

GAMBIA



MUSLIM MARRIAGE AND DIVORCE ACT

LAWS OF THE GAMBIA

Act No. 1 of 1941

CHAPTER 42:01

MUSLIM MARRIAGE AND DIVORCE ACT

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Chapter 42:01

MUSLIM MARRIAGE AND DIVORCE ACT¹

An Act relating to Muslim Marriages and Divorces, and for connected matters.

[Act No. 1 of 1941.]

[Date of commencement: *30th August, 1941.*]

1. Short title and application

This Act may be cited as the Muslim Marriage and Divorce Act and shall apply only to the City of Banjul.

Provided that it shall be lawful for the President by Order published in the Gazette, to apply all or any of the provisions of this Act or of any rules made under this Act to any other part of The Gambia.

2. Interpretation

In this Act, unless the context otherwise requires:

"Minister" means the Minister responsible for religious affairs;

"prescribed" means prescribed by rules made under this Act.

3. Muslim marriages legal and valid

A Muslim marriage celebrated before the commencement of this Act according to the rites and observances of the Muslim religion customary and usual among the community and sect in which the marriage took place shall be and shall be deemed to have been from the time of celebration thereof a legal and valid marriage.

4. Muslim marriages and divorces to be registered

From and after the commencement of this Act, all Muslim marriages and all divorces from those marriages celebrated or given according to the rites and observances of the Muslim religion customary and usual among the community or sect in which the marriage or divorce takes place shall be valid and registered as herein provided.

5. Marriages and divorces taking place outside the City of Banjul, etc.

All Muslim marriages and all divorces from those marriages celebrated or given according to the rites and observances of the Muslim religion customary and usual among the community or sect in which the marriage or divorce takes place, shall be registered within such time by such person as may be prescribed, if such marriage or divorce takes place outside the City of Banjul or any other part of The Gambia to which this Act applies, and one of the parties thereto is at the time of such marriage or divorce domiciled in the City of Banjul or any other part of The Gambia to which this Act applies.

6. Public Service Commission to appoint Registrars of Muslim marriages and divorces

¹ This Act was originally called Mohammedan Marriage and Divorce Act.

The Public Service Commission may, by notification published in the Gazette, appoint a person (hereinafter called a Registrar) to register Muslim marriages and divorces which have been effected within certain specified limits.

7. Registrar to keep books

A Registrar shall keep such books as may be prescribed.

8. Marriages and divorces to be registered

Application for the registration of a marriage or divorce shall be in such manner and within such period as may be prescribed.

9. Registrar to make inquiry

On application being made to a Registrar for registration under this Act, the Registrar shall satisfy himself or herself as to whether or not such marriage or divorce has been effected by or between the parties, and as to the identity of the parties, and shall make such other inquiries as may be prescribed.

10. If satisfied, Registrar shall register

If the Registrar is satisfied on the points regarding which inquiry is to be made under section 9 of this Act, he or she shall on payment of such fee as may be prescribed, make an entry of the marriage or divorce in such book as may be prescribed and the entry shall be signed by such persons as may be prescribed.

11. Free copies of entries to parties

On completion of the registration of a marriage or divorce, the Registrar shall deliver free of charge to each of the parties to the marriage or divorce, a copy of the entry certified under his or her own hand.

12. Record of refusal to register

A Registrar refusing to register a marriage or divorce shall make an order of refusal and record his or her reasons for such order in such book as may be prescribed.

13. Appeal from refusal by Registrar

An appeal shall lie within such time as may be prescribed to such person or persons as the Minister shall, by order, direct against any order made by the Registrar under section 12 of this Act and the order made upon such appeal shall be final.

14. Registers and certified copies of entries therein to be received as evidence

A register required to be kept by a Registrar under this Act, and also every copy of any entry therein certified to be a true copy under the hand of the Registrar or other person who for the time being has the lawful custody of the register, shall be good evidence of the facts therein recorded in pursuance of this Act in and before all courts and in all proceedings whatsoever in which it shall be necessary to give evidence of the marriage or divorce or the refusal to register a marriage or divorce to which such entry shall relate.

