

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Selling price • Verkoopprys
(GST excluded/AVB uitgesluit)
Local **50c** Plaaslik
Other countries 70c Buitelands
Post free • Posvry

VOL. 264

CAPE TOWN, 24 JUNE 1987

No. 10795

KAAPSTAD, 24 JUNIE 1987

STATE PRESIDENT'S OFFICE

No. 1393.

24 June 1987

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 24 of 1987: Mediation in Certain Divorce Matters Act, 1987.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1393.

24 Junie 1987

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 24 van 1987: Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987.

GENERAL EXPLANATORY NOTE:

Words underlined with solid line indicate insertions in existing enactments.

ACT

To provide for mediation in certain divorce proceedings, and in certain applications arising from such proceedings, in which minor or dependent children of the marriage are involved, in order to safeguard the interests of such children; and to amend the Divorce Act, 1979, in order to provide for the consideration by a court in certain circumstances of the report and recommendations of a Family Advocate before granting a decree of divorce or other relief and to make the provisions of section 12 (1) and (2) of the said Act applicable to an enquiry instituted in terms of this Act; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 16 June 1987.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Definitions.

1. In this Act, unless the context otherwise indicates, any word or expression has the meaning attached thereto in the Divorce Act, 1979 (Act No. 70 of 1979), and—
 (i) “Family Advocate” means a Family Advocate appointed under section 2 (1); (ii)
 (ii) “Family Counsellor” means a Family Counsellor appointed under section 3 (1); (iii)
 (iii) “Minister” means the Minister of Justice. (10)

Appointment of Family Advocates.

2. (1) The Minister may appoint one or more officers in the public service at each division of the Supreme Court of South Africa to be styled the Family Advocate, to exercise the powers and perform the duties granted or assigned to a Family Advocate by or under this Act or any other law.
 (2) No person shall be appointed as a Family Advocate unless he is qualified to be admitted to practise as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), and the Minister deems him to be suitable for appointment as a Family Advocate by reason of his involvement in or experience of the adjudication or settlement of family matters. (15)

Appointment of Family Counsellors.

3. (1) Subject to the provisions of this section the Minister may appoint at each division of the Supreme Court of South Africa one or more suitably qualified or experienced persons to be styled the Family Counsellor, to assist the Family Advocate with an enquiry referred to in section 4 (1). (25)

WET OP BEMIDDELING IN SEKERE
EGSKEIDINGSAANGELEENTHEDDE, 1987

Wet No. 24, 1987

ALGEMENE VERDUIDELIKENDE NOTA:

Woorde met 'n volstreep daaronder, dui inwoegings in bestaande verordeninge aan.

WET

Om voorsiening te maak vir bemiddeling in sekere egskeidingsgedinge, en in sekere aansoeke wat uit sodanige gedinge voortspruit, waarby minderjarige of afhanklike kinders uit die huwelik betrokke is, ten einde die belang van sodanige kinders te beskerm; en die Wet op Egskeiding, 1979, te wysig ten einde voorsiening te maak vir die oorweging deur 'n hof in sekere omstandighede van die verslag en aanbevelings van 'n Gesinsadvokaat alvorens 'n egskeidingsbevel of ander regshulp verleen word en die bepalings van artikel 12 (1) en (2) van genoemde Wet van toepassing te maak op 'n onderzoek ingevolge hierdie Wet ingestel; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 16 Junie 1987.)

