

## DIVORCE RULES 1987

1	Name	10	Order dissolving marriage
2	Interpretation	11	Remarriage
3	Grounds for dissolution of marriage	12	Notification of decision
4	Application for dissolution	13	Ancillary orders
5	Lodging of application	14	Decisions are final
6	Notice to respondent	15	Recognition of outside dissolutions
7	Notice of defence		
8	Referral to Taupulega	<b>SCHEDULE</b>	Forms
9	Duties of Taupulega		

### **1 Name**

These are the Divorce Rules 1987.

### **2 Interpretation**

(1) In these Rules —

“application” means an application made pursuant to rule 4(1) for an order dissolving a marriage;

“notice of defence” means a notice of defence lodged pursuant to rule 7;

“Office for Tokelau Affairs” means the Office for Tokelau Affairs at Apia in Samoa.

(2) A reference to a numbered form is a reference to the form so numbered in the Schedule.

### **3 Grounds for dissolution of marriage**

An application for an order dissolving a marriage may be made only on one or more of the following grounds —

(i) that the respondent has, since the solemnisation of the marriage, committed adultery;

(ii) that the respondent has, since the solemnisation of the marriage, treated the applicant, or a child of the applicant, with cruelty;

(iii) that the parties to the marriage are living apart, and have been living apart for the period of 3 years immediately preceding the lodging of the application.

### **4 Application for dissolution of marriage**

(1) An application for an order dissolving a marriage may be made —

(i) where the application is made on the ground specified in rule 3(iii), by either party to the marriage or jointly by both parties;

- (ii) in any other case, by either party to the marriage.
- (2) An application under paragraph (1) may be made only where one of the parties to the marriage —
  - (i) is a Tokelauan; and
  - (ii) ordinarily resides in Tokelau at the time of the lodging of the application.

## **5 Lodging of application**

- (1) An application made under rule 4(1) shall, if made by one party, be in form 1, or if made by both parties jointly, be in form 2, and shall be lodged with the Office for Tokelau Affairs.
- (2) Any facts stated in that application in support of the grounds on which the application is made shall be verified by affidavit.
- (3) Every application so lodged shall be accompanied by —
  - (i) the original or a certified copy of the certificate of the marriage to which that application relates; and
  - (ii) any affidavits required by paragraph (2); and
  - (iii) an application fee of \$10.

## **6 Notice to respondent**

- (1) Except where the application is made jointly by both parties to the marriage, the Office for Tokelau Affairs, on the lodging with it of an application under rule 4(1), shall, in accordance with this rule, give notice of the application to the respondent.
- (2) Subject to paragraph (4)(ii), every such notice shall be in form 3, and shall be accompanied by a copy of the application to which the notice relates, a copy of any affidavit lodged with that application, and a copy of these Rules.
- (3) Where the respondent resides in Tokelau, notice of the application shall be personally delivered to the respondent, or brought to the respondent's notice if the respondent refuses to accept it.
- (4) Where the respondent resides outside Tokelau, the Office for Tokelau Affairs shall —
  - (i) where the respondent's address is known, send the notice to the respondent by registered post; or

- (ii) where the respondent's address is not known, take such steps as are practicable in the circumstances to bring the notice to the knowledge of the respondent, either by advertisement or in some other manner.
- (5) Where, in respect of any application made under rule 4(1), any notice is required to be given to the respondent under this rule, that application shall not be considered by a Taupulega under rule 9 unless —
- (i) where paragraph (3) applies, the application is accompanied by an affidavit in form 4 showing that the notice has been personally delivered to, or brought to the notice of, the respondent;
  - (ii) where paragraph (4) applies, the application is accompanied by an affidavit in form 5 showing that the notice has been sent to the respondent by registered post, or showing the steps that have been taken to bring the notice to the knowledge of the respondent, or showing why it is not practicable in the circumstances to take any steps to bring the notice to the knowledge of the respondent.