15. Power to make rules

The Minister may, from time to time, make such rules as he or she may think fit for carrying out the purposes of this Act, and, in particular and without prejudice to the generality of the foregoing, for the following purposes, namely—

- (a) prescribing the form of registers to be kept by Registrars;
- (b) prescribing the time within which a marriage or divorce shall be registered;
- (c) prescribing the persons by whom an application for registration of a marriage or divorce shall be made;
- (d) prescribing the inquiries to be made by a Registrar before registering a marriage or divorce;
- (e) prescribing the persons by whom entries in registers shall be signed;
- (f) regulating appeals from the refusal by a Registrar to register a marriage or divorce;
- (g) regulating the correction of errors in registers;
- (h) prescribing the measures to be taken for the safe custody and preservation of registers;
- (i) regulating the inspection of registers, and the supplying of copies of entries therein;
- (j) prescribing the returns to be made by Registrars;
- (k) prescribing the fees to be charged for any matter or thing under this Act or any rules made thereunder;
- (l) prescribing the remuneration of Registrars.

16. Savings

Nothing in this Act shall be construed to—

- (a) render invalid, merely by reason of its not having been registered, a Muslim marriage or divorce which would otherwise be valid;
- (b) render valid, by reason of its having been registered, any such marriage or divorce which would otherwise be invalid;
- (c) authorise the attendance of a Registrar at the celebration of a marriage except at the request of the parties concerned;
- (d) affect the religion or religious rights of any persons in The Gambia;
- (e) affect the provisions of the Sharia Law Recognition Act.

[Cap. 6:04.]

17. Jurisdiction in divorce cases

Subject to the provisions of the Constitution, nothing contained in section 3 of the Courts Act shall authorise the grant of any relief under that Act when the marriage of the parties has been declared valid under this Act:

Provided that nothing herein contained shall prevent a court of competent jurisdiction from granting relief under Sharia law.

[Cap. 6:01.]

CHAPTER 42:01

MUSLIM MARRIAGE AND DIVORCE ACT

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MUSLIM MARRIAGE AND DIVORCE (REGISTRATION) RULES

ARRANGEMENT OF RULES

RULE

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5. Time within which and person by whom application shall be made.
6. Inquiries to be made by Registrar.
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8. Fees.
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10. Correction of clerical errors in Registers.
11. Periodical inspection of Registers.
12. Safe custody and return of Registers.
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SCHEDULE

Forms

MUSLIM MARRIAGE AND DIVORCE (REGISTRATION) RULES

[Rules 45 of 1941, Rules 12 of 1942, LN 56 of 1963.]

[Made under section 15.]

1. Citation

These Rules may be cited as the Muslim Marriage and Divorce (Registration) Rules.

2. Language and script in which entries in registers may be made

Entries required to be made by these Rules in a register or book shall be made in English or Arabic or in such other language and script as the Minister may, either generally or in any particular case, direct.

3. Signatures of illiterates, etc.

Nothing in these Rules shall prevent a person who is unable to write from putting his or her mark instead of the signature required by these Rules or from writing such signature in any language or script other than English:

Provided that that other language or script is the language or script in which he or she is generally accustomed to sign his or her name.

4. Books to be kept by Registrars

(1) A Registrar shall keep the following register books, which shall be supplied to him or her by the Minister—

- (a) a Register of Marriages in the Form A set out in the Schedule to these Rules;
- (b) a Register of Divorces in the Form B set out in the Schedule to these Rules;
- (c) a Register of Refusals to register a Marriage or Divorce in the Form C set out in the Schedule to these Rules.

[Forms A, B and C, Schedule.]

(2) The entries in Forms A and B set out in the Schedule to these Rules shall be prepared by the Registrar in triplicate. On completion of the registration of a marriage or divorce, the Registrar shall deliver free of charge to each of the parties to the marriage or divorce one copy of the entry of the marriage or divorce duly certified under his or her own hand. The remaining copy of the entry shall be preserved in the appropriate Register.

[Forms A and B, Schedule.]

(3) The Minister may direct that the particulars to be printed in the Forms set out in the Schedule to these Rules may be printed in some other language or languages in addition to English.

[Schedule.]

5. Time within which and person by whom application shall be made

(1) Application for registration of a marriage or divorce shall (except as hereinafter provided) be made within one month of the date of such marriage or divorce in the manner and by the persons following, that is to say—

- (a) in the case of a marriage, by the husband and wife and the guardian (if any) of the wife;
- (b) in the case of divorce—
 - (i) if the divorce be of the kind known as Khula, by both the parties jointly and the

- guardian (if any) of the woman,
- (ii) if the divorce be by the sentence of a competent court, by the presiding Cadi of such court,
- (iii) in any other case, by the man who effected the divorce.

