

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

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CHAPTER XX

MARRIAGE ORDINANCE

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An ordinance to make provision for the solemnization and registration of marriages and for matters relating thereto.

[16th October, 1952]

Ordinances Nos:
4 of 1952,
2 of 1957,
2 of 1968,
2 of 1985,
2 of 2012,
2 of 2014.

PART I—PRELIMINARY

- 1.—(1) This ordinance may be cited as the Marriage Ordinance.
(2) In this ordinance, unless the context otherwise requires—
[“child of the marriage” means a child of the husband and wife, and includes, in relation to any proceedings under this Ordinance, a child (whether or not a child of the husband or wife) who was a member of the family of the husband and wife at the time when the husband and wife ceased to live together or at the time immediately preceding the institution of proceedings, whichever first occurred;]
“Registrar” means the Registrar of Marriages, and includes a Deputy Registrar when acting as Registrar;
“registered minister” means a minister registered under the provisions of this ordinance;
[“spouse” means a person’s husband or wife, and where that person’s marriage has been dissolved under Part VIII of this Ordinance, includes a person who was a spouse before that marriage was dissolved.]
(Amended by Ordinance No. 2 of 2012)

Short title and interpretation.

PART II—GENERAL

2. The Governor shall, from time to time, appoint a fit and proper person to be the Registrar of Marriages, and may also from time to time appoint a Deputy Registrar of Marriages to act in the absence or during the illness or incapacity of the Registrar.

Appointment of Registrar.

3. The Registrar shall have an office at such place as the Governor shall from time to time direct.

Office of Registrar.

4. Whenever, after the commencement of this ordinance, any persons desire to marry, one of the parties to the intended marriage shall sign and give to the Registrar a notice in the Form (A) in the First Schedule hereto.

Notice of marriage.

5. If the person giving such notice is unable to write or is insufficiently acquainted with the English language, or both, then it shall be sufficient if he or she place a mark or cross thereto in the presence of some literate person who shall attest the same, which attestation shall be in the Form (B) in the First Schedule.

First Schedule.

Signature of notice by person unable to write or to understand English language.

First Schedule.

6. The Registrar shall supply forms of notice gratuitously to any persons *bona fide* applying for the same.

Registrar to supply forms of notice free of charge.

Notice to be entered in "Marriage Notice Book" and published.

7. Upon receipt of such notice the Registrar shall cause the same to be entered in a book to be called the "Marriage Notice Book" which may be inspected at any reasonable time without fee. He or she shall also publish such notice by causing a copy of the same to be affixed on the outer door of the office, and to be kept exposed there until the grant of a certificate as hereinafter mentioned, or until three months shall have elapsed.

Registrar to issue certificate on proof of conditions by affidavit.

8. The Registrar, at any time after the expiration of twenty-one days and before the expiration of three months from the date of the notice, upon payment of the prescribed fee, shall thereupon issue a certificate in the Form (C) in the First Schedule hereto:

First Schedule.

Provided always that the Registrar shall not issue such certificate until satisfied by affidavit—

- (a) that one of the parties has been resident within the Islands at least fifteen days preceding the granting of the certificate;
- (b) that each of the parties to the intended marriage (not being a widower or widow) is eighteen years old, or that, if he or she is under that age, the consent hereinafter made requisite has been obtained in writing and is annexed to such affidavit;
- (c) that there is no impediment of kindred or affinity, or any other lawful hindrance to the marriage.

The Registrar taking such affidavit shall explain to the persons making the same what are the prohibited degrees of kindred and affinity and the penalties which may be incurred under other provisions of this ordinance.

Marriage to take place within three months after date of notice.

9. If the marriage shall not take place within three months after the date of the notice, the notice and all proceedings consequent thereupon shall be void; and fresh notice must be given before the parties can lawfully marry.

Governor's power to grant licence to marry.

10. The Governor, upon proof being made to him by affidavit that there is no lawful impediment to the proposed marriage, and that the necessary consent (if any) to such marriage has been obtained, may, if he shall think fit, dispense with the giving of notice, and with the issue of the certificate of the Registrar, and may grant his licence, which shall be according to Form (D) in the First Schedule hereto, authorizing the celebration of a marriage between the parties named in such licence by the Registrar, or by a registered minister.

First Schedule.

Caveat may be entered against issue of certificate.

