

## **NORWEGIAN LEGISLATION**

### **THE MARRIAGE ACT**

#### **ACT NO. 47 OF 4 JULY 1991 RELATING TO MARRIAGE**

##### *Chapter 4. Dissolution of marriage. Separation.*

#### **§ 19 Dissolution of marriage**

A marriage may be dissolved by divorce after prior separation pursuant to section 21 or without prior separation pursuant to sections 22 and 23. A marriage may also be dissolved pursuant to section 24.

#### **§ 20 Separation**

A spouse who finds that he or she cannot continue cohabitation may demand a separation.

A separation ceases to have legal effect if the spouse continue or resume cohabitation. However, cohabitation for a transitional period until cohabitation is terminated, or brief attempts to resume cohabitation, will not have this effect.

#### **§ 21 Divorce after separation**

Each of the spouses may demand a divorce when they have been separated for at least one year.

#### **§ 22 Divorce after cohabitation is terminated**

Each of the spouses may demand a divorce if they have not cohabited for at least two years.

#### **§ 23 Divorce on grounds of abuse**

A spouse may demand a divorce if the other spouse has intentionally attempted to kill him or her or their children or wilfully exposed them to severe maltreatment. The same applies if the spouse has behaved in a manner that is likely to arouse grave fear of such behaviour.

A demand for divorce pursuant to this section must be submitted within six months after the spouse learned of the act, and not later than two years after it took place.

**§ 24 Dissolution of a marriage contracted contrary to section 3 or section 4**

Each of the spouses may demand that the marriage be dissolved if it was contracted contrary to section 3 or section 4.

If neither of the spouses institutes proceedings, the County Governor shall institute proceeding for dissolution of the marriage. The County Governor may nevertheless decide that no proceedings shall be instituted or that legal action shall be postponed, if there are strong reasons for doing so.

A spouse may demand a divorce when the other spouse has contracted a new marriage contrary to section 4.

No demand for the dissolution of a new marriage contrary to section 4 may be made pursuant to the first or second paragraph if the previous marriage has been dissolved.

*Chapter 5. Hearing of cases regarding the dissolution of marriage and regarding separation*

**§ 26 Mediation, etc.**

Spouses who have children of their marriage under 16 years of age shall in separation and divorce cases pursuant to sections 20 and 22 attend mediation proceedings before the case is brought before a court or the County Governor, cf. section 27. The purpose of the mediation is to reach an agreement concerning parental responsibility, right of access or where the child or children shall permanently reside, with due emphasis on what will be the best arrangement for the child/children. The Ministry will by regulation prescribe further rules regarding who may undertake mediation pursuant to the first sentence, and regarding approval of such bodies.

Mediation pursuant to the first paragraph is not required if the case has already been brought before a court with a claim for

divorce pursuant to section 23 or dissolution pursuant to section 24. Nor is mediation or information required when proceedings are instituted by a guardian pursuant to section 28, second paragraph.

The spouses are under an obligation to attend in person unless compelling reasons prevent them from doing so. When an attempt at mediation has been made, a certificate shall be issued to that effect. The Ministry will by regulation prescribe further rules concerning exemptions from the obligation to attend mediation proceedings. The Ministry will also prescribe rules concerning the terms on which a certificate stating that mediation has been attempted may be issued.

Any person who undertakes to mediate has an obligation to maintain secrecy concerning what he or she learns in connection with such mediation.

The Ministry may issue further rules concerning the nature of the mediation, and concerning the summons thereto and procedures to be followed.

### **§ 27 Which authority will decide the case**

Separation and divorce are granted by the County Governor unless otherwise prescribed by the second or third paragraph. The decision shall be made by a court:

- (a) when the case concerns dissolution of a marriage pursuant to section 23 or section 24;
- (b) when the case concerns divorce pursuant to section 22, and the parties do not agree that the conditions have been fulfilled;
- (c) when proceeding for separation or divorce are instituted by a guardian or provisional guardian pursuant to section 28.

Separation pursuant to section 20 and divorce pursuant to section 22 shall also be decided by a court when demand is made in proceeding for divorce that have been brought before the court on other grounds, or in connection with a case concerning a question pursuant to this Act or a question pursuant to the Children Act concerning children of the marriage, which is related to the demand for separation or divorce.

**§ 28 Party rights for a spouse without legal capacity, etc.**

Proceedings for dissolution of a marriage or separation are instituted by or against a spouse personally even if he or she lacks legal capacity. When proceedings are instituted, the guardian may assist the person lacking legal capacity. The guardian shall be notified about the case by the County Governor. If the case is brought before the courts, the writ shall also be served on the guardian.

A guardian may bring proceedings for dissolution of a marriage or separation on behalf of a spouse who lacks legal capacity to act if this is essential in ten interests of he said spouse. These cases are dealt with in any event by the courts, which will also decide whether there are grounds for legal action.

If a provisional guardian has been appointed for a legally competent spouse pursuant to sections 90 *et seq.* of the Guardianship Act, and it is part of the duties of the provisional guardian to act in or to bring proceedings for separation and divorce, the provisions in the first and second paragraph shall apply correspondingly to the provisional guardian.

**§ 29 procedure to be followed by the County Governor, etc.**

When a petition for separation or divorce is received by the County Governor, the parties may be summoned to appear in person if the County Governor believes this to be appropriate.

The Ministry will issue further regulations regarding the information to be required by the County Governor before a separation or divorce is granted.