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

1. In hierdie Wet, tensy uit die samehang anders blyk, het Woordomskrywing.
enige woord of uitdrukking die betekenis wat in die Wet op Egskeiding, 1979 (Wet No. 70 van 1979), daaraan geheg word, en beteken—
 - (i) "Gesinsadvokaat" 'n Gesinsadvokaat kragtens artikel 2 (1) aangestel; (i)
 - (ii) "Gesinsraadgewer" 'n Gesinsraadgewer kragtens artikel 3 (1) aangestel; (ii)
 - (iii) "Minister" die Minister van Justisie. (iii)
2. (1) Die Minister kan een of meer beampetes in die staatsdiens by elke afdeling van die Hooggereghof van Suid-Afrika aanstel wat die benaming Gesinsadvokaat sal dra, om die bevoegdhede uit te oefen en die pligte te verrig wat by of kragtens hierdie Wet of enige ander wet aan 'n Gesinsadvokaat verleen of opgedra word.
Aanstelling van
Gesinsadvokate.
(2) Niemand word as 'n Gesinsadvokaat aangestel nie tensy hy gekwalificeerd is om ingevolge die Wet op die Toelating van Advokate, 1964 (Wet No. 74 van 1964), toegelaat te word om as advokaat te praktiseer en die Minister hom, vanweë sy betrokkenheid by of ervaring van die beregting of beslegting van gesinsaangeleenthede, geskik ag vir aanstelling as 'n Gesinsadvokaat.
3. (1) Behoudens die bepalings van hierdie artikel kan die Minister by elke afdeling van die Hooggereghof van Suid-Afrika een of meer paslik gekwalificeerde of ervare persone aanstel wat die benaming Gesinsraadgewer sal dra, om die Gesinsadvokaat by te staan met 'n ondersoek in artikel 4 (1) bedoel.
Aanstelling van
Gesinsraadgewers.

Act No. 24, 1987**MEDIATION IN CERTAIN DIVORCE MATTERS ACT, 1987**

(2) A Family Counsellor shall hold office for a period of three years, or for such shorter period as the Minister determines at the time of his appointment.

(3) A Family Counsellor may resign by written notice to the Minister.

(4) The Minister may at any time withdraw the appointment of a Family Counsellor if in his opinion there is sufficient reason for doing so.

**Powers and
duties of
Family
Advocates.**

4. (1) The Family Advocate shall—

- (a) after the institution of a divorce action; or
- (b) after an application has been lodged for the variation, rescission or suspension of an order with regard to the custody or guardianship of, or access to, a child, made in terms of the Divorce Act, 1979 (Act No. 70 of 1979),

if so requested by any party to such proceedings or the court concerned, institute an enquiry to enable him to furnish the court at the trial of such action or the hearing of such application with a report and recommendations on any matter concerning the welfare of each minor or dependent child of the marriage concerned or regarding such matter as is referred to him by the court.

(2) A Family Advocate may—

- (a) after the institution of a divorce action; or
- (b) after an application has been lodged for the variation, rescission or suspension of an order with regard to the custody or guardianship of, or access to, a child, made in terms of the Divorce Act, 1979,

if he deems it in the interest of any minor or dependent child of a marriage concerned, apply to the court concerned for an order authorizing him to institute an enquiry contemplated in subsection (1).

(3) Any Family Advocate may, if he deems it in the interest of any minor or dependent child of a marriage concerned, and shall, if so requested by a court, appear at the trial of any divorce action or the hearing of any application referred to in subsections (1) (b) and (2) (b) and may adduce any available evidence relevant to the action or application and cross-examine witnesses giving evidence thereof.

Regulations.

5. (1) The Minister may make regulations as to—

- (a) the procedure to be followed in relation to the institution of an enquiry referred to in section 4, and the manner in which the report and recommendations mentioned in that section shall be produced in court;
- (b) the conditions of service of a Family Counsellor;
- (c) the payment by the State of remuneration and allowances to a Family Counsellor for services rendered, the manner of calculation of such remuneration and allowances and the recovery of such remuneration and allowances by the State from a party or parties to a divorce action or an application referred to in section 4 (1) (b) and (2) (b) by means of an order as to costs by the court;
- (d) the appointment by a Family Advocate or a Family Counsellor of a person or persons to assist him with an enquiry referred to in section 4 and the payment by the State of remuneration to such person or persons;
- (e) the appointment, powers and duties of one or more committees to advise the Minister regarding the appointment, powers and duties of Family Counsellors; and
- (f) generally, any other matter which he deems necessary or expedient to prescribe in order to give effect to the provisions of this Act and to realize the objects thereof.

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**WET OP BEMIDDELING IN SEKERE
EGSKEIDINGSAANGELEENTHEDE, 1987**

Wet No. 24, 1987

(2) 'n Gesinsraadgewer beklee sy amp vir 'n tydperk van drie jaar, of vir die korter tydperk wat die Minister ten tyde van sy aanstelling bepaal.

(3) 'n Gesinsraadgewer kan by skriftelike kennisgewing aan die Minister bedank.