## **7 Respondent may lodge notice of defence**

- (1) Any respondent to whom notice of an application is required to be given pursuant to rule 6 may —
- (i) where paragraph (3) of that rule applies, within 30 days of the date of that notice; or
  - (ii) where paragraph (4) of that rule applies, within 3 months of the date of that notice;
- lodge a notice of defence in form 6.
- (2) Any facts stated in the notice of defence in rebuttal of, or in addition to, the facts stated in the application shall be verified by affidavit.
- (3) Every such notice of defence shall —
- (i) be lodged with the Office for Tokelau Affairs, or with the Administration Officer on any island of Tokelau; and
  - (ii) be accompanied by any affidavits required by paragraph (2).

**8 Application to be referred to Taupulega**

- (1) The Council for the Ongoing Government shall arrange for every application under rule 4(1), any notice of defence to that application, any affidavits lodged with that application or that notice of defence, and any affidavit required by rule 6(5), to be referred to the appropriate Taupulega.
- (2) Where the application is lodged jointly by both parties to a marriage, the application and other documents shall be referred under paragraph (1) as soon as practicable after the lodging of that application.
- (3) Where the application is lodged by one party to the marriage, the application and other documents shall be referred under paragraph (1) as soon as practicable after the lodging of a notice of defence to the application, or, if no such notice of defence is lodged, the expiration of whichever of the periods specified in rule 7(1) for the lodging of a notice of defence is applicable in the circumstances.
- (4) For the purposes of paragraph (1), the appropriate Taupulega is —
  - (i) the Taupulega of the village in Tokelau where the applicant ordinarily resides; or
  - (ii) where the applicant does not ordinarily reside in Tokelau, the Taupulega of the village in Tokelau where the respondent ordinarily resides.

**9 Duties of Taupulega**

- (1) A Taupulega shall, as soon as practicable after receiving an application referred to it pursuant to rule 8(1), consider the application, any notice of defence to that application, and any affidavits lodged with that application or that notice, and shall report in writing to the Council for the Ongoing Government whether the marriage to which the application relates should be dissolved.
- (2) In respect of every application referred to it, the Taupulega —
  - (i) shall consult the appropriate minister of religion associated with the parties to the application; and
  - (ii) may consult the parties and any other person who, in its opinion, may be able to assist it in forming a view on the application.

- (3) Subject to paragraph (2), the Taupulega shall consider every application solely by reference to the documents referred to in rule 8(1), and no person shall be entitled to appear before or be heard by or make submissions to the Taupulega in respect of any application.
- (4) Notwithstanding anything in this rule, where the parties to an application are living in the same village of Tokelau when the Taupulega is considering that application, the Taupulega may, before reporting to the Council for the Ongoing Government, seek a reconciliation between the parties through discussion with them.

**10 Order dissolving marriage**

- (1) Where a Taupulega reports, pursuant to rule 9(1), that a marriage should be dissolved, the Council for the Ongoing Government shall forthwith make an order dissolving that marriage, but shall otherwise refuse to make an order.
- (2) An order dissolving a marriage shall be in form 7, and shall take effect on being made.

**11 Remarriage**

Where an order dissolving a marriage has been made by the Council for the Ongoing Government, the parties to the marriage may marry again.

**12 Notification of decision of Council for the Ongoing Government**

- (1) The Council for the Ongoing Government shall, as soon as practicable after making or refusing to make an order dissolving a marriage, notify the applicant for that order, and, where the respondent's address is known, the respondent, that the order has been made or refused, as the case may be.
- (2) If the address of a person whose marriage has been dissolved is not known, the Council for the Ongoing Government shall cause a notice of the dissolution to be displayed for at least 3 months in the Administration Office of each island of Tokelau, and public notification shall be given of it.
- (3) A copy of every order made pursuant to rule 10 shall be retained in the records of the Office for Tokelau Affairs.