11. Any person whose consent to a marriage is hereby required, or who may know of any just cause why the marriage should not take place, may enter a caveat against the issue of

the Registrar's certificate, by writing at any time before the issue thereof the word "Forbidden" opposite to the entry of the notice in the Marriage Notice Book, and appending thereto his name and place of abode, and the grounds upon or by reason of which he claims to forbid the issue of the certificate, and the Registrar shall not issue his certificate until such caveat shall be removed as hereinafter is provided.

12. Whenever a caveat is entered against the issue of a certificate, the Registrar shall refer the matter to the [Magistrate's] Court, and that Court shall thereupon summon the parties to the intended marriage, and the person by whom the caveat is entered, and shall require the person by whom the caveat is entered to show cause why the Registrar should not issue his certificate, and shall hear and determine the case in a summary way, and the decision of the court shall be final.

When caveat entered question to be referred to Court.

(Amended by Ordinance No. 2 of 2012)

13. If the Court decides that the certificate ought to be issued, a judge thereof shall remove the caveat cancelling the word "Forbidden" in the Marriage Notice Book in ink, and writing in such Marriage Book, immediately below such entry and cancellation the words "cancelled by order of the [Magistrate's] Court" and signing his name thereto. The Registrar shall then issue his certificate and the marriage may proceed as if the caveat had not been entered, but the time which has elapsed between the entering and the removal of the caveat shall not be included in the period of three months specified in section 8 hereof.

Removal of caveat.

(Amended by Ordinance No. 2 of 2012)

14. The court may award compensation and costs to the party injured, if it appears that a caveat was entered on insufficient grounds.

Compensation and costs.

PART III—CONSENT TO MARRIAGE IN CERTAIN CASES NECESSARY

15. If either party to an intended marriage, not being a widower or widow, is under eighteen years of age, the written consent of either parent or of the guardian of such party, must be produced annexed to such affidavit as aforesaid before a licence can be granted or a certificate issued.

Consent to marriage of minors.

16.—(1) If the person required to sign such consent is unable to write, or is insufficiently acquainted with the English language, or both, then he or she shall sign such consent by placing a mark or cross thereto in the presence of the Registrar.

Signature of consent by person unable to write or to understand English language.

(2) Such signature shall be attested by such person in the Form (B) in the First Schedule hereto.

First Schedule.

Consent where no parent or guardian capable of consenting.

17. If there be no parent or guardian of such party residing in the Islands and capable of consenting to the marriage, then any of the following persons may consent to such a marriage in writing, upon being satisfied after due inquiry that the marriage is a proper one; that is to say, the Governor or the Supreme Court, and such consent shall be as effectual as if the father or mother had consented.

PART IV – CELEBRATION OF MARRIAGE

Marriage in place of worship by registered minister within specified hours and before witnesses.

18. Marriages may be celebrated by a registered minister and according to the rites and usages of marriages observed in the religious denomination to which such minister belongs:

Provided that the marriage be celebrated with open doors between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, and in the presence of two or more witnesses besides the officiating minister.

Minister not to celebrate marriage if impediment nor without licence, etc.

19. A minister shall not celebrate any marriage if he knows of any just impediment to such marriage, nor until the parties deliver to him the Registrar's certificate or the Governor's licence.

Registrar, etc., to be provided with books of certificates.

20. The Governor shall cause to be printed and delivered to the Registrar, and to registered ministers, books of marriage certificates in duplicate and with counterfoils in Form (E) in the First Schedule hereto. Such books shall be kept by the Registrar and the registered ministers under lock and key, and be in the custody of the Registrar and such ministers respectively.

First Schedule.

Entries to be made in marriage certificate.

21. Immediately after the celebration of any marriage by a minister, the officiating minister shall fill up in duplicate a marriage certificate with the particulars by the said Form (E), and state also and enter in the counterfoil the number of the certificate, the date of the marriage, names of the parties, and the names of the witnesses.

Signature of certificate in duplicate.

22. The certificate shall then be signed in duplicate by the officiating minister by the parties and by two or more witnesses to the marriage. The minister having also signed his name to the counterfoil, he shall sever the duplicate certificate therefrom, and he shall deliver one certificate to the parties, and shall within seven days thereafter transmit the other to the Registrar of Marriages, who shall file the same in his office.

23. After the issue of a certificate under section 8 or 13 hereof, or of a licence under section 10, the parties may, if they think fit, contract a marriage before the Registrar, in the presence of two witnesses in his office, with open doors, between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon, and in the following manner—

Marriage in Registrar's office.

