

The Formation and Dissolution of Marriage Act

This is an Act to consolidate the Formation and Dissolution of Marriage Act, cf. Consolidated Act No. 148 of 8 March 1991 as amended by section 4 of Act No. 386 of 20 May 1992, by section 35 of Act No. 387 of 14 June 1995, by section 8 of Act No. 389 of 14 June 1995, by section 7 of Act No. 385 of 22 May 1996 and by section 9 of Act No. 232 of 2 April 1997.

Part 1

Marriage conditions

1. A person who is under 18 years of age may not contract marriage without the permission of the County Governor's Office (*statsamtet*). When giving a young person under 18 permission to marry the County Governor's Office may lay down conditions to the effect that despite the marriage the young person is still a minor and consequently legally incompetent until he or she attains the age of 18.
- 2.-(1) A person who is under 18 years of age and has not previously been married shall not marry without the consent of the parents.

(2) If either of the parents is dead, of unsound mind, mentally deficient or does not share custody or if his statement cannot be obtained without special difficulty or delay, the other parent's consent shall be sufficient.
3. A person under guardianship according to section 5 of the Danish Guardianship Act or under guardianship involving deprivation of his legal capacity, cf. section 6 of the Danish Guardianship Act, shall not be allowed to marry without the consent of the guardian.
4. Where consent is refused under sections 2-3, the County Governor's Office (*statsamtet*) may give permission to the marriage if there is no reasonable ground for the refusal.
5. (Repealed).
6. Marriage between relatives in lineal ascent and descent or between brothers and sisters shall not be allowed.
7. Marriage shall not be contracted without the permission of the Minister of Justice between persons, of whom one has been married to the other person's relative in lineal ascent or descent. If there are children of the former marriage, permission may only be granted if it is not undesirable in the interests of the children.
8. An adopter and an adopted child shall not be allowed to marry as long as the adoptive relationship exists.

9. A person who has previously been married or has been a party to a registered partnership shall not be allowed to marry as long as the former marriage or registered partnership exists.

10. A person who has been married or has been a party to a registered partnership shall not be allowed to remarry until the administration of the estate of the deceased spouse by the court or by an administrator has been commenced, or the administration out of court has been closed. However, this shall not apply if community of property did not exist between the spouses or exemption from administration is specially authorised. Further, the Minister of Justice may permit that the provision in the first sentence be derogated from where there are special reasons which make it desirable.

11. Marriage shall not be allowed without either party having declared to the other party and the authority which is to examine the marriage conditions whether the person concerned has or is expecting children with another man or woman. The duty of disclosure shall include adopted children but not children whom the party concerned has had adopted to somebody else.

Part 2

Examination of marriage conditions and marriage ceremony

12. Before marriage is contracted, it must be proved that the marriage conditions are satisfied. The Minister of Justice shall lay down rules thereon.

13.-(1) The examination of the marriage conditions shall be carried out by the chairman of the local council. In municipalities with a corporation system or a form of government where the administrative management is divided, cf. sections 64 and 64 a of the Danish Local Government Act, the local council may decide in the government by-laws that the examination shall be carried out by a member of the corporation or a committee chairman respectively.

(2) The examination shall be carried out at the place where either of the parties is resident. Where neither party is resident in this country, the examination shall be carried out at the place where either of the parties is staying.

(3) On the lodging of a request for examination of the marriage conditions, an amount of DKK 500 shall be paid if neither party is resident in this country.

(4) The Minister of Justice may lay down rules governing payment of the cost of translating documents required in connection with the examination of the marriage conditions. Furthermore, the Minister of Justice may lay down rules on the payment of the cost of interpreter assistance in connection with the examination of the marriage conditions in cases where neither party is resident in this country.

14. If desired by the parties, banns can be published from the pulpit. Rules thereon shall be laid down by the Minister of Ecclesiastical Affairs.

15.-(1) Marriage may be contracted as a religious or civil marriage.

(2) Spouses may have their civil marriage blessed by a minister of the Danish National Church. Rules thereon shall be laid down by the Minister of Ecclesiastical Affairs.

16.-(1) A religious ceremony can take place:

1) within the Danish National Church if either of the parties is a member of the Church.

2) within recognised religious communities if either of the parties is a member of the religious community concerned.

3) within other religious communities if either of the parties is a member of the religious community concerned and the religious community has ministers who are authorised by the Minister of Ecclesiastical Affairs to perform marriage ceremonies.