(4) Die Minister kan te eniger tyd die aanstelling van 'n Gesinsraadgewer intrek indien daar na sy oordeel voldoende rede is om dit te doen.

4. (1) Die Gesinsadvokaat moet—

- 10 (a) na die instelling van 'n egskeidingsgeding; of
- (b) na die indiening van 'n aansoek om wysiging, intrekking of opskorting van 'n bevel met betrekking tot die bewaring van, of voogdy oor, of toegang tot, 'n kind in gevolge die Wet op Egskeiding, 1979 (Wet No. 70 van 15 1979), gegee,

indien daartoe versoek deur enige party in sodanige verrigtinge of deur die betrokke hof, 'n ondersoek instel ten einde hom in staat te stel om die hof by die verhoor van so 'n geding of die aanhoor van so 'n aansoek van 'n verslag en aanbevelings te 20 voorsien oor enige aangeleentheid rakende die welsyn van elke minderjarige of afhanglike kind uit die betrokke huwelik, of oor sodanige aangeleentheid as wat deur die hof na hom verwys word.

(2) 'n Gesinsadvokaat kan—

- 25 (a) na die instelling van 'n egskeidingsgeding; of
- (b) na die indiening van 'n aansoek om wysiging, intrekking of opskorting van 'n bevel met betrekking tot die bewaring van, of voogdy oor, of toegang tot, 'n kind in gevolge die Wet op Egskeiding, 1979, gegee,

30 indien hy dit in die belang van 'n minderjarige of afhanglike kind uit 'n betrokke huwelik ag, by die betrokke hof aansoek doen om 'n bevel wat hom magtig om 'n ondersoek in subartikel (1) beoog, in te stel.

(3) 'n Gesinsadvokaat kan, indien hy dit in die belang van 'n minderjarige of afhanglike kind uit 'n betrokke huwelik ag, en moet, indien deur 'n hof daartoe versoek, verskyn by die verhoor van 'n egskeidingsgeding of die aanhoor van 'n aansoek in subartikels (1) (b) en (2) (b) bedoel, en kan enige beskikbare getuienis wat op die geding of aansoek betrekking het, aanbied, en 35 40 getuies wat getuienis aflê aan kruisverhoor onderwerp.

5. (1) Die Minister kan regulasies uitvaardig aangaande—

Regulasies.

- (a) die prosedure wat gevolg moet word met betrekking tot die instel van 'n ondersoek in artikel 4 bedoel, en die wyse waarop die verslag en aanbevelings in daardie artikel vermeld, aan die hof voorgelê moet word;
- 45 (b) die diensvoorraarde van 'n Gesinsraadgewer;
- (c) die betaling deur die Staat van vergoeding en toelaes aan 'n Gesinsraadgewer vir dienste gelewer, die wyse van berekening van sodanige vergoeding en toelaes en die verhaling deur die Staat van sodanige vergoeding en toelaes op 'n party of partye in 'n egskeidingsgeding of 'n aansoek in artikel 4 (1) (b) en (2) (b) bedoel deur middel van 'n kostbevel deur die hof;
- 50 (d) die aanstelling deur 'n Gesinsadvokaat of 'n Gesinsraadgewer van 'n persoon of persone om hom met 'n ondersoek in artikel 4 bedoel, behulpsaam te wees en die betaling deur die Staat van vergoeding aan sodanige persoon of persone;
- 55 (e) die aanstelling, bevoegdhede en pligte van een of meer komitees om die Minister betreffende die aanstelling, bevoegdhede en pligte van Gesinsraadgewers te adviser; en
- 60 (f) in die algemeen enige ander aangeleentheid wat hy nodig of dienstig ag om voor te skryf ten einde die bepalings van hierdie Wet uit te voer en die oogmerke daarvan te verwesenlik.

Act No. 24, 1987**MEDIATION IN CERTAIN DIVORCE MATTERS ACT, 1987**

(2) No regulations may be made under subsection (1) (c) or (d) except with the concurrence of the Minister of Finance.

Amendment of
section 6 of
Act 70 of 1979.

