



SAMOA

MARRIAGE ORDINANCE 1961

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MARRIAGE ORDINANCE 1961

1961

No.8

AN ORDINANCE to consolidate and amend the law relating to marriage.

[Assent and commencement date: 28 September 1961]

**PART 1
PRELIMINARY**

1. Short title – (1) This Ordinance may be cited as the Marriage Ordinance 1961.

(2) This Ordinance is divided into parts as follows:

- (a) PART 1: Administration (sections 3 to 6);
- (b) PART 2: Restrictions on marriage (sections 7 to 14);
- (c) PART 3: Solemnisation of marriage (sections 15 and 16);
- (d) PART 4: *Registration of Marriages (sections 17 to 21); Repealed*
- (e) PART 5: General (sections 22 to 35).

2. Interpretation – In this Ordinance, unless the context otherwise requires:

- “affinity” means relationship by marriage;
- “consanguinity” means relationship by blood;
- “Deputy Registrar” means a Deputy Registrar appointed under the Births, Deaths and Marriages Registration Act 2002;
- “Minister” means the Minister of Justice;
- “Minister of religion” means a marriage officer licensed as such on the nomination or at the request of a religious body;

“Registrar” means the Registrar appointed under the Births, Deaths and Marriages Registration Act 2002.

**PART 1A
ADMINISTRATION**

Division 1 – Registrar and Deputy Registrar

3. Application of Ordinance – (1) This Ordinance, so far as they relate to capacity to marry, applies to the marriage of any person domiciled in Samoa at the time of the marriage, whether the marriage is solemnised in Samoa or elsewhere.

(2) This Ordinance, so far as they relate to the formalities of marriage, including the provisions relating to consents to the marriage of minors, applies to any marriage solemnised in Samoa, whether or not either of the parties to any such marriage is at the time of the marriage domiciled in Samoa.

4. Registrar and Deputy Registrar – (1) The Registrar is charged with the general administration of this Ordinance.

(2) A Deputy Registrar shall, under the control of the Registrar, have all of the powers, duties and functions of the Registrar.

(3) Where a vacancy occurs for any reason in the office of Registrar, or in the absence of the Registrar, and for so long as the vacancy or absence continues:

- (a) the Deputy Registrar if there is only 1; or
- (b) a Deputy Registrar so authorised at any time in writing by the Minister or by the Registrar in every other case, –

has and may exercise and perform all the powers, functions, and duties of the Registrar.

5. *Repealed by s98 of Act 2002, No 17*

Division 2 – Marriage Officers

6. Appointment of marriage officers – (1) The Head of State may by warrant signed by him or her license as a marriage officer any Minister of religion or other person whom the Head of State believes to be a fit and proper person to be so licensed.

(2)The licence may be revoked by the Head of State in a like manner.

PART 2 RESTRICTIONS ON MARRIAGE

7. Marriage of persons within prohibited degrees of relationship void – (1) Subject to the provisions of this section, a marriage which is forbidden by the provisions of the First Schedule is void.

(2)Persons who are not within the degrees of consanguinity but are within the degrees of affinity prohibited by the First Schedule may apply to the Supreme Court for its consent to their marriage, and the Supreme Court, if it is satisfied that neither party to the intended marriage has by his or her conduct caused or contributed to the cause of the termination of any previous marriage of the other party, may make an order dispensing with the prohibition contained in the First Schedule so far as it relates to the parties to the application and, if such an order is made, that prohibition shall cease to apply to the parties.

(3)The Registrar of the Supreme Court where any order under this section is made shall send a copy in duplicate of the order to the Registrar.

(4) No marriage, not forbidden by the provisions of the First Schedule, is void only on the ground of consanguinity or affinity.

8. Validation of certain marriages already solemnised – All marriages solemnised before the commencement of this Ordinance that by virtue of section 7 would have been valid and lawful if this Ordinance had been in force when they were solemnised is taken to have been and to be valid and lawful, and the issue born of any such marriage (whether born before or after commencement of this Ordinance) is taken to have been born in lawful wedlock:

PROVIDED THAT where either of the parties to any such marriage has thereafter during the lifetime of the other party to the marriage and before the commencement of this Ordinance lawfully married any other person, the first marriage is taken to have been dissolved immediately before the solemnisation of the second marriage:

PROVIDED ALSO THAT this section does not affect any estate,

right, or interest in any real or personal property to which any person has become absolutely entitled before the commencement of this Ordinance, or affect any proceedings commenced in any Court before the commencement of this Ordinance, or any decree, order, or judgment made or given (whether before or after the commencement of this Ordinance) in any such proceedings.

