

THE AFFILIATION, SEPARATION AND MAINTENANCE (AMENDMENT) BILL 1

(NAME OF BILL)

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✓ FROM: Attorney General's Chambers 27/11/92

✓ TO: Minister 27/11/92
 (for signing Objects & Reasons, Notice of Presentation and covering letter to Clerk)

TO: ~~Minister of Finance~~
 (for signing of letter to Clerk signifying Cabinet approval and of Constitution)

✓ TO: Clerk to National Parliament 27/11/92
 (for certificate by Speaker)

✓ TO: Attorney General's Chambers
 (for printing)

○ ✓ TO: Clerk to National Parliament
 (for reference during 1st, 2nd and 3rd Readings)
 (Date passed: 7.12.92 Act No. 13/92)

✓ TO: Attorney General's Chambers
 (for checking before Assent)

TO: Governor-General 14/12/92
 (for Assent)

TO: Clerk to National Parliament 18.12.92
 (for distribution)

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**THE AFFILIATION,
SEPARATION AND
MAINTENANCE
(AMENDMENT) ACT 1992**

(NO. 13 OF 1992)



THE AFFILIATION, SEPARATION AND MAINTENANCE (AMENDMENT) ACT 1992

(NO. 13 OF 1992)

Passed by the National Parliament this seventh day of December 1992.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.

A handwritten signature in cursive script, appearing to read 'J. M. Tuhaika'.

*J. M. Tuhaika
Clerk to National Parliament*

Assented to in Her Majesty's name and on Her Majesty's behalf this sixteenth day of December 1992.

A handwritten signature in cursive script, appearing to read 'G.G.D. Lepping'.

*G.G.D. Lepping
Governor-General*

Date of commencement: see section 1.

AN ACT To Amend the Affiliation, Separation and Maintenance Act, 1971.

ENACTED by the National Parliament of Solomon Islands.

THE AFFILIATION, SEPARATION AND MAINTENANCE
(AMENDMENT) ACT 1992

ARRANGEMENT OF SECTIONS

Section:

1. Short title and commencement.
2. Amendment of section 3 of Act No. 8 of 1971.
3. Amendment of section 5.
4. Insertion of new section 7A.
5. Repeal and replacement of section 11.
6. Amendment of section 12.
7. Insertion of new sections 12A and 12B.
8. Amendment of section 14.
9. Repeal and replacement of section 16.
10. Insertion of new sections 17B, 17C and 17D.
11. Repeal and replacement of section 18.
12. Amendment of section 19.
13. Amendment of section 21.

1. This Act may be cited as the Affiliation, Separation and Maintenance (Amendment) Act, 1992, and shall come into operation on such date as the Minister may appoint, by notice published in the Gazette.

Short title and commencement.

2. Section 3 of the Affiliation, Separation and Maintenance Act, 1971 (hereinafter referred to as "the principal Act") is hereby amended by deleting the words "on oath".

Amendment of section 3 of Act No. 8 of 1971.

3. Section 5 of the principal Act is hereby amended in the following respects -

Amendment of section 5.

- (a) in subsection (2)(a) by deleting the words "sum of money monthly or weekly" and substituting therefor the words "periodical payment";
- (b) in subsections (3) by deleting the words "monthly or weekly sum" and substituting therefor the words "periodical payment";
- (c) in subsection (4) by deleting the words "monthly or weekly payments" and substituting therefor the words "periodical payment";
- (d) in subsection (5) by deleting the words "the payments" and substituting therefor the words "the periodical payments".

4. The principal Act is hereby amended by inserting therein next after section 7 the following new section as section 7A -
 "Extension of order. 7A. Notwithstanding the provisions of section 7, a court may at the time of making an affiliation order, or being satisfied that -

Insertion of new section 7A.

- (a) a child is or will be receiving instruction at an educational institution or undergoing training for a trade, profession or vocation or would if sufficient provision is made receive such instruction or undergo such training or vocation (irrespective of whether the child at the time is or may at some time after the making of the order engage in gainful employment); or
- (b) special circumstances justify or warrant the making of provision for his maintenance, make order under section 5(2)(a) in favour of a child -

- (i) who has attained the age of sixteen years; or
- (ii) where the child has not attained the age of sixteen years, extending the payment of benefits beyond the prescribed age of sixteen years.”.

