

A BILL

i n t i t u l e d

An Act to amend the Law Reform (Marriage and Divorce) Act 1976.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Law Reform (Marriage and Divorce) (Amendment) Act 2016.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 3

2. The Law Reform (Marriage and Divorce) Act 1976 [*Act 164*], which is referred to as the “principal Act” in this Act, is amended in subsection 3(3)—

(a) by substituting for the words “before which a petition for divorce has been made under section 51 from” the words “from having exclusive jurisdiction over the dissolution of a marriage and all matters incidental thereto including”;

- (b) by substituting for the words “on the petition of one party to a marriage where the other party has converted to Islam,” the words “or other orders under Part VII and Part VIII on:
- (a) a petition for divorce under section 53 where one party converts to Islam after the filing of the petition or after the pronouncement of a decree; or
 - (b) a petition for divorce under either section 51, 52 or 53 on the petition of either party or both parties to a marriage where one party has converted to Islam;” and
- (c) by inserting after the words “such decree” the words “and orders made”.

Amendment of section 12

3. Subsection 12(1) of the principal Act is amended—

- (a) in paragraph (a), by inserting after the words “her father” the words “or mother”;
- (b) in paragraph (b), by deleting the words “or his or her father is dead”; and
- (c) by substituting for paragraph (c) the following paragraph:
 - “(c) if the person is an adopted child, of his or her adopted father or adopted mother; or”.

Amendment of section 51

4. Section 51 of the principal Act is amended—

- (a) by substituting for subsection (1) the following subsection:
 - “(1) Where one party to a marriage has converted to Islam—
 - (a) either party may petition for a divorce under this section or section 53; or

(b) both parties may petition for a divorce under section 52.”;

(b) in subsection (2)—

(i) by inserting after the words “dissolving the marriage” the words “or at any time,”; and

(ii) by inserting after the words “if any,” the words “under Part VII and Part VIII”; and

(c) in subsection (3), by substituting for the words “under this section” the words “where one party has converted to Islam”.

New section 51A

5. The principal Act is amended by inserting after section 51 the following section:

“Property of spouse after conversion

51A. (1) Where a person who has converted to Islam dies before the non-Muslim marriage of which that person is a party has been dissolved, that person’s matrimonial assets shall be distributed by the court among the interested parties in accordance with the provisions of this section upon application by any interested party.

(2) In exercising the power conferred by subsection (1), the court shall have regard to—

(a) the extent of the contributions made by the interested parties in money, property or works towards the acquisition of the matrimonial asset or payment of expenses for the benefit of the family;

(b) any debts owing by the deceased and the interested party which were contracted for their benefit;

(c) the extent of the contributions to the welfare of the family by looking after the house or caring for the family;

- (d) the duration of the marriage;
- (e) the needs of the children, if any, of the marriage;
and
- (f) the rights of the interested party under the Distributions Act 1958 [Act 300] if the deceased had not converted.

(3) For the purposes of this section, “interested party” or “interested parties” means the surviving spouse and surviving children of a marriage, if any, and the parents of the deceased converted spouse.”.

Amendment of section 76

6. Section 76 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “by their joint efforts”;
- (b) in subsection (2)—
 - (i) in paragraph (a), by inserting after the words “the assets” the words “or payment of expenses for the benefit of the family”;
 - (ii) by inserting after paragraph (a) the following paragraph:
 - “(aa) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family;”;
 - (iii) in paragraph (c), by substituting for the comma at the end of the paragraph a semicolon; and
 - (iv) by inserting after paragraph (c) the following paragraph:
 - “(d) the duration of the marriage;”;
- (c) by deleting subsections (3) and (4).

New section 88A

7. The principal Act is amended by inserting after section 88 the following section:

“Religion of child

88A. (1) Where a party to a marriage has converted to Islam, the religion of any child of the marriage shall remain as the religion of the parties to the marriage prior to the conversion, except where both parties to the marriage agree to a conversion of the child to Islam, subject always to the wishes of the child where he or she has attained the age of eighteen years.

(2) Where the parties to the marriage professed different religions prior to the conversion of one spouse to Islam, a child of the marriage shall be at liberty to remain in the religion of either one of the prior religions of the parties before the conversion to Islam.”.

Amendment of section 95

8. Section 95 of the principal Act is amended—

(a) by inserting after the words “physical or mental disability” the words “or is pursuing further or higher education or training”; and

(b) by inserting after the words “ceasing of such disability” the words “or completion of such further or higher education or training”.