(2) The Minister of Ecclesiastical Affairs may determine that members of foreign Evangelical Lutheran communities shall be treated as the members of the Danish National Church with respect to the right to a religious ceremony.

17.-(1) Religious marriage ceremonies within the Danish National Church shall be performed by its ministers. The Minister of Ecclesiastical Affairs shall lay down rules specifying which ministers of the Danish National Church may perform religious marriage ceremonies and in which cases they are under an obligation to do so.

(2) A religious ceremony outside the Danish National Church shall be performed by ministers specially authorised for this purpose.

18.-(1) The right to a civil marriage is open to everybody. The marriage ceremony is conducted by the authorities mentioned in section 13(1).

(2) The authority examining the marriage conditions may authorise one or more persons to perform the marriage ceremony at its responsibility.

19.-(1) No marriage ceremony shall be performed until one of the authorities mentioned in section 13(1) has certified that the marriage conditions are satisfied. The certificate shall have been issued within the last four months.

(2) Where, however, due to the illness of either of the parties, there is a serious risk that a postponement of the marriage ceremony will cause it not to take place, the marriage ceremony may be performed even though the marriage conditions have not been examined or only partially examined.

(3) A marriage ceremony may never be performed if the marriage authority is aware that the marriage conditions are not satisfied.

20.-(1) A marriage ceremony shall be conducted in the presence of at least two witnesses.

(2) Appearing simultaneously the parties shall when asked by the marriage authority declare their willingness to marry each other, after which they are pronounced man and wife.

(3) The rules of procedure governing marriage ceremonies in the Danish National Church and civil ceremonies shall be laid down by the Minister of Ecclesiastical Affairs and the Minister of Justice respectively. Recognised religious communities shall be subject to their own special rules. For other religious communities the procedure governing marriage ceremonies under paragraph 3) of section 16(1) shall be approved by the Minister of Ecclesiastical Affairs.

(4) The Minister of Justice may lay down rules on the payment of the cost of interpreter assistance during the marriage ceremony in cases where neither party is resident in this country.

21.-(1) A marriage shall only be valid if it is conducted by an authority which according to the Act may conduct marriages, and in compliance with the provision in section 20(2).

(2) A marriage which is void under subsection (1) may be approved by the Minister of Justice as valid where there are special reasons which make it desirable.

22.-(1) The Minister of Ecclesiastical Affairs may lay down rules on the right of Danish ministers to perform marriage ceremonies abroad.

(2) The Minister for Foreign Affairs may lay down rules on the right of diplomatic and consular officers to perform marriage ceremonies abroad.

(3) The provisions of the Act on marriage conditions and marriage shall apply to marriage ceremonies performed under subsections (1) and (2). The marriage conditions may be examined by a diplomatic or consular officer authorised by the Minister for Foreign Affairs for the purpose.

(4) By an agreement with a foreign State it may be determined that marriages conducted by the ministers of the country concerned or diplomatic or consular officers in this country shall be valid in Denmark.

Part 3

Marriage annulment

23.-(1) A marriage shall be annulled by a judicial decree if contracted in contravention of section 6 or section 9.

(2) However, a marriage contracted in contravention of section 9 cannot be annulled if the former marriage was dissolved before proceedings were instituted.

(3) Annulment proceedings may be instituted by the Minister of Justice or anyone authorised by him for the purpose or by either of the spouses. If the marriage was

contracted in contravention of section 9, the spouse of the former marriage may also institute proceedings.

24.-(1) A marriage may also be annulled by a judicial decree based on a claim made by either spouse:

- 1) if at the time of marrying he was in a state which made him unable to manage his own affairs;
- 2) if he was forced to contract marriage;
- 3) if by mistake he was married to a person other than his fiancée or without being willing to marry; or
- 4) if he was induced to contract marriage, being misled by the other spouse through false information or fraudulent non-disclosure of the truth about who the other person was or about such circumstances in the other person' s previous life which would with reasonable cause have deterred him from marrying and which must still be considered to be of such significance to the relationship between the spouses that the marriage cannot reasonably be required to be maintained.

(2) Proceedings shall be instituted within six months after the state or force mentioned in paragraphs 1)-2) of subsection (1) has stopped or after the spouse has become aware of the facts mentioned under paragraphs 3)-4). Proceedings shall be instituted within three years after the marriage was contracted.

25.-(1) Annulment shall have the same legal effects as a divorce.

(2) The provisions in section 69 of the Danish Administration of Estates Act shall apply to the division of property.