Notice of the decision of the County Governor regarding separation pursuant to section 20 and divorce pursuant to section 21 and section 22, cf. section 27, shall be served on the parties unless they have waived notification. The time limit for appealing against the decision is three weeks, and it runs for each of the parties from the time notice of the decision is served on him or her. The parties may in advance waive their right to appeal against the decision. As regards notification and an appeal against the decision of the County Governor, the provisions of the Public Administration Act shall otherwise apply.

If one of the parties dies during the case, section 425 of the Civil Procedure Act applies correspondingly as regards appealing against the decisions of the County Governor.

**§ 30 Invalidity**

Once a decision regarding separation and divorce has become final, no claim may be made that the decision is invalid because of a procedural error or for other reasons.

*Part III Maintenance and pension after separation and divorce  
Chapter 16 Right to maintenance and spouse's pension*

**§ 79 Right to maintenance after separation, divorce or other cessation of cohabitation**

The mutual obligations of spouses pursuant to section 38 cease to exist upon separation and divorce. The same applies to a cessation of cohabitation without a separation or divorce.

If the ability and opportunity of a spouse to ensure adequate support have been reduced as a result of caring for children of the marriage or of the distribution of joint tasks during cohabitation, the other spouse may be ordered to pay maintenance.

In other cases maintenance may only be ordered if special reasons so indicate.

**§ 80 Assessment of maintenance**

Maintenance shall be assessed on the basis of the need for maintenance of the person entitled thereto and the ability to pay of the person liable to pay maintenance.

When special reasons so indicate, maintenance may be determined as a lump sum payment, alone or in addition to regular payments.

**§ 81 Duration of maintenance.**

Maintenance shall be ordered for a limited period not exceeding three years. If the marriage has lasted for a long time, or if there are other special reasons, maintenance may be ordered for a longer period or without any time limit.

Maintenance may be ordered for a period of up to three years before the claim was submitted to the authority that is to decide the matter.

#### **§ 82 Cessation of maintenance**

The right to maintenance lapses if the person entitled thereto remarries.

#### **§ 83 Determination of maintenance**

The parties may enter into an agreement regarding maintenance. If the parties do not agree on the question of maintenance, each of them may demand that it be decided by the courts. If both parties so desire, the question may instead be decided by the County Governor. The parties may demand a decision on the question of maintenance even if they have previously entered into an agreement regarding this.

#### **§ 84 Alteration of maintenance determined**

Each of the parties may demand that the maintenance determined by the County Governor or the court be altered or revoked if there are special grounds for doing so. When strong reasons so indicate, the decision may also apply to maintenance that fell due before the demand for alteration was submitted. The provision in section 57, third paragraph, of the Children Act shall apply correspondingly. A decision regarding the demand for alteration shall be made pursuant to the provisions of section 83.

#### **§ 85 Relation to the demands of the parties. Implementation of maintenance, etc.**

The authority that determines maintenance may alter the maintenance payments to the children of both parties to the marriage even if neither of the parties has demanded it.

The provisions of section 60 of the Children Act regarding the implementation of maintenance payments shall apply correspondingly.

#### **§ 86 Right of a divorced spouse to a spouse's pension from a pension scheme other than the national insurance scheme**

A divorced spouse retains the right to a spouse's pension from a pension scheme other than the national insurance scheme if the marriage lasted at least ten years, and the divorced spouse was at least 45 years old at the time of the divorce. By pension scheme is meant a public pension scheme and a private collective pension scheme with compulsory membership.

The right to a spouse's pension is contingent on the other spouse being or having been, at the time of the divorce, a member of a pension scheme other than the national insurance scheme which covers a spouse's pension. In such a case the divorced person also acquires the right to a spouse's pension from a scheme of which the deceased spouse had become a member after the divorce.

**§ 87 Special provisions for when several persons are entitled to a pension**

If the deceased spouse had remarried, and the new spouse is entitled to a spouse's pension as mentioned in section 86 pursuant to the general rules of the pension scheme concerned, the pension shall be divided between the persons entitled in proportion to the number of commenced years that each of them was married to the deceased. However, if one of them waives the right, the pension accrues undivided to the other.

If a divorced spouse puts forward a claim in a pension scheme that also grants rights to a subsequent spouse, the matter may claim a part of the spouse's pension from a pension scheme of which the deceased was previously a member, even if this is not prescribed by the general rules of the pension scheme concerned.

**§ 88 Consequence if a person who is entitled to a pension remarries or dies**

If the person entitled to a pension contracts a new marriage while the previous spouse is alive, the right to a pension lapses pursuant to the provisions in this chapter. If a new marriage has been contracted after the death of the previous spouse, the rules laid down in the pension scheme concerned with regard to a surviving spouse shall apply.

If the right of a divorced or subsequent spouse to a pension lapses in the event of death or marriage, the entire pension shall accrue to the other provided that he or she is entitled to a pension from the deceased pursuant to section 86 or section 87. If the new marriage ends, and the right to benefits is revived pursuant to the rules of the pension scheme concerned, the benefits shall again be divided.

**§ 89 Lapse of right to spouse's pension on commission of a criminal act against the deceased**

If a spouse or divorced spouse is sentenced to an unconditional term of imprisonment for a criminal act against the person who has earned the right to a pension, and the latter dies as a result of the act, the right to a spouse's pension from any pension scheme other than the national insurance scheme lapses. Section 88; second paragraph, first sentence, shall apply correspondingly.