5. Section 11 of the principal Act is hereby repealed and the following new section substituted therefor -

Repeal and replacement of section 11.

“Husband may apply for order.

11. The husband of every married woman who -

- (a) has been convicted of an offence against his person under the provisions of Parts XXIII or XXV of the Penal Code and sentenced to pay a fine of more than ten dollars or to a term of imprisonment exceeding two months; or
- (b) is a habitual drunkard; or
- (c) has been guilty of adultery, and such adultery has not been condoned or connived at or been condoned to by his wilful neglect or misconduct; or
- (d) has deserted him; or
- (e) has been guilty of persistent cruelty to him or his children; or
- (f) whilst suffering from venereal disease and knowing that she was so suffering has insisted on having sexual intercourse with him; or
- (g) has compelled him to submit to prostitution or has been guilty of such conduct as was likely to result and has resulted in him submitting herself to prostitution or has been guilty of such conduct as was likely to result and has resulted in him submitting herself to prostitution,

may apply to the court for an order or orders under the provisions of this Part:

Provided that, when a husband is entitled to apply for an order or orders under the provisions of this section on the grounds of the conviction of his wife in the High Court, a certificate of such conviction under the hand of the Registrar of the High Court sealed with the seal

of the High Court may be put in evidence before a court hearing an application under the provisions of this Part and such certificate shall be evidence of the facts therein stated.”.

6. Section 12 of the principal Act is hereby amended in the following respects -

Amendment
of section
12.

- (a) by renumbering section 12 as subsection (1) of that section;
- (b) by deleting paragraphs (c) and (d) of the subsection so re-numbered and substituting the following new paragraphs as paragraphs (c), (d), (e) and (f) respectively -
 - “ (c) that the husband shall pay to his wife, or to the court or any third person on her behalf, such periodical payments and for such term as the court, having regard to the means both of the husband and his wife, considers reasonable;
 - (d) that the husband shall pay to his wife or to the court or any third person on her behalf in addition to or in lieu of periodical payments, such lump sum as the court, having regard to the means both of the husband and his wife, considers reasonable in final settlement;
 - (e) that the husband shall pay to his wife, or to the court or to any third person on her behalf for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments and for such term as the court, having regard to the means both of the husband and his wife, considers reasonable for the maintenance of each child of the marriage committed to her custody under paragraph (b);
 - (f) that the husband shall pay to his wife or to the court or to any third person on her behalf for the benefit of a child of the family to whom the application relates, or to such a child, such lump sum as the court, having regard to the means of the husband and his wife considers reasonable”;
- (c) by renumbering paragraph (e) as paragraph (g); and

(d) by adding the following new subsection as subsection (2) immediately after the subsection so renumbered -

“ (2) Without prejudice to the generality of subsection (1)(d) or (f), an order under this section for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any child of the family to whom the application relates, before the making of the order to be met.”.

Insertion
of new
sections 12A
and 12B.

7. The principal Act is hereby amended by inserting therein immediately after section 12 the following new sections as sections 12A and 12B respectively -

“Duration of Orders for financial provision for a party to a marriage. 12A.(1) The term to be specified in any order made under section 12(1)(c) shall be such term as the court thinks fit except that the term shall not begin earlier than the date of the making of the application for the order and shall not extend beyond the death of either of the parties to the marriage.

(2) Where an order is made under section 12(1)(c) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order, shall, notwithstanding anything in it, cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage.

Duration of Orders for financial provision for children. 12B.(1) Subject to subsection (3), no order shall be made under section 12(1)(e) or (f) in favour of a child who has attained the age of sixteen.

(2) The term to be specified in an order made under section 12(1)(e) in favour of a child may begin with the date of the making of an application for the order in question or any later date but shall not in any event, subject to subsection (3), extend beyond the date of the child's sixteenth birthday.

(3) The court -

(a) may make an order under section 12(1)(e) or (f) in favour of a child who has attained the age of sixteen, or

(b) may include in an order made under section 12(1)(e) or (f) in relation to a child

who has not attained the age of sixteen, a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of that child,

if it appears to the court -

- (i) that the child is, or will be, receiving instruction at an educational institution or undergoing training for a trade, profession or vocation, or would if sufficient provision is made receive such instruction or undergo such training or vocation (irrespective of whether the child at the time is or may at some time after making of the order engage in gainful employment); or
- (ii) that special circumstances justify or warrant the making of the order or provision.