6. Section 6 of the Divorce Act, 1979, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A decree of divorce shall not be granted until the court—

(a) is satisfied that the provisions made or contemplated with regard to the welfare of any minor or dependent child of the marriage are satisfactory or are the best that can be effected in the circumstances; and

(b) if an enquiry is instituted by the Family Advocate in terms of section 4 (1) (a) or (2) (a) of the Mediation in Certain Divorce Matters Act, 1987, has considered the report and recommendations referred to in the said section 4 (1).“

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Amendment of
section 8 of
Act 70 of 1979.

7. Section 8 of the Divorce Act, 1979, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A maintenance order or an order in regard to the custody or guardianship of, or access to, a child, made in terms of this Act, may at any time be rescinded or varied or, in the case of a maintenance order or an order with regard to access to a child, be suspended by a court if the court finds that there is sufficient reason therefor: Provided that if an enquiry is instituted by the Family Advocate in terms of section 4 (1) (b) or (2) (b) of the Mediation in Certain Divorce Matters Act, 1987, such an order with regard to the custody or guardianship of, or access to, a child shall not be rescinded or varied or, in the case of an order with regard to access to a child, not be suspended before the report and recommendations referred to in the said section 4 (1) have been considered by the court.”

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Amendment of
section 12 of
Act 70 of 1979.

8. Section 12 of the Divorce Act, 1979, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The provisions of subsections (1) and (2) shall *mutatis mutandis* apply with reference to proceedings relating to the enforcement or variation of any order made in terms of this Act as well as in relation to any enquiry instituted by a Family Advocate in terms of the Mediation in Certain Divorce Matters Act, 1987.”

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Short title and
commencement.

9. (1) This Act shall be called the Mediation in Certain Divorce Matters Act, 1987, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

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**WET OP BEMIDDELING IN SEKERE
EGSKEIDINGSAANGELEENTHEDE, 1987**

Wet No. 24, 1987

(2) Geen regulasies mag kragtens subartikel (1) (c) of (d) uitgevaardig word nie behalwe met die instemming van die Minister van Finansies.

6. Artikel 6 van die Wet op Egskeiding, 1979, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Egskeidingsbevel word nie verleen nie alvorens die hof Wysiging van artikel 6 van Wet 70 van 1979.
 10 (a) oortuig is dat die voorsiening wat vir die welsyn van 'n minderjarige of afhanglike kind uit die huwelik gemaak is of beoog word, bevredigend is of die beste is wat in die omstandighede bewerkstellig kan word; en
 15 (b) indien 'n ondersoek ingevolge artikel 4 (1) (a) of (2) (a) van die Wet op Bemiddeling in Sekere Egskeidings-aangeleenthede, 1987, deur die Gesinsadvokaat ingestel word, die verslag en aanbevelings in genoemde artikel 4 (1) bedoel, oorweeg het.”.

7. Artikel 8 van die Wet op Egskeiding, 1979, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Onderhoudsbevel of 'n bevel met betrekking tot die bewaring van, of voogdy oor, of toegang tot, 'n kind ingevolge hierdie Wet gegee, kan te eniger tyd deur 'n hof ingetrek of gewysig word of, in die geval van 'n onderhoudsbevel of 'n bevel met betrekking tot toegang tot 'n kind, opgeskort word, indien die hof bevind dat daar voldoende rede daarvoor bestaan: Met dien verstande dat indien 'n ondersoek ingevolge artikel 4 (1) (b) of (2) (b) van die Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987, deur die Gesinsadvokaat ingestel word, so 'n bevel met betrekking tot die bewaring van, of voogdy oor, of toegang tot, 'n kind nie ingetrek of gewysig word of, in die geval van 'n bevel met betrekking tot toegang tot 'n kind, nie opgeskort word nie, alvorens die verslag en aanbevelings in genoemde artikel 4 (1) bedoel, deur die hof oorweeg is.”.

8. Artikel 12 van die Wet op Egskeiding, 1979, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Die bepalings van subartikels (1) en (2) is mutatis mutandis van toepassing met betrekking tot verrigtinge betreffende die toepassing of wysiging van 'n bevel kragtens hierdie Wet gegee sowel as met betrekking tot enige ondersoek wat 'n Gesinsadvokaat ingevolge die Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987, ingestel het.”.

9. (1) Hierdie Wet heet die Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

50 (2) Verskillende datums kan kragtens subartikel (1) ten opsigte van verskillende bepalings van hierdie Wet bepaal word.

Kort titel en inwerkingtreding.