The Registrar, after production to him of the certificate or licence, shall, either directly or through an interpreter, address the parties thus—

Form to be observed.

“Do I understand that you *A.B.*, and you *C.D.*, come here for the purpose of becoming man and wife?”

If the parties answer in the affirmative, he shall proceed thus—

“Know ye that by the public taking of each other as man and wife in my presence, and in the presence of the persons now here, and by the subsequent attestation thereof by signing your names to that effect, you become legally married to each other, although no other rite of a civil or religious nature shall take place, and that this marriage cannot be dissolved during your lifetime, except by a valid judgment of divorce; and if either of you before the death of the other shall contract another marriage while this remains undissolved, you will be thereby guilty of bigamy, and liable to punishment for that offence.”

Each of the parties shall then say to the other, “I call upon all persons here present to witness that I, *A.B.*, do take thee, *C.D.*, to be my lawful wife (or husband).”

24. The Registrar shall then fill up, and together with the parties and witnesses shall sign the certificate of the marriage in duplicate, and the Registrar shall then fill up and sign the counterfoil as hereinbefore prescribed in the case of a marriage by a registered minister, and shall deliver one certificate to the parties and shall file the other in his office.

Marriage certificate to be signed.

PART V—REGISTRY AND EVIDENCE OF MARRIAGES

25.—(1) The Registrar shall forthwith register in a book to be kept in his office for such purpose, and to be called “The Marriage Register Book”, every certificate of marriage which shall be filed in his office, according to the Form (F) in the First Schedule hereto; and every such entry shall be made in the order of date from the beginning to the end of the book, and every entry so made shall be dated on the day on which

Marriage certificate to be registered.

First Schedule.

it is so entered, and shall be signed by the Registrar, and such book shall be indexed in such manner as is best suited for easy reference thereto.

(2) The Registrar shall at all reasonable times allow searches to be made in the Marriage Register Book, and shall give certified copies therefrom upon payment of the prescribed fee.

Corrections of clerical errors in marriage certificates.

26. The Registrar may correct any clerical error in any certificate of marriage filed in his office, upon production of the certificate delivered to the parties, and shall authenticate every such correction by his or her signature and the date of such correction.

Evidence of marriage.

27. Every certificate of marriage which shall have been filed in the office of the Registrar or a copy thereof, purporting to be signed and certified as a true copy by the Registrar for the time being and every entry in a Marriage Register Book or copy thereof certified as aforesaid, shall be admissible as evidence of the marriage to which it relates, in any court of justice or before any person having by law or consent of parties authority to hear, receive, and examine evidence.

Registration of ministers.

28.—(1) The Governor, upon receiving a requisition from any minister of religion ordinarily officiating as such specifying the religious denomination of such minister and his designation and normal place of residence together with the place where he or she officiates and desiring that he or she may be registered as a minister for celebrating marriages under this ordinance, may, if he shall think fit, register or cause to be registered the name of such minister in a register book to be kept for that purpose. No fee shall be paid for any such registration.

(2) The Governor may at any time, if he shall think fit to do so, remove the name of any minister from the register and a minister whose name is removed shall not, after notification thereof in such manner as the Governor shall think fit, have authority to celebrate marriages under the provisions of this ordinance.

Circumstances invalidating marriage.

29.—(1) No marriage in the Islands shall be valid, which, if celebrated in England, would be null and void on the ground of kindred or affinity.

(2) No marriage purported to be celebrated in the Islands under this ordinance shall be valid if at the date of the marriage either of the parties thereto was [under the age of 17 years.]

(Amended by Ordinance No. 2 of 2014)

(3) A marriage shall be null and void if both parties knowingly and wilfully acquiesce in its celebration—

- (a) in the case of a marriage before the Registrar in any place other than the office of the Registrar; or
 - (b) under a false name or names; or
 - (c) without the Registrar's certificate of notice or Governor's licence duly issued; or
 - (d) by a person not being a registered minister or the Registrar of Marriages.
- (4) No marriage shall, after celebration, be deemed invalid by reason that any provision of this ordinance other than the foregoing has not been complied with.

30. All marriages celebrated under this ordinance shall be good and valid in law to all intents and purposes.

Marriages under this Ordinance valid.

31. The fees specified in the Second Schedule hereto shall be paid to the Registrar for the several matters to which they are applicable and shall be paid and applied as the Governor may from time to time direct.

