Court may, in and by any decree of nullity of marriage, or at any time and from time to time thereafter, make such order as it thinks fit as to the custody of the children of the parties to the void marriage.

**15. Molestation**—If, at any time after a decree of divorce or of dissolution of a voidable marriage has been pronounced one of the former spouses—

(a) Commits any trespass by entering or remaining upon or in any land, house, or building which is in the occupation of the other former spouse or in which the other former spouse dwells or is present; or

(b) Attempts or threatens to commit any such trespass; or

(c) Molests the other former spouse by watching or besetting the dwellinghouse, place of business or employment, or residence of the other former spouse, or by following or waylaying the other former spouse in any road or other public place,—

that first-mentioned former spouse commits an offence, and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$40.

**16. Commencement of proceedings, etc.**—(1) Where any person desires to commence any proceedings under these regulations or to file in the High Court any document relating, directly or indirectly, to any

such proceedings, he may do so by delivering the petition or document to the Registrar of the High Court or, in the Tokelau Islands, to any Commissioner of the High Court or any Magistrate.

(2) Where any petition or document is delivered, pursuant to subclause (1) of this regulation, to a Commissioner of the High Court or a Magistrate, the person delivering the same shall pay to the Commissioner or Magistrate a sum sufficient to defray the costs of sending the petition or document to the Registrar of the High Court.

(3) Subject to the provisions of subclause (2) of this regulation, where any petition or document is, pursuant to subclause (1) of this regulation, delivered to a Commissioner of the High Court or a Magistrate, it shall be the duty of the Commissioner or Magistrate to dispatch, as soon as reasonably possible thereafter, the petition or document to the Registrar of the High Court.

**17. Fees—**(1) The following fees shall be payable under these regulations to the Registrar of the High Court:

(a) On the filing in the High Court of any petition for a decree of divorce, nullity of marriage, or dissolution of a voidable marriage, the sum of \$6.

(b) On the filing in the High Court of any other document, the sum of \$1.

(2) All such fees shall be in addition to any sum referred to in subclause (2) of regulation 16 of these regulations.

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

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#### EXPLANATORY NOTE

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

These regulations make provision with respect to divorce, nullity of marriage, and dissolution of a voidable marriage in the Tokelau Islands in substitution for the provisions as to divorce in the Native Laws (Divorce) Ordinance 1921 of the Gilbert and Ellice Islands Colony.

The regulations confer jurisdiction on the High Court of Niue, and follow closely the provisions of Part XXII of the Niue Act 1966 relating to the jurisdiction of that Court in divorce, nullity of marriage, dissolution of a voidable marriage, the grounds of divorce, procedural matters, maintenance, and custody.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 13 November 1975.

These regulations are administered in the Ministry of Foreign Affairs.