(2) In the case of a marriage or divorce celebrated or given outside the City of Banjul or any other part of The Gambia to which these Rules apply, a party to it, who is domiciled within the City of Banjul or such other part of The Gambia, shall apply for the registration of such marriage or divorce within one month after his or her first return to the City of Banjul or such other part of The Gambia.

(3) If a person, who is required by this rule to apply for the registration of a marriage or divorce, dies within the period herein prescribed for making an application and without having made such application, the application shall be made by the heir or heiress of the person.

(4) Nothing in this rule shall prevent a woman or her guardian from applying for the registration of a marriage or divorce if the man fails to so apply.

(5) Notwithstanding anything to the contrary contained in this rule, a Registrar may accept and inquire in the manner hereinafter provided by these Rules into an application for registration of a marriage or divorce after the period prescribed herein for making such application on payment by the applicant of the fee prescribed in rule 8 of these Rules.

6. Inquiries to be made by Registrar

(1) Before registering a marriage or divorce, a Registrar shall make such inquiries as may be necessary in order to satisfy himself or herself that—

- (a) the person or persons applying to register such marriage or divorce is or are a party or the parties to such marriage or divorce or the guardian or guardians of such party or parties; and
- (b) the marriage or divorce was celebrated or given in accordance with the rites and observances of the Muslim religion customary amongst the community or sect to which the parties to the marriage or divorce belong.

(2) The Registrar may, if he or she thinks fit, refuse to register any marriage or divorce until he or she has made inquiries of a person whom he or she has reason to believe can give material information regarding any of the matters referred to in this rule, and, for the purpose of ascertaining the truth regarding any such matters as aforesaid, may require that the person takes an oath or affirmation regarding such matters in such manner as is customary amongst and held binding by the community or sect to which the person belongs.

(3) A refusal to register a marriage or divorce shall be entered in the Form C set out in the Schedule to these Rules.

[Form C, Schedule.]

7. Persons by whom entries are to be signed

(1) The entries in the appropriate registers shall be signed by the following persons, namely—

(a) in the case of a marriage, by the husband and wife and the guardian (if any) of the wife, and two witnesses to the marriage;

(b) in the case of divorce—

(i) if the divorce be of the kind known as Khula, by both parties to the divorce and the

guardian (if any) of the woman and the person or persons identifying the parties to

the divorce,

(ii) if the divorce be by the sentence of a court of competent jurisdiction, by the presiding Cadi of such court,

(iii) in any other case, by the man who has effected the divorce and a witness who identifies him.

(2) If the marriage or divorce has been celebrated or given outside the City of Banjul or any other part of The Gambia to which these Rules apply and the attendance of any person, who is required by this rule to sign the entry in the appropriate register, cannot be procured without any amount of delay or expense which in the circumstances of the case appears to the Registrar unreasonable, the Registrar may dispense with the attendance of such person, but shall enter in his or her own hand in the appropriate place in the Register the name and residence of the person whose attendance is so dispensed with.

(3) If it is shown to the satisfaction of the Registrar that a person, who is required by this rule to sign an entry in any Register is dead, or so ill as not to be able to attend before the Registrar, the Registrar shall enter the name and residence of such person in the appropriate place in the Register and record under his or her hand the fact that the person is dead or ill as aforesaid.

8. Fees

(1) The following fees is payable on the registration of a marriage or divorce celebrated or made after the coming into force of these Rules—

	<i>D.b.</i>
If application to register is made within the period prescribed by rule 5 (1) and rule 5 (2)	2.00
If application to register is made after the period prescribed by rule 5 (1) and rule 5 (2)	5.00

(2) An application to register under these Rules any marriage or divorce celebrated or made before the coming of this Act may be accepted on payment of a fee of	2.00
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[LN 56 of 1963.]

9. Appeal from refusal to register a marriage or divorce

(1) An appeal from the refusal of a Registrar to register a marriage or divorce shall be presented either verbally or in writing within one month of the refusal to the person or persons directed to hear the appeal by order of the Minister under section 13 of the Act (hereinafter referred to as the "Appellate Tribunal").

(2) On presentation of the appeal, the Appellate Tribunal may call for the register containing the entry of the refusal to enter the marriage or divorce or a certified copy of the relevant entry therein.

(3) On hearing the appeal the Appellate Tribunal may make all or any of the inquiries prescribed by rule 6 (1) and may exercise all or any of the powers conferred on a Registrar by rule 6 (2) and, in addition, may call for a report from or require the attendance of the Registrar at the hearing of the appeal.