26. If a marriage is annulled and if, at the time when the marriage was contracted, either spouse was in good faith with respect to the ground for annulment while the other spouse knew or ought to know it, the decree may award the former spouse compensation which shall be fixed having regard to both spouses' financial and other circumstances.

27.-(1) In the event of the death, before annulment, of either of the parties to a marriage which could be annulled under section 23, the surviving spouse or any of the heirs may demand application of the provisions of section 69 of the Danish Administration of Estates Act and the spouse may demand compensation under section 26.

(2) The spouse who may institute proceedings under section 24 shall have the same right if the other spouse dies before the marriage has been annulled and before the expiration of the time-limits set out in section 24(2). Where proceedings have been instituted and the spouse thereafter dies, any of the heirs may demand application of the provisions in section 69 of the Danish Administration of Estates Act.

(3) Claims under subsections (1)-(2) shall be made within six months after the death.

28. Where a spouse who has contracted a marriage in contravention of section 9 dies before the marriage has been annulled, any right against a third party to compensation, pension or any other financial benefit accruing to a surviving spouse by reason of the death shall accrue to the spouse of the first marriage unless the circumstances require otherwise.

Legal separation

29. A spouse who feels unable to continue the marital cohabitation shall be entitled to legal separation.

30. The effects of legal separation shall lapse for the future if the spouses resume or continue the marital cohabitation.

Divorce after legal separation

31.-(1) A spouse shall be entitled to a divorce after one year' s legal separation.

(2) Spouses shall be entitled to a divorce after six months' legal separation if they agree on a divorce.

Living apart for two years

32. A spouse shall be entitled to a divorce if the spouses have lived apart for the past two years due to disagreement.

Adultery

33.-(1) A spouse shall be entitled to a divorce if the other spouse has committed adultery or has participated in equivalent sexual relations. However, divorce cannot be demanded if the spouse has agreed to the act or may later be deemed to have waived his or her right.

(2) A divorce cannot be granted because of sexual relations which took place during the spouses' legal separation.

(3) An application for an administrative divorce decree shall be lodged or legal proceedings instituted within six months after the spouse having become aware of the act and within two years after it was committed.

Violence

34.-(1) A spouse shall be entitled to a divorce if the other spouse has intentionally committed violence of a serious nature against the spouse or the children.

(2) An application for an administrative divorce decree shall be lodged or legal proceedings instituted within one year after the spouse having become aware of the act and within three years after it was committed.

Bigamy

35. A spouse shall be entitled to a divorce if the other spouse has remarried in contravention of section 9.

36. - 41. (Repealed).

Procedure for obtaining legal separation or divorce

42.-(1) Legal separation and divorce shall be granted by a judicial decree or an administrative decree.

(2) An administrative decree can only be granted if the spouses are agreed on a legal separation or divorce by an administrative decree and on the conditions set out in sections 46, 49 and 54-56, cf., however, section 45.

The spouses may refer the question of the amount of maintenance payment to the County Governor's Office (*statsamtet*) for determination.

(3) Where it is found to be inadvisable to grant an administrative decree, the grant of a decree shall be refused.

42 a.-(1) An administrative decree shall be granted by the Minister of Justice or by the County Governor's Office (*statsamtet*) as authorised by the Minister of Justice.

(2) On the lodging of an application for an administrative divorce decree DKK 500 shall be paid to the County Governor's Office.

(3) If, however, the applicant has lodged an application for divorce within the last three months, for which payment has been made, no new payment shall be made.

Mediation

43.-(1) If desired by both parties, mediation may be carried out by a minister. Rules thereon shall be laid down by the Minister of Ecclesiastical Affairs in consultation with the Minister of Justice.

(2) The Minister of Justice may lay down rules on voluntary counselling of spouses before a legal separation or divorce is granted.

Negotiation of conditions concerning legal separation or divorce

44.-(1) Before a legal separation or divorce is granted, a negotiation of conditions shall take place. If, however, divorce is desired under section 31 and the conditions of the legal separation also apply to the period following the divorce, no negotiation of conditions shall be required.

(2) Rules on the negotiation of conditions shall be laid down by the Minister of Justice.

These rules may provide that the negotiation of conditions shall not apply to a spouse who is not resident in this country.

Part 5

Legal separation and divorce conditions and change of the conditions etc.

45. Any conditions determined in a judicial separation decree granted in this country shall also apply to the period following a divorce, achieved on the basis of the legal separation. However, the judicial separation decree may determine otherwise as regards any maintenance obligation.