Transitional

9. Any action or proceedings commenced or pending immediately before the date of coming into operation of this Act shall, after the date of coming into operation of this Act, be continued under the provisions of the principal Act as amended by this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Law Reform (Marriage and Divorce) Act 1976 (“Act 164”) generally as one of the measures to address issues arising out of the conversion to Islam of one party to a marriage.

This Bill seeks to give the right to the converting spouse to file a petition for divorce to dissolve his civil marriage under subsection 51(1) of Act 164. Currently, the law does not give the spouse who has converted to Islam the right to file a petition for divorce in civil court under Act 164 as the right to dissolve the marriage is only given to the spouse who has not converted to Islam. Therefore, so long as the spouse who has not converted to Islam does not file a petition for divorce in the civil court, the civil marriage of the spouses is deemed to be valid and continuous under Act 164.

Since the spouse who has converted to Islam does not have the right to file a petition for divorce under Act 164, he does not have the right to make an application for other ancillary relief such as maintenance, custody of children, division of matrimonial assets and *etc.* This situation causes hardship to the converting spouse since Act 164 does not provide remedies for them and some of them seek to find other remedies by filing an application for a divorce and other ancillary relief in the Syariah Court. In that situation, the Syariah Court will exercise its power to make an order in relation to divorce and other ancillary relief. A conflict will arise where both spouses make an application in two different courts i.e. the civil court and the Syariah Court and both Courts make different orders.

Although the Syariah Court can grant an order for a divorce and ancillary relief, it does not dissolve the civil marriage under Act 164 because the power to dissolve the civil marriage under Act 164 is only given to the civil court. Therefore, Syariah Court does not have jurisdiction to dissolve the marriage and make order for other ancillary relief and such order for a divorce and other ancillary relief have no legal effect. This matter has been decided by the Federal Court in the case of *Viran a/l Nagapan v. Deepa a/p Subramaniam* [Civil Appeal No. : 02(f)-4-01-2015(N)], *Peguam Negara Malaysia and Ketua Polis Negara v. Deepa a/p Subramaniam* [Civil Appeal No. : N-02-801-05-2004 & N-02-1004-06-2014], *Subashini a/p Rajasingam v. Saravanan a/l Thangatoray & other appeals* [2008] 2 MLJ 147 and *Tang Sung Mooi v. Too Miew Kim* [1994] 3 MLJ 117 and by the High Court in the case of *Shamala a/p Sathiyaseelan v. Dr. Jeyaganesh a/l C. Mogarajah* [2004] 2 MLJ 241, *Kung Lim Siew (P) v. Choong Chee Kuan* [2003] 6 MLJ 260 and *Teh Siew Choo v. Teo Eng Hua* [1999] 6 CLJ 308.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.

3. *Clause 2* seeks to amend subsection 3(3) of Act 164 to enable a party to a marriage who has converted to Islam or both parties to present a petition for divorce before a civil court under Act 164. At present, the right to present a petition for divorce is only given to the party who has not converted to Islam. Those who have converted to Islam cannot apply for divorce under Islamic Family Law Act/Enactment because the Syariah Court does not have jurisdiction to hear any case where a non-muslim is involved.

4. *Clause 3* seeks to amend subsection 12(1) of Act 164 to confer equal rights in giving consent for marriage to the mother or adopted mother of a person below 21 years of age, similar to that given to the father.
5. *Clause 4* seeks to amend subsection 51(1) of Act 164 to enable a party to a marriage who has converted to Islam or both parties to present a petition for divorce.
6. *Clause 5* seeks to introduce a new section 51A of Act 164 to ensure that the next-of-kin of the person converting to Islam who subsequently dies before the non-Muslim marriage is dissolved shall be entitled to the matrimonial assets. In making the distribution, the court shall have regard to the extent of the contributions made towards acquisition of the assets, debts owing, the duration of the marriage and the needs of children.
7. *Clause 6* seeks to amend section 76 to allow the court to have regard to the payment of expenses for the benefit of the family, the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family and the duration of the marriage, for the purposes of equality of division of matrimonial assets.
8. *Clause 7* seeks to introduce a new section 88A into Act 164 to provide for the status of the religion of the child if his father or mother converts to Islam.
9. *Clause 8* seeks to amend section 95 of Act 164 to extend the duration of the order for maintenance where a child is pursuing further or higher education or training.
10. *Clause 9* seeks to provide for the transitional provision in relation to any existing actions or proceedings which commenced immediately before the commencement of this Act in which such existing actions or proceedings shall be continued under the provisions of the principal Act as amended by this Act.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

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