(4) An order made under section 12(1)(e) in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.”.

8. Section 14 of the principal Act is hereby amended in the following respects -

Amendment
of section
14.

- (a) by deleting from subsection (1) the words “monthly or weekly payment” and substituting therefor the words “periodical payment” and
- (b) by deleting from subsection (2)(b) the words “monthly or weekly sum” and substituting therefor the words “periodical payment”.

9. Section 16 of the principal Act is hereby repealed and the following new section substituted therefor -

Repeal and
replacement
of section 16.

“Interim Orders. 16. (1) Where an application is made for an order under section 8 or 12 -

- (a) the magistrate’s court at any time before making a final order on, or dismissing or refusing the application by virtue of section 15, or

- (b) the High Court on ordering the application to be reheard by a magistrate's court (either after the refusal of an order under section 15 or on appeal against any order made by a magistrate's court under this Act).

shall, subject to the provisions of this Part, have the following powers, that is to say -

- (i) power to make an order (hereinafter referred to as an "interim maintenance order") which requires the respondent to make to the applicant or to any child of the family who is under sixteen or to the applicant for the benefit of such a child, such periodical payments as the court thinks reasonable;
- (ii) power to make an order (hereinafter referred to as an "interim custody order") which makes any such provision for the legal custody of, and access to, any child of the family who is under the age of sixteen, as the court has power to make under section 8 or 12(1)(b).

(2) An interim order made on an application for an order under section 8 or 12 shall cease to have effect on whichever of the following dates occur first, that is to say -

- (a) the date, if any, specified for the purposes in the interim order;
- (b) the date of the expiration of the period of three months beginning with the date of the making of the interim order;
- (c) the date on which a magistrate's court either makes a final order on or dismisses the application.

(3) No appeal shall lie from the making of or refusal to make, the variation of or refusal to vary, or the revocation of or refusal to revoke, an interim maintenance order.

(4) An interim order made by the High Court under this section ordering that an application be

reheard by a magistrate's court shall, for the purpose of its enforcement and the purposes of section 14 be treated as if it were an order of that magistrate's court and not of the High Court.'.

10. The principal Act is hereby amended by inserting therein after section 17A the following new sections as sections 17B, 17C and 17D respectively -

Insertion of
new sections
17B, 17C
and 17D.

'Powers of the Court to make orders protecting a party to a marriage or a child of the family.

17B. (1) Either party to a marriage may, whether or not an application is made by that party for an order under section 12, apply to a magistrate's court for an order under this section.

(2) Where on an application for an order under this section the court is satisfied that the respondent has used, or threatened to use, violence against the person of the applicant or a child of the family and that it is necessary for the protection of the applicant or a child of the family that an order should be made under this subsection, the court may make one or both of the following orders, that is to say -

- (a) an order that the respondent shall not use, or threaten to use, violence against the person of the applicant;
- (b) an order that the respondent shall not use, or threaten to use, violence against the person of a child of the family.

(3) Where on an application for an order under this section the court is satisfied -

- (a) that the respondent has used violence against the person of the applicant or a child of the family, or
- (b) that the respondent has threatened to use violence against the person of the applicant or a child of the family and has used violence against some other person; or
- (c) that the respondent has in contravention of an order made under subsection (2) threatened to use violence against the person of the applicant or a child of the family,

and that the applicant or a child of the family is in danger of being physically injured by the respondent (or would be in such danger if the applicant or child were to enter the matrimonial home) the court may make one or both of the following orders that is to say -

- (i) an order requiring the respondent to leave the matrimonial home;
- (ii) an order prohibiting the respondent from entering the matrimonial home.

(4) Where the court makes an order under subsection (3), the court may, if it thinks fit, make a further order requiring the respondent to permit the applicant to enter and remain in the matrimonial home.

(5) Where on an application for an order under this section the court is satisfied that there is imminent danger of physical injury to the applicant or a child of the family, the court may make an order under subsection (2) notwithstanding -

- (a) that the summons has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application; or
- (b) that the summons requires that respondent to appear at some other time or place, and any order made by virtue of this subsection is in this section and in section 17C referred to as an ("expedited order").