Fees.
Second Schedule.

32. The Governor may, when he is satisfied of the poverty of the parties, reduce the amount of the said fees, or remit them altogether; and, if they have been paid into revenue, order their refund.

Fees may be remitted on ground of poverty.

PART VI—OFFENCES AND PENALTIES

33. Whoever is guilty of bigamy shall be liable to imprisonment for a period not exceeding five years.

Bigamy.

34. Whoever, being unmarried, goes through the ceremony of marriage with a person whom he or she knows to be married to another person, shall be liable to imprisonment for a period not exceeding five years.

Marriage with a person previously married.

35. Whoever in any declaration, certificate, licence, document, or statement by law to be made or issued for the purposes of a marriage, declares, enters, certifies, or states any material matter which is false, shall, if he or she does so without having taken reasonable means to ascertain the truth or falsity of such matter, be liable to imprisonment for a period not exceeding one year, or shall, if he or she does so knowing that such matter is false, be guilty of an offence and liable to imprisonment for a period not exceeding five years.

Making false declaration, etc., for marriage.

36. Whoever endeavours to prevent a marriage by pretence that his or her consent thereto is required by law, or that any person whose consent is so required does not consent, or that there is any legal impediment to the performing of such marriage, shall, if he or she does so knowing that such pretence is false or without having reason to believe that it is

False pretence of impediment to marriage.

true, be guilty of an offence and liable to imprisonment for a period not exceeding two years.

Unlawfully performing marriage ceremony.

37. Whoever performs or witnesses as a registered minister or Registrar the ceremony of marriage, knowing that he or she is not duly qualified so to do, or that any of the matters required by law for the validity of such marriage has not happened or been performed, so that the marriage is void or unlawful on any ground, shall be guilty of an offence and liable to imprisonment for a period not exceeding five years.

Wilful neglect of duty to fill up or transmit certificate of marriage.

38. Whoever, being under a duty to fill up the certificate of a marriage celebrated by him or her, or the counterfoil thereof, or to transmit the same to the Registrar, wilfully fails to perform such duty, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

Personation in marriage.

39. Whoever personates any other person in marriage, or marries under a false name or description, with intent to deceive the other party to the marriage, shall be guilty of an offence and liable to imprisonment for a period not exceeding five years.

Fictitious marriage.

40. Whoever goes through the ceremony of marriage, or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground, and that the other person believes it to be valid, shall be guilty of an offence and liable to imprisonment for a period not exceeding five years.

Forms in First Schedule may be used.

41. The forms contained in the First Schedule hereto may be used in the cases to which they are applicable, with such alterations as may be necessary.

Returns.

42. The Registrar shall make such returns to the Governor as the Governor may from time to time direct.

Jurisdiction of Supreme Court.

43. The jurisdiction of the [Magistrate's] Court shall be exercised in accordance with the provisions of this ordinance. **(Amended by Ordinance No. 2 of 2012)**

[PART VII—SEPARATION

Application for separation order

44. Either party to a marriage may apply for a separation order.

Power of Magistrate's Court to make separation order

45.—(1) Every application for a separation order shall be heard and determined in the Magistrate's Court.

(2) The Magistrate's Court may make a separation order if the grounds in section 46 are established.

(3) In an application for a separation order, the Magistrate's Court may make an occupation order under section 50.

46. In proceedings for a separation order, the Magistrate's Court shall make the order if it is satisfied that there is a state of disharmony between the parties to the marriage of such a nature that it is unreasonable to require the parties to continue, or, as the case may be, to resume, cohabitation with each other.

Grounds for separation order

47. So long as a separation order remains in force, neither party to the marriage shall be under an obligation to cohabit with the other party, but, except as provided by this Ordinance or any other enactment, the order shall not otherwise affect the marriage or the status, rights, and obligations of the parties to the marriage.

Effect of separation order

48.—(1) A separation order shall cease to have any force or effect if—

Discharge of separation order on resumption of cohabitation

- (a) The husband and the wife, with the free consent of both parties, have resumed cohabitation as husband and wife, and such cohabitation has been for a period of more than 28 days; or
- (b) The order is discharged by the court under section 49 of this Ordinance.

49.—(1) Subject to subsection (2) of this section, a Magistrate's Court may, on the application of either party, discharge any separation order if the Court is satisfied that the circumstances have so changed since the making of the order that it is reasonable that the order should be discharged.