9. Minimum age of marriage – A marriage officer shall not solemnise or record any marriage unless the husband is at least 18 years of age and the wife is at least 18 years of age, but no marriage is invalidated by a breach of the provisions of this section.

10. Consent to marriage of minors – (1) A marriage officer shall not solemnise or record the marriage of any man under the age of 21 years or of any woman under the age of 21 years without the consent of 1 of the parents or the guardian of such man or woman, if either of those parents or such guardian is alive and resident in Samoa.

(2) A District Court Judge may in any case, if the Judge thinks fit to do so, grant exemption from the requirements of this section.

(3) No marriage is invalidated by any breach of the provisions of this section.

11. General provisions relating to consents – (1) A consent under section 10 is to be in writing witnessed by some person who shall add his or her occupation and address, and the consent is to be delivered to the marriage officer to whom notice of the intended marriage is given.

(2) The consent given may, by notice in writing signed by the person giving consent, be withdrawn at any time before the marriage officer solemnises the marriage.

12. Marriages without marriage officer void – If a person knowingly and wilfully marry in Samoa in the absence of a marriage officer, the marriage is void.

13. Marriages not to be void because of defects in procedure – (1) Except as provided in section 7 or 12, no marriage is taken to be void by reason of any error or defect in

the notice or declaration required before solemnisation, or in the registration of the marriage when solemnised where the identity of the parties is not questioned, or on account of any other infringement of the provisions of this Ordinance.

(2) Nothing in this section exempts any marriage officer, Registrar, or other person who does anything contrary to the provisions of this Ordinance from any penalty for any offence under this Ordinance committed by any such person.

14. Notice of marriage – (1) A marriage officer shall not solemnise or record any marriage unless notice in writing of the intention of the parties to enter into such marriage has been given to the marriage officer by 1 of the parties to the marriage at least 10 clear days before the day of the marriage.

(2) On receipt of such notice the marriage officer shall publish the same in such manner and form as the Head of State may prescribe.

(3) On every such notice there shall be payable by the person giving the same such fee (if any) as may be prescribed, and all such fees are payable into the Treasury.

(4) At any time when regulations have been made requiring a declaration to be made that no restrictions on any marriage exist, no marriage officer shall solemnise or record any marriage unless such declaration has been made contemporaneously with or subsequently to the giving of notice.

(5) No marriage is invalidated solely by a breach of the requirements of this section.

PART 3 SOLEMNISATION OF MARRIAGE

15. Mode of solemnisation – (1) A marriage in Samoa shall take place between the persons named in the notice given under this Ordinance, and shall, subject to the provisions of this Ordinance, be solemnised with open doors in such manner as the marriage officer thinks fit.

(2) The marriage shall be solemnised in the presence of a marriage officer and 2 or more witnesses.

16. Marriage to be solemnised within 3 months of notice

– A marriage shall not be solemnised after the expiration of 3 months from the date of the notice of the intended marriage.

PART 4

REGISTRATION OF MARRIAGES - REPEALED

17 – 21. Repealed by s98 of Act 2002, No17

PART 5

MISCELLANEOUS

22 – 29. Repealed by s98 of Act 2002, No17

30. Offence to solemnise marriage contrary to provisions of this Ordinance – A marriage officer who knowingly and wilfully solemnises any marriage contrary to the provisions of this Ordinance, or where there is any other lawful impediment to the marriage, commits an offence and is liable on conviction to a fine not exceeding 6 penalty units or to imprisonment for a term not exceeding 5 years.

31. Offence to solemnise marriage falsely pretending to be marriage officer – A person who falsely pretends to be a marriage officer and solemnises any marriage, knowingly and wilfully so doing, commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years.

32. Offences in connection with false statements and improper solemnisation of marriages – A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding 4 penalty units, who knowingly and wilfully:

- (a) makes or causes to be made any false declaration for the purposes of this Ordinance.
- (b) *repealed by s98 of the 2002 Act, No17*

33. Offences generally – (1) A person who fails to comply with or does any act in contravention of any of the provisions of this Ordinance commits an offence.

(2) A person who commits an offence against this Ordinance for which no specific penalty is elsewhere provided is liable on conviction to a fine not exceeding 1 penalty unit.

