

Namibia

Divorce Laws Amendment Ordinance, 1935

Ordinance 18 of 1935

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Divorce Laws Amendment Ordinance, 1935

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ORDINANCE

To amend the divorce laws of the Territory.

(English text signed by the Administrator)

[\[The provisions in this Ordinance have no headings.\]](#)

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the Governor-General, in so far as such consent is necessary previously obtained and communicated to the Legislative Assembly by message from the Administrator in accordance with the provisions of section twenty-six of the South West Africa Constitution Act, 1925, of the Parliament of the Union of South Africa, as follows:-

1.

- (1) In addition to any other grounds on which a decree of divorce may by any law at present in force in the Territory be granted such a decree may also be granted on the ground that the party against whom the decree is
 - (a) has been subject to the provisions of the Mental Disorders Act, 1916, of the Parliament of the Union of South Africa as extended to the Territory by the South West Africa Mental Disorders Act, 1926 (Act [No. 22 of 1926](#)), of the said Parliament, for a period of not less than seven years and is incurable; or

[\[The Mental Disorders Act 38 of 1916, with the exception of sections 27 to 29bis inclusive, was replaced by the Mental Health Act 18 of 1973. The remaining provisions were repealed by the Criminal Procedure Act 51 of 1977.\]](#)
 - (b) has been declared to be an habitual criminal under section three hundred and forty- four of the Criminal Procedure and Evidence Act, 1917, as applied to the Territory by the Criminal

Procedure and Evidence Proclamation, 1919 ([Proclamation No. 20 of 1919](#)), and has been detained in prison for at least five years after such declaration:

[The Criminal Procedure and Evidence Act, 1917 is no longer in force. The declaration of persons as habitual criminals is now covered by section 286 of the Criminal Procedure Act 51 of 1977.]

Provided that a Court shall not grant a decree of divorce on the grounds set forth in paragraph (a) unless it is satisfied by the evidence of three medical practitioners of whom two shall be alienists appointed by the Court that the defendant is incurable and unless it is also satisfied that the plaintiff (if the plaintiff is the husband of the defendant) is in no way to blame for the mental condition of the defendant. The evidence of such medical practitioners may be accepted on affidavit, but the court may, in its discretion, require any such medical practitioner to be summoned to give oral evidence, if it should consider such oral evidence essential for the proper determination of the mental condition of the defendant.

- (2) Whenever a decree is sought on the ground mentioned in paragraph (b) of sub-section (1) hereof, it shall be competent for the Court to refuse such decree if it is satisfied that the plaintiff voluntarily assisted the defendant in the commission of any crime of which he or she has been convicted.

2.

Whenever a decree of divorce is granted under paragraph (a) of sub-section (1) of section one, the Court -

- (a) may order that the plaintiff pay the defendant's costs, if any, and that he make provision to the satisfaction of the Master for the proper maintenance of the defendant and any child or children of the marriage and for the securing of any benefits to which the defendant may be entitled;
- (b) shall not, as against the defendant, order the forfeiture of any benefits arising out of the marriage.

3.

- (1) Whenever a person who has been granted a decree of divorce under paragraph (a) of sub-section (1) of section one intends to marry again, he shall (whether the marriage be by special licence or after publication of banns) obtain a certificate under the hand of the Master to the following effect, namely -
 - (a) a certificate that the provisions of paragraph (a) of section two have been complied with; or
 - (b) if no order has been made under that paragraph a certificate stating that fact.
- (2) Every such certificate shall be delivered to the marriage officer before whom the marriage is intended to be solemnized.
- (3) Any such person who marries again without obtaining such certificate as is required under sub-section (1) shall be liable to a fine of not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding six months, and in addition it shall be competent for the Master or any other person acting for the divorced spouse or children to take such action as may be necessary for the due fulfilment of such order.

[A fine not exceeding one hundred pounds is equivalent to a fine not exceeding N\$200.]

- (4) Any marriage officer who solemnizes any such marriage unless there has first been delivered to him the certificate required by this section in respect of the parties to the marriage shall be liable to such fine or in default of payment to such imprisonment as aforesaid.

4.

This Ordinance may be cited as the Divorce Laws Amendment Ordinance, 1935.