

PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS

No 2 of 2012

[seal of Pitcairn]

[Vicki Treadell]

Enacted by the Governor of the Islands
of Pitcairn, Henderson, Ducie and Oeno

MARRIAGE (AMENDMENT) ORDINANCE 2012

DATE MADE: 28 MAY 2012

DATE PUBLISHED: 28 MAY 2012

An Ordinance to provide for separation and dissolution of marriage proceedings in
Pitcairn

Title and
commencement

1. This Ordinance may be cited as the Marriage (Amendment) Ordinance 2012 and shall come into force on the day after it is published.

Headings amended

2. –(1) A new heading shall be added before section 1 of the Marriage Ordinance as follows –

PART I – PRELIMINARY

(2) A new heading shall be added after section 1 and before section 2 of the Marriage Ordinance as follows –

PART II – GENERAL

(3) The heading immediately following section 14 and preceding section 15 of the Marriage Ordinance is hereby amended by inserting the words “PART III –” before the word “CONSENT”.

(4) The heading immediately following section 17 and preceding section 18 of the Marriage Ordinance is hereby amended by inserting the words “PART IV –” before the word “CELEBRATION”.

(5) The heading immediately following section 24 and preceding section 25 of the Marriage Ordinance is hereby amended by inserting the words “PART V –” before the word “REGISTRY”.

(6) The heading immediately following section 32 and preceding section 33 of the Marriage Ordinance is hereby amended by inserting the words “PART VI –” before the word “OFFENCES”.

Section 1 amended

3. Section 1 of the Marriage Ordinance shall be amended by inserting, in appropriate alphabetical order, the following definitions:

“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;

“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.

Section 12 amended

4. Section 12 of the Marriage Ordinance shall be amended by deleting the words “Supreme Court” and substituting the words “Magistrate’s Court”.

Section 13 amended

5. Section 13 of the Marriage Ordinance shall be amended by deleting the words “Supreme Court” and substituting the words “Magistrate’s Court”.

Section 43 amended

6. Section 43 of the Marriage Ordinance shall be amended by deleting the words “Supreme Court” and substituting the words “Magistrate’s Court”.

New Part VII and VIII inserted

7. A new Part VII, Part VIII and Part IX shall be inserted in the Marriage Ordinance after section 43 as follows:

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.
Grounds for separation order	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.
Effect of 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.
Discharge of separation order on resumption of cohabitation	48. –(1) A separation order shall cease to have any force or effect if – (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.
Discharge of separation order by Court	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.

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

Occupation order

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.

(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.

Orders for dissolution of marriage

54. –(1) An order dissolving a marriage shall, subject to subsections (2), (3), (4) and (5) of this section, take effect as a final order at the expiration of one month from the date on which it is made.

(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.

Appeal

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.

PART IX – WELFARE OF SPOUSE AND CHILDREN

Maintenance and custody orders

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.

Arrangements for welfare of children on dissolution of marriage

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.

(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.

Justice Ordinance amended

8. –(1) Section 3 of the Justice Ordinance is hereby amended by inserting the following at the end of section 3(3)(a) –

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or

(iii) any dispute under the Marriage Ordinance;

(2) An new section 70Q is hereby inserted in Part VIII of the Justice Ordinance as follows–

Meaning of spouse 70Q. For the purposes of this Part–

“spouse” means a person’s husband or wife, and where that person’s marriage has been dissolved under Part VIII of the Marriage Ordinance, includes a person who was a spouse before that marriage was dissolved.

(3) Section 71 of the Justice Ordinance is hereby amended by –

(a) repealing subsection 71(1) and substituting the following subsection:

Maintenance of spouse and children

(1) Any person, whose spouse has deserted them or has willfully neglected or refused to sufficiently maintain them or any of their children (including adopted children) may apply to the Court for an order against the spouse containing all or any of the following provisions –

(a) maintenance for the applicant;

(b) the legal custody and guardianship of any such children;

(c) maintenance for any such children;

and, upon receipt of any such application, the Magistrate shall issue a summons to compel the attendance of the spouse of the applicant before the Court at the time and place appointed in and by such summons.

(b) deleting the word “husband” where it appears in section 71(2) and substituting the word “spouse”.

(4) Section 72 of the Justice Ordinance is hereby amended by –

(a) deleting the words “the father” where they appear –

(i) in subsection 72(1) in the phrase “the father of whom has wilfully neglected”; and

(ii) in subsection 72(2) in the phrase “may make an order against the father”;

and substituting the words “a parent”; and

(b) deleting the words “the father” where they appear –

(i) in subsection 72(1) in the phrase “an order against the father”; and

(ii) in subsection 72(1) in the phrase “compel the attendance of the father before the Court”;

and substituting the words “that parent”.

(5) Section 76 of the Justice Ordinance is hereby repealed.