Custody

46. The provisions in the Danish Custody and Access Rights Act shall apply to the custody of the children in connection with a legal separation or divorce.

47. (Repealed)

Change of agreement or decision on custody

48. (Repealed)

Maintenance payments

49. In connection with a legal separation or divorce, a decision shall be made as to whether a spouse shall be under an obligation to pay towards the maintenance of the other spouse.

50.-(1) If the spouses make no agreement thereon themselves, the court shall decide the question of maintenance obligation, including the question of duration of the obligation while the County Governor's Office (*statsamtet*) shall determine the amount of the payment. Unless special circumstances exist, the court may only impose a maintenance obligation on a spouse for a specified period not exceeding ten years.

(2) Decisions under subsection (1) shall be made having regard to the extent to which the person requesting payment can maintain himself or herself adequately having regard to the standard of living enjoyed by him or her and whether the other party is able to pay a maintenance payment having regard to his or her financial conditions and other circumstances. Further, account shall be taken of the duration of the marriage. In addition, account may be taken of whether the person requesting payment needs support for training or the like.

51. The maintenance obligation shall lapse when the person entitled to maintenance remarries or either of the spouses dies.

Change of agreement or decision on maintenance payments

52. An agreement made by the spouses on the maintenance obligation or the amount of the maintenance payment may be changed by a judicial decree if, by reason of materially changed conditions, it would be unreasonable to maintain the agreement.

53.-(1) A decision made by a judicial decree on the maintenance obligation of the spouses may be changed by a new judicial decree where there are materially changed conditions as well as other special reasons which make it desirable.

(2) A decision made by the County Governor's Office (*statsamtet*) on the amount of the maintenance payment may be changed by the County Governor's Office where the circumstances of the case require it.

Other conditions

54. The special rules of Danish legislation shall apply to the right to a spouse pension after a divorce.

55.-(1) The provisions of Danish rent legislation shall apply to the right of the spouses to continue the lease of a common flat.

(2) If a flat in a building which belongs to the property contributed by either of the spouses or to his or her separate property and which contains several flats has so far served as the

family home, the court may in connection with a judicial separation or divorce decree order the spouse to lease the flat to the other spouse and determine the lease conditions.

56. Where a spouse has had separate property and where the matrimonial property, the duration of the marriage and circumstances in general make it particularly desirable, it may be determined, based on a claim made by the other spouse in connection with a judicial separation or divorce decree, that either spouse shall pay to the other spouse an amount to ensure that that other spouse is not placed in an unreasonably bad financial position after the legal separation or divorce. This rule shall also apply to rights which are not assignable or otherwise of a personal nature and which are not included in the division of the estate.

Temporary provision concerning custody

57. *(Repealed)*

Change of certain agreements on conditions etc.

58. Where, on the occasion of a legal separation or divorce, spouses have agreed on the division of the property, the maintenance obligation or any other conditions, the agreement may be changed by a judicial decree or held not to be binding if at the time of its making it is deemed to be unreasonable for either spouse.

Part 6

Commencement provisions etc.

59. This Act shall enter into force on 1 January 1970.

60. The provision in section 21(2) shall also apply to marriage ceremonies performed before the entry into force of the Act.

61.-(1) Where, before the entry into force of this Act, proceedings for legal separation, divorce or marriage annulment have been instituted or application for an administrative separation or divorce decree has been lodged, the provisions of the previous legislation shall apply.

(2) Where, however, both parties so request before a final judicial or administrative decree is granted, the provisions of this Act shall apply.

(3) Where a marriage contracted before the entry into force of this Act is annulled, the provisions of the Act concerning the effects of marriage annulment shall apply.

62.-(1) The provisions of the previous legislation shall apply to the right of spouses to obtain a divorce on the basis of a legal separation granted before the entry into force of this Act.

(2) However, notwithstanding the provision in subsection (1) either spouse may demand a divorce from 1 January 1971.

(3) Otherwise the provisions of this Act may at the request of both spouses be applied in whole or in part.

63. The provision in section 48 shall also apply to agreements and decisions on custody made before the entry into force of this Act.

64.-(1) The provisions in sections 52 and 58 shall only apply to agreements made after the entry into force of this Act.

(2) Any change of decisions on maintenance payments made before the entry into force of this Act shall be made in accordance with the provisions of this Act.

