

# MATRIMONIAL AFFAIRS ACT NO. 37 OF 1953

[ASSENTED TO 1 OCTOBER, 1953]

[DATE OF COMMENCEMENT: 28 OCTOBER, 1953]

(English text signed by the Governor-General)

This Act has been updated to *Government Gazette* 17129 dated 19 April, 1997.

## as amended by

General Law Further Amendment Act, No. 93 of 1962

[with effect from 4 July, 1962—see title GENERAL LAW AMENDMENT ACTS]

Maintenance Act, No. 23 of 1963

Matrimonial Affairs Amendment Act, No. 13 of 1966

Matrimonial Affairs Amendment Act, No. 13 of 1976

Divorce Act, No. 70 of 1979

Matrimonial Property Act, No. 88 of 1984

General Law Fourth Amendment Act, No. 132 of 1993

[with effect from 1 December, 1993—see title GENERAL LAW AMENDMENT ACTS]

Guardianship Act, No. 192 of 1993

[with effect from 1 March, 1994—see title CHILDREN]

Justice Laws Rationalisation Act, No. 18 of 1996

[with effect from 1 April 1997—see title COURTS]

## ACT

**To amend the law relating to the property rights of spouses, to orders for maintenance, to the guardianship and custody of minors and to divorce.**

### ARRANGEMENT OF SECTIONS

1. . . . .
2. . . . .
3. . . . .
4. . . . .
5. Guardianship and custody of minors
- 6 to 10 . . . . .
- inclusive
- .
11. Short title

1. . . . .

[S. 1 amended by s. 31 of Act No. 93 of 1962 and repealed by s. 10 of Act No. 132 of 1993.]

2. . . . .

[S. 2 amended by s. 1 of Act No. 13 of 1966 and repealed by s. 10 of Act No. 132 of 1993.]

3. . . . .

[S. 3 substituted by s. 1 of Act No. 13 of 1976 and repealed by s. 37 of Act No. 88 of 1984.]

4. . . . .

[S. 4 repealed by s. 16 of Act No. 23 of 1963.]

**5. Guardianship and custody of minors.**—(1) Any provincial or local division of the Supreme Court or any judge thereof may, on the application of either parent of a minor whose parents are divorced or are living apart, in regard to the custody or guardianship of, or access to, the minor, make any order which it may deem fit, and may in particular, if in its opinion it would be in the interests of such minor to do so, grant to either parent the sole guardianship (which shall include the power to consent to the marriage of the child) or the sole custody of the minor, and the court may order that, on the predecease of the parent to whom the sole guardianship of the minor is granted, a person other than the surviving parent shall be the guardian of the minor, either jointly with or to the exclusion of the surviving parent.

[Sub-s. (1) substituted by s. 16 (a) of Act No. 70 of 1979.]

(2) An order under subsection (1) in regard to a minor whose parents are living apart shall, if the parents become reconciled and live together again as husband and wife, lapse with effect from the date on which the parents commence to live together again.

[Sub-s. (2) substituted by s. 16 (b) of Act No. 70 of 1979.]

(3) Subject to any order of court—

(a) a parent to whom the sole guardianship or custody of a minor has been granted under subsection (1) of the Divorce Act, 1979, may by testamentary disposition appoint any person to be the sole guardian or to be vested with the sole custody of the minor, as the case may be; and

[Para. (a) amended by s. 4 of Act No. 18 of 1996.]

(b) the parent of a minor to whom the sole guardianship of the minor has not been granted under subsection (1) or the Divorce Act, 1979, shall not be entitled by testamentary disposition to appoint any person as the guardian of the minor unless such parent was the sole natural guardian immediately before his death.

[Sub-s. (3) substituted by s. 2 (a) of Act No. 13 of 1966 and by s. 16 (c) of Act No. 70 of 1979. Para. (b) substituted by s. 2 (a) of Act No. 192 of 1993.]

(4) . . . . .

[Sub-s. (4) deleted by s. 2 (b) of Act No. 192 of 1993.]

(5) The court or a judge may, where a parent has appointed a guardian or custodian as provided in paragraph (a) of subsection (3), upon the application of the other parent, made after the death of the testator, make such order in regard to the guardianship or custody of the minor as the court or judge may deem in the interests of the minor.

[Sub-s. (5) substituted by s. 2 (c) of Act No. 192 of 1993.]

(6) If an order under subsection (1) of this section or under the Divorce Act, 1979, granting the sole guardianship or custody of a minor to a parent, lapses or is rescinded or is varied in such a manner that the parent is no longer the sole guardian or vested with the sole custody of the minor, any disposition under subsection (3) (a) shall lapse.

[Sub-s. (6) substituted by s. 2 (b) of Act No. 13 of 1966 and by s. 16 (d) of Act No. 70 of 1979 and amended by s. 4 of Act No. 18 of 1996.]

(7) . . . . .

[Sub-s. (7) deleted by s. 2 (d) of Act No. 192 of 1993.]

**6 to 10 inclusive.** . . . . .

[Ss. 6 to 10 inclusive repealed by s. 18 of Act No. 70 of 1979.]

**11. Short title.**—This Act shall be called the Matrimonial Affairs Act, 1953.

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