

FAMILY LAW REFORM EXECUTIVE SUMMARY

INTRODUCTION

1. The Family Law review was commenced in 2011 by the Law Reform Commission. The review was divided into two sets of consultations from which two consultation papers were prepared. This process led to the preparation of the draft Maintenance Bill, the Matrimonial Causes Bill and the Family Property (Rights of Spouses) Bill.

2. Summary of main reforms under the Bills -

- (a) Moving away from the current fault-based divorce to a single ground of divorce i.e. irretrievable breakdown;
- (b) Removing the power of the court to award damages for adultery;
- (c) Acknowledging pre-nuptial agreements;
- (d) Decreasing the period of separation required before dissolution of a marriage from two and five years to twelve months;
- (e) Widening the definition of children of the marriage to include children born by artificial conception procedures in order to protect all children's rights;
- (f) Allowing applications for financial relief in Cayman Islands courts even though the separation or divorce took place in another country;
- (g) Allowing for committal to prison for non-payment of maintenance and for suspension of drivers licences;
- (h) Allowing the Crown to apply for maintenance orders on behalf of a dependent adult;
- (i) Specifying the expectation of confidentiality and proceedings being heard in closed court;
- (j) Recognising 'common law' unions in relation to the distribution family property where parties have lived together for at least five years;
- (k) Abolishing some of the remaining legal provisions that distinguish between 'legitimate' and 'illegitimate' children in procedure and/or in effect; and
- (l) Formally increasing the age of responsibility for children from 14 years to 18 years and allowing the *Children Law (2012 Revision)* to provide comprehensively for the welfare of children (defined as persons under age 18), including for maintenance/financial support.

THE MATRIMONIAL CAUSES BILL, 2018

3. This Bill seeks to repeal and replace the Matrimonial Causes Law (2005 Revision) which was originally enacted in 1976. The main areas of reform in this Bill are -

- (1) Creating a single ground for divorce i.e. irretrievable breakdown - **Clause 33**
- (2) Requiring mediation prior to divorce - **Part 4** of the Bill provides details of the reconciliation, counselling and dispute resolution process as they relate to matrimonial proceedings.
- (3) Introducing summary divorces where there are no children and the hearing of some financial arrangements after a divorce has been granted - **see clause 57 (2)**.
- (4) Recognition of pre-nuptial agreements - **see clauses 64 and 65**.
- (5) Power of the Grand Court to grant ancillary relief to resident persons under decrees made in other jurisdictions - **See Part 9**.
- (6) Abolition of actions and damages for adultery - **see clause 102**.
- (7) Abolition of the need for men to prove domicile in order to apply for a divorce in the Islands - **Clause 8**. Instead increasing equality of eligibility based on Caymanian status or residence for one year or more in the Islands prior to application for divorce proceedings.

THE MAINTENANCE BILL, 2018

4. The Maintenance Bill, 2018 seeks to repeal and replace the current Law and, among other things, the Bill -
 - (a) no longer deals with maintenance of children which has since 2012 been covered by the Children Law;
 - (b) introduces equality for maintenance of spouses - a male will now also be able apply for maintenance;
 - (c) repeals references to illegitimacy;
 - (d) repeals the penalty deeming a man a rogue and vagabond for non-payment of maintenance and widens the penalties for such non-payment; and
 - (e) details the matters which the court must take into account in making an order for maintenance. These include the following -
 - (i) the respondent's and the applicant's assets and means;
 - (ii) the assets and means that the applicant and the respondent are likely to have in the future;
 - (iii) the applicant's capacity to contribute to the applicant's own support;
 - (iv) the capacity of the respondent to provide support;
 - (v) the mental and physical health and age of the applicant and the respondent and the capacity of each of them for appropriate gainful employment;

- (vi) the measures available for the applicant to become able to provide for the applicant 's own support and the length of time and cost involved to enable the applicant to take those measures;
- (vii) any legal obligation of the respondent or the applicant to provide support for another person; and
- (viii) the desirability of the applicant or respondent staying at home to care for a child.

5. Note - **Clause 19** of the Bill provides that one of the sanctions for failure to pay maintenance is that the court may direct the suspension of a person's driver's licence and car registration. **Clauses 24 and 25** set out the procedure for the suspension by the court.

THE FAMILY PROPERTY (RIGHTS OF SPOUSES) BILL, 2018

6. The main areas of reform in the Bill are -

(1) The definition of spouse has been extended to include persons in common law relationships. - **see clauses 2 and 3.**

(2) **Clause 10** deals with the introduction of pre-nuptial agreements which fall under two categories, marriage agreement and cohabitation agreements. The type of agreement depends on the nature of the relationship of the spouse i.e. whether married or about to marry or in a de facto relationship.

(3) The Bill also sets out the provisions relating to the division of property between spouses upon the breakdown of a marriage or cohabitation - **see clause 14.** The Bill in clause 14 sets out the matters which must be considered by the court upon an application for division of property including -

- (a) the contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either spouse, including any contribution made in the capacity of homemaker or parent;
- (b) that there is no family home;
- (c) the age of each spouse and the duration of the marriage or the period of cohabitation;
- (d) that there is an agreement with respect to the ownership and division of property;
- (e) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made in the capacity of homemaker or parent;
- (f) the effect of any proposed order upon the earning capacity of either spouse;
- (g) the standard of living enjoyed by the family before the breakdown of the marriage or the relationship;
- (h) any order that has been made under this Law in respect of a spouse; or
- (i) such other fact or circumstance which, in the opinion of the court the justice of the case requires to be taken into account.

(4) A contribution is not only a monetary one and the Bill affirms the fact that there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.

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