65. From the entry into force of this Act, cf., however, sections 61, 62 and 64, the following Regulation and Acts shall be repealed:

- 1) Regulation of 30 April 1824 on the Duties of Ministers relating to Marriage;
- 2) Act of 13 April 1851 on Marriage outside the Danish National Church;
- 3) Act No. 79 of 19 February 1892 on Marriages Conducted by Danish Consuls Abroad;
- 4) Act No. 269 of 14 December 1906 on Agreements concerning Marriages Conducted by Diplomatic or Consular Officers;
- 5) Act No. 276 of 30 June 1922 on the Formation and Dissolution of Marriage; and
- 6) Act No. 140 of 25 May 1956 on Adoption, section 26.

66. Provisions governing the relationship between Danish legislation and another State' s legislation on the formation and dissolution of marriage may be laid down in an agreement with a foreign State or by the Minister of Justice.

67. This Act shall not apply to the Faroe Islands and Greenland but may by Royal Decree be made effective in whole or in part for these provinces subject to such deviations as are dictated by the special circumstances of Greenland and the Faroe Islands.

Act No. 230 of 6 June 1985 relating to sections 46-48 and section 57 contains, inter alia, the following provisions:

Section 3

The Act shall enter into force on 1 January 1986.

Section 4

(1) Where, before the entry into force of the Act, legal separation or divorce proceedings have been instituted or an application for an administrative separation or divorce decree has been lodged, the provisions of the previous legislation shall apply.

Where, however, both parties so request before a final judicial decree or an administrative decree is granted, the provisions of section 1 and 2 shall apply.

(3) Where, before the entry into force of the Act, an agreement or a decision on custody has been made which is not to apply to any subsequent legal separation or divorce, a decision shall be made during the legal separation or divorce proceedings as to who is to have custody.

Act No. 209 of 5 April 1989 relating to sections 2, 5, 29-44, 50, 52 and 58 of the Danish Marriage Act contains, inter alia, the following provisions:

Section 6

The Act shall enter into force on 1 October 1989.

Section 7

- (1) Where, before the entry into force of the Act, an application for an administrative separation or divorce decree has been lodged or legal separation or divorce proceedings have been instituted, the provisions of the previous legislation shall apply.
- (2) Where, however, both parties so request before an administrative decree or a final judicial decree is granted, the provisions of section 1 shall apply.
- (3) The provisions in section 1 shall apply to the right of spouses to a divorce on the basis of legal separation granted before the entry into force of the Act.

Section 8

The change in section 52 and section 58(1) of the Danish Marriage Act mentioned in paragraph 8) of section 1 shall apply to all agreements made after 1 January 1970.

Act No. 373 of 7 June 1989 relating to sections 9 and 10 of the Danish Marriage Act lays down in section 5 that the Act shall enter into force on 1 October 1989.

Act No. 845 of 20 December 1989, section 1 of which concerns section 42 of the Danish Marriage Act, provides in section 3 that the Act shall enter into force on the day after its publication in the Danish Law Gazette.

Act No. 396 of 13 June 1990, section 7 of which concerns sections 1, 4, 10, 20, 42, 50 and 53 of the Danish Marriage Act, provides in section 16 that the Act shall enter into force on 1 July 1990. However, paragraph 4) of section 7, which concerns section 20 of the Danish Marriage Act, shall not enter into force until 1 October 1990.

Act No. 386 of 20 May 1992, section 4 of which concerns sections 13, 20, 42 and 42 a of the Danish Marriage Act, provides in section 12 that the Act shall enter into force on the day after its publication in the Danish Law Gazette and shall have effect from 24 April 1992.

Act No. 387 of 14 June 1995, section 35 of which concerns sections 13, 20 and 46 of the Danish Marriage Act, provides in section 33 that the Act shall enter into force on 1 January 1996. However, paragraphs 1) and 2) of section 35, which concern sections 13 and 20 of the Danish Marriage Act, shall enter into force on the day after its publication in the Danish Law Gazette.

Act No. 389 of 14 June 1995, section 8 of which concerns sections 1 and 3 of the Danish Marriage Act, provides in section 23 that the Act shall enter into force on 1 January 1997.

Act No. 385 of 22 May 1996, section 7 of which concerns section 10 of the Danish Marriage Act, provides in section 15 that the Act shall enter into force on 1 January 1997.

Act No. 232 of 2 April 1997, section 9 of which concerns sections 13 and 18 of the Danish Marriage Act, provides in section 14 that the Act shall enter into force on 1 January 1998.

Danish Ministry of Justice, 9 March 1999

Frank Jensen

/Dorrit Sylvest Nielsen

Official Notes