(4) The decision of the Appellate Tribunal shall be communicated to the Registrar, who shall record it in the Register in Form C set out in the Schedule to these Rules, and in the event of his or her order being reversed or altered, shall comply with the terms of the order of the Appellate Tribunal.

[Form C, Schedule.]

(5) The Appellate Tribunal may for sufficient reason enlarge the time prescribed by this rule for presentation of an appeal.

10. Correction of clerical errors in Registers

A Registrar may correct any clerical error in an entry in Form A or Form B set out in the Schedule to these Rules, on production to him or her of the copies thereof delivered to the parties and shall authenticate every such correction in such Register and such copies thereof by his or her signature and the date of such correction.

[Forms A and B, Schedule.]

11. Periodical inspection of Registers

A Registrar shall, at the expiration of every three months, submit all Registers and books which he or she is required to keep by these Rules and are in his or her custody, for inspection by the Appellate Tribunal or such other person as the Minister may, by Notification published in the *Gazette*, direct.

12. Safe custody and return of Registers

A Registrar shall keep safely such Registers and books until the same shall be filled, and shall then, or earlier, if he or she leaves the district or his or her appointment be revoked, forward them to the Appellate Tribunal or to such person as the latter may direct.

13. Registers open to inspection and copies obtainable

A Register or book which is required to be kept by these Rules, shall be to inspection by a person applying for the same, and certified copies of an entry shall be given by the Registrar or other person for the time being having the custody of such Register or book to a person applying for such copy on payment of a fee of one dalasi.

14. Remuneration of Registrars

A person appointed to be a Registrar under section 6 of the Act shall receive by way of remuneration a sum equal to twenty-five per cent of the fees received by him or her under rule 8 of these Rules.

[Rules 12 of 1942.]

SCHEDULE

[Rules 4 and 10.]

FORM A

MUSLIM MARRIAGE AND DIVORCE ACT

Register of Marriages

1. Consecutive number
2. Name of bridegroom and father of bridegroom
3. Residence of bridegroom
4. Name of bride and father of bride
5. Residence of bride
6. Whether bride is a spinster, a widow, or divorced by former husband
7. Whether bride is an adult or otherwise
8. Name and residence of guardian of bride
9. Date on which marriage was contracted
10. Amount of dower
11. Amount of dower which is prompt
12. Amount of dower which is deferred
13. Amount of dower which was paid before or at the time of marriage
14. Whether any property was given in lieu of the whole or any part of the dower with particulars of the same

15. Special conditions (if any)
16. Place at which marriage took place
17. Name of person in whose house marriage ceremony took place
18. Signature of bridegroom
19. Signature of bride
20. Signature of bride's guardian
21. Signature and residence of witnesses to the marriage
- (a) Name of witness
- (b) Residence
- (c) Name of witness
- (d) Residence
22. Date of registration
23. Signature and residence of Registrar

FORM B

[Rules 4 and 10.]

MUSLIM MARRIAGE AND DIVORCE ACT

Register of Divorces

1. Consecutive number
2. Name of husband and his father
3. Residence of husband
4. Name of wife and her father
5. Residence of wife
6. Date of divorce
7. Place at which divorce took place
8. Name of person in whose house the divorce took place
9. Names and residences of witnesses to the divorce (if any)
10. Signature of party registering the divorce
11. Signature and residence of person identifying the husband before the Registrar
12. If the divorce be a Khula, the following particulars should be added—

- (a) Amount of dower
- (b) Signature of wife
- (c) Signature of guardian of wife (if any)
- (d) Signature and residence of person identifying wife before Registrar
13. Date of registration
14. Signature and residence of Registrar

FORM C

[Rules 4, 6 and 9.]

MUSLIM MARRIAGE AND DIVORCE ACT

Register of Refusal to Register a Marriage or a Divorce

1. Date of application for registration.....
2. Whether application was to register a marriage or divorce
3. Name and residence of bridegroom or husband
4. Name and residence of bride or wife
5. Name and residence of guardian of bride or wife (if any)
6. Date of marriage or divorce
7. Place of marriage or divorce
8. Name of person in whose house the marriage or divorce is stated to have taken place
.....
9. Name of applicant for registration
10. Grounds of refusal to register
11. Date of refusal to register
12. Signature and residence of Registrar

APPOINTMENT OF REGISTRAR

[Notification 14 of 1941.]

[Made under section 6.]

The person from time to time holding the office of Cadi of the Cadi Court of Banjul, as constituted by the Sharia Law Recognition Act, is appointed to be a Registrar for the purposes of this Act.

[Cap. 6:04.1]