(3) No prosecution under this Ordinance shall be commenced after the expiration of 3 years from the date when the offence was committed.

34. Regulations – (1) The Head of State, on the advice of Cabinet, may make regulations for any purpose for which regulations are contemplated or required by this Ordinance, and may make all such other regulations as may in his or her opinion be necessary or expedient for giving full effect to the provisions of this Ordinance and for the due administration thereof.

(2) Without limiting subsection (1), regulations may be made for all or any of the following purposes:

- (a) prescribing the manner and form of the publication of notices of marriage;
- (b) prescribing the form and contents of any declaration required as a condition of the solemnisation of any marriage and the persons by whom it is to be made;
- (c) prescribing the form of words to be used by the parties to any marriage and by the marriage officer in cases where the marriage officer solemnising the marriage is a Registrar or other person than a Minister of religion;
- (d) *Repealed by s98 of the 2002 Act, No17*
- (e) *Repealed by s98 of the 2002 Act, No17*
- (f) prescribing fees for the doing of any act under this Ordinance.

(3) The Minister shall table all regulations made under this section before the Legislative Assembly within 28 days after the making thereof if the Assembly is then in session; and if not, to table such regulations before the Assembly with 28 days after the commencement of the next ensuing session.

35. Enactments ceasing to be part of law of Samoa, and savings – (1) As from the date of the coming into force of this Ordinance, the enactments specified in the Second Schedule shall cease to be part of the law of Samoa.

(2) The ceasing by the operation of this Ordinance of any provision to be part of the law of Samoa does not affect a

document made or anything whatsoever done or regulations made under or relating to the provision so ceasing to be part of the law of Samoa, and every such document, thing, or regulation, so far as it is subsisting or in force at the time when such provision ceased to be part of the law of Samoa, shall continue and have effect as if it had been made or done under this Ordinance.

SCHEDULES
(Sections 7 and 35)

FIRST SCHEDULE
(Section 7)

- 1. A man may not marry his:**
 - (1) Grandmother
 - (2) Grandfather's wife
 - (3) Wife's grandmother
 - (4) Father's sister
 - (5) Mother's sister
 - (6) Mother
 - (7) Stepmother
 - (8) Wife's mother
 - (9) Daughter
 - (10) Wife's daughter
 - (11) Son's wife
 - (12) Sister
 - (13) Son's daughter
 - (14) Daughter's daughter
 - (15) Son's son's wife
 - (16) Daughter's son's wife
 - (17) Wife's son's daughter
 - (18) Wife's daughter's daughter
 - (19) Brother's daughter
 - (20) Sister's daughter

- 2. A woman may not marry her:**
 - (1) Grandfather
 - (2) Grandmother's husband
 - (3) Husband's grandfather
 - (4) Father's brother
 - (5) Mother's brother
 - (6) Father

- (7) Stepfather
 - (8) Husband's father
 - (9) Son
 - (10) Husband's son
 - (11) Daughter's husband
 - (12) Brother
 - (13) Son's son
 - (14) Daughter's son
 - (15) Son's daughter's husband
 - (16) Daughter's daughter's husband
 - (17) Husband's son's son
 - (18) Husband's daughter's son
 - (19) Brother's son
 - (20) Sister's son
3. The foregoing provisions of this Schedule with respect to any relationship shall apply whether the relationship is by the whole blood or by the half blood and whether the relationship is legitimate or illegitimate.
4. In this Schedule, unless the context otherwise requires, the term "wife" means a former wife, whether she is alive or deceased, and whether her marriage was terminated by death or divorce or otherwise; and the term "husband" has a corresponding meaning.

SECOND SCHEDULE
(Section 35)

**ENACTMENTS CEASING TO BE PART OF THE LAW OF
SAMOA**

- No. 16 - 1921 : The Samoa Act 1921, sections 284 to 300 (both inclusive)
- No. 40 - 1945 : The Statutes Amendment Act 1945, section 74.

REVISION NOTES 2008–2022

This is the official version of this Act as at 31 December 2022.

This Act has been revised by the Legislative Drafting Division from 2008 – 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General—
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”
 - (xii) Part numbers changed to decimal. Title to Part 5 changed to ‘MISCELLANEOUS’

By the *Immigration Act 2020, No.25, commenced on 1 March 2021*

Section 9 amended by substituting reference to “16” with “18”

Section 10 amended by substituting reference to “19” with “21”

*This Ordinance is administered by
the Ministry of Justice and Courts Administration.*