(6) An expedited order shall not take effect until the date on which notice of the making of the order is served on the respondent in such manner as may be prescribed or, if the court specifies a later date as the date on which the order is to take effect, that later date, and an expedited order shall cease to have effect on whichever of the following dates occur first, that is to say -

- (a) the date of the expiration of the period of 28 days beginning with the date of the making of the order;

(b) the date of commencement of the hearing of the application for an order under this section.

(7) An order under this section may be made subject to such exceptions or conditions as may be specified in the order and, subject in the case of an expedited order, to subsection (6), may be made for such term as may be so specified.

(8) The court in making an order under subsection (2)(a) or (b) may include provision that the respondent shall not incite or assist any other person to use, or threaten to use, violence against the person of the applicant or, as the case may be, the child of the family.

“Supplementary provisions.

17C.(1) A magistrate’s court shall, on an application made by either party to the marriage in question, have power by order to vary or revoke any order made under section 17B.

(2) Rules may be made for the purpose of giving effect to the provisions of section 17B and any such rules may in particular, but without prejudice to the generality of this subsection, make provision for the hearing without delay of any application for an order under subsection (3) of that section.

(3) Except so far as the exercise by the respondent of a right to occupy the matrimonial home is suspended or restricted by virtue of an order made under subsection (3) of section 17B, an order made under that section shall not affect any estate or interest in the matrimonial home of the respondent or any other person.

“Powers of arrest for breach of section 17B order.

17D.(1) Where a magistrate’s court makes an order under section 17B which provides that the respondent -

- (a) shall not use violence against the person of the applicant, or
- (b) shall not use violence against a child of the family, or

has physically injured the applicant or a child of the family and considers that he is likely to do so again attach a power of arrest to the order.

(2) Where by virtue of subsection (1) a power of arrest is attached to an order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of any such provision of the order as is mentioned in paragraph (a), (b) or (c) of subsection (1) by reason of that person's use of violence or, as the case may be, his entry into the matrimonial home.

(3) Where a power of arrest is attached to an order under subsection (1) and the respondent is arrested under subsection (2) -

- (a) he shall be brought before a magistrate within a period of 24 hours beginning at the time of his arrest, and
- (b) the magistrate before whom he is brought may remand him.

(4) Where a court has made an order under section 17B but has not attached to the order a power of arrest under subsection (1), then if at any time the applicant for that order considers that the other party to the marriage in question has disobeyed the order, he may apply for the issue of a warrant for the arrest of that other party to a magistrate in the district in which either party to the marriage ordinarily resides; but a magistrate shall not issue a warrant on such an application unless -

- (a) the application is substantiated on oath, and
- (b) the magistrate has reasonable grounds for believing that the other party to the marriage has disobeyed that order.

(5) The magistrate's court before whom any person is brought by virtue of a warrant issued under subsection (4) may remand him."

Repeal and
replacement
of section 18.

11. Section 18 of the principal Act is hereby repealed and the following new section substituted therefor -

"Procedure. 18. (1) The Chief Justice may make Rules of Court under this Act for all or any of the following

- (a) for regulating the practice and procedure of Magistrate's Courts in the exercise of their jurisdiction under this Act;
- (b) for regulating the forms to be used and all matters connected therewith;
- (c) generally for the better carrying into effect of the provisions, objects and intentions of this Act.

(2) All applications under this Act shall be made and dealt with and all orders shall be enforced in accordance with the Rules of Court, if any, made by the Chief Justice under subsection (1) and in the event of there being no such rules in effect or no provision in such Rules to meet any particular circumstances arising in any application before the court, the court and the parties shall deal with the application in accordance with the provisions of the Magistrate's Court (Civil Procedure) Rules 1969."

12. Section 19 of the principal Act is hereby amended in the following respects -

- (a) in subsection (1) by deleting the words "monthly or weekly amount" and substituting therefor the words "periodical payment".
- (b) by deleting the full stop that appears at the end of subsection (1) and substituting therefor a colon; and
- (c) by adding the following proviso at the end of subsection (1):

"Provided that the court may also exercise its power under this subsection where the person against whom the order has been made is present in court and consents or is not present in court but has given his consent in writing signed by him to the attachment of his pension or income as to the periodical amount payable under the said order or as to any lesser amount notwithstanding that he has not at the time of giving his consent as aforesaid failed to make any payment which he is required by the order to make."

13. Section 21 of the principal Act is hereby amended by deleting the word "twenty" and substituting therefor the words "two hundred".

Amendment
of section
19.

Amendment
of section
21.