Discharge of separation order by Court

(2) The Court shall not discharge the order if an application for dissolution of marriage has been filed by either party, and is pending.

50.—(1) On granting a separation order, the Magistrate's Court may make an order granting to either spouse, for such period or periods and on such terms and subject to such conditions as the Court thinks fit, the right personally to occupy the family home.

Occupation order

(2) Where an order is made under subsection (1) of this section, the person in whose favour it is made shall be entitled, to the exclusion of the other spouse, personally to occupy the family home to which the order relates.

(3) The Court—

- (a) in determining whether to make an order under subsection (1) of this section; and
- (b) in determining, in relation to that order, the period

or periods, the terms (if any), and the conditions (if any) of the order;

shall have particular regard to the need to provide a home for any children of the marriage, and may also have regard to all other relevant circumstances.

(4) For the purposes of this section—

“family home” means the dwelling-house that either or both of the spouses use habitually or from time to time as the only or principal family residence, together with any land, buildings, or improvements appurtenant to that dwelling-house and used wholly or principally for the purposes of the household.

(5) An occupation order made under this section has effect notwithstanding any provision of the Land Tenure Reform Ordinance.

PART VIII—DISSOLUTION OF MARRIAGE

Application for
dissolution of
marriage

51. An application for an order dissolving a marriage may be made by either party to the marriage where, at the time of the filing of the application, at least one party to the marriage is domiciled in the Islands.

Application for
dissolution to be
determined by the
Magistrate’s Court

52. Every application for an order dissolving a marriage shall be heard and determined by the Magistrate’s Court.

Grounds for
dissolution

53.—(1) An application for an order dissolving a marriage may be made only on the ground that the marriage has broken down irretrievably.

(2) The ground for the order is established in law if, and only if, the applicant satisfies the court of one or more of the following facts, that is to say -

- (a) that the respondent has committed adultery and the applicant finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;
- (c) that the parties of the marriage have lived apart for a continuous period of at least two years immediately preceding the filing of an application under section 51.

(3) For the purposes of paragraph (2)(a) above, one party to a marriage shall not be entitled to rely on adultery committed by the other if, after it became known to him or her that the other had committed that adultery, the parties have lived with each other for a period exceeding six months.

(4) It shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the applicant and into any facts alleged by the respondent.

(5) A separation order or a separation agreement (whether made by deed or other writing or orally) in full force for the period of two years immediately preceding the filing of an application under section 51 may be adduced as evidence of living apart for the required period.

(6) Where the ground for the making of the order is established under subsection (2) of this section, the Court shall, subject to section 57 of this Ordinance, make an order dissolving the marriage.

54.—(1) An order dissolving a marriage shall, subject to subsections (2), (3) and (4) of this section, take effect as a final order at the expiration of one month from the date on which it is made.

Orders for dissolution of marriage

(2) Where either party to the marriage is not resident on the Island, the Magistrate shall determine the time period to be allowed before an order dissolving a marriage takes effect as a final order.

(3) Where an order dissolving a marriage is made in defended proceedings and either of the parties to the marriage dies, the order shall not take effect as a final order.

(4) Where an order dissolving a marriage is appealed pursuant to section 55 of this Ordinance, the order shall not take effect as a final order while the appeal or hearing is pending.

55. Either party may, within one month of an order for dissolution having been made under section 53(6) of this ordinance, lodge an appeal to the Supreme Court.

Appeal

PART IX—WELFARE OF SPOUSE AND CHILDREN

56. The Magistrate has the power to make such orders as are required by the circumstances for the maintenance of any spouse and the maintenance, care and custody of any children of the marriage.

Maintenance and custody orders

57.—(1) No Registrar or Magistrate shall make an order dissolving a marriage unless he or she is satisfied that arrangements have been made for the day-to-day care, maintenance, and other aspects of the welfare of every child of the marriage and those arrangements are satisfactory or are the best that can be devised in the circumstances.

Arrangements for welfare of children on dissolution of marriage

(2) No order dissolving a marriage shall be invalid solely on the ground that-

- (a) any provision of subsection (1) of this section has not been complied with; or

-
- (b) any information that is relevant for the purposes of those subsections has not been supplied to the Court;
or
 - (c) any information that has been supplied is incomplete, incorrect, or misleading.]
- (Parts VII—IX inserted by Ordinance No. 2 of 2012)**