**13 Ancillary orders**

- (1) On or at any time after the making of an order dissolving a marriage, the Council for the Ongoing Government may, at the request of either of the parties to that marriage, make such orders as the Council for the Ongoing Government thinks fit relating to the following matters —
  - (i) the custody of any children of the marriage;
  - (ii) the payment, by one party to the marriage, of maintenance for the other party;
  - (iii) the payment of maintenance in respect of any child of the marriage by either party to the marriage;
  - (iv) the division, between the parties, of any property belonging to the parties to the marriage on its dissolution.
- (2) An order made under paragraph (1) may be made subject to such terms and conditions as the Council for the Ongoing Government thinks fit.
- (3) A request made pursuant to paragraph (1) may be made with any application made pursuant to rule 4(1), or by separate letter addressed to the Council for the Ongoing Government.
- (4) The Council for the Ongoing Government may, in relation to any such request —
  - (i) require notice of that request to be given to any person;
  - (ii) order either party to the marriage in relation to which the request is made to provide such further information relating to that request as the Council for the Ongoing Government may require;
  - (iii) consult with the parties, or with any other person who, in the opinion of the Council for the Ongoing Government, may be able to assist the Council for the Ongoing Government in determining the request.
- (5) Subject to paragraph (4), no person shall be entitled to appear before or be heard by or make submissions to the Council for the Ongoing Government in respect of any request made pursuant to this rule.
- (6) Any order made by the Council for the Ongoing Government under paragraph (1) may be enforced as if it were an order of a court made in a civil matter.

**14 Decision of Council for the Ongoing Government final**

No appeal shall lie to any court from any order made by the Council for the Ongoing Government pursuant to these rules.

**15 Recognition of dissolutions made outside Tokelau**

The validity of a decree or order or legislative enactment for divorce or dissolution or nullity of marriage made (whether before or after the commencement of these Rules) by a court or legislature or public authority of any country outside Tokelau shall, by virtue of this rule, be recognised by all the courts of Tokelau, where the decree or order or enactment is recognised as valid in the courts of a country with which one of the parties to the marriage —

- (i) has a real and substantial connection; or
- (ii) had, at the time of the making of the decree or order or enactment, a real and substantial connection.

**16 Revocation**

[Spent]

---

SCHEDULE

FORM 1

rule 5(1)

APPLICATION FOR ORDER DISSOLVING A MARRIAGE

To: The Council for the Ongoing Government

I, [Full name], of [Place of residence], [Occupation] apply for an order dissolving my marriage to [Full name of respondent].

This application is made on the ground that:

(1) The respondent has, since the solemnization of our marriage, committed adultery.

OR

(2) The respondent has, since the solemnization of our marriage, treated me (or my child or both my child and me) with cruelty.

OR

(3) I am living part from the respondent, and we will, at the lodging of this application, have been living apart for the period of 3 years immediately proceeding the lodging of this application.

I say:

1 I am a Tokelauan and I ordinarily reside in Tokelau in the village of [Name of village].

OR

1 The respondent is a Tokelauan and he (or she) ordinarily resides in Tokelau in the village of [Name of village].

OR

1 The respondent and I are both Tokelauans and we both ordinarily reside in Tokelau.

2 The respondent has, since the solemnization of our marriage, committed adultery: [Give details].

OR

2 The respondent has, since the solemnization of our marriage, treated me (or my child [Full name] or both my child [Full name] and me) with cruelty [Give details].

OR

2 (1) I am living apart from the respondent, and we will, at the lodging, of this application, have been living apart for the period of 3 years immediately preceding the lodging of this application.

(2) We ceased living together on [Insert date].

3 There are no children of our marriage.

OR

3 We have the following natural and adopted children of our marriage:

Full name of each child	Age at application	Name of person with whom each child is living at the time of application and relation ship (if any) of that person to the child.

4 The respondent's address is [Insert address, if known]

.....

Signature of applicant .....

Sworn at [Place] this.....day of ..... before me —

Commissioner .....

[or other person authorized under the Affidavits and Declarations Rules 1986 to take an affidavit.]

Documents to accompany this application. At the time of the lodging of this application, it must be accompanied by —

(i) The original or a certified copy of the certificate of the marriage to which it relates; and

(ii) Affidavits verifying any facts stated in the application in support of the grounds on which it is made.

Application fee. An application fee of \$10 must accompany this application.

\_\_\_\_\_



Divorce

FORM 2  
rule 5 (1)

JOINT APPLICATION FOR ORDER DISSOLVING A MARRIAGE

To: The Council for the Ongoing Government

We, [Full name], of [Place of residence], [Occupation] and [Full name], of [Place of residence], [Occupation] jointly apply for an order dissolving our marriage.

This application is made on the ground that we are living apart, and we will, at the lodging of this application, have been living apart for the period of 3 years immediately preceding the lodging of this application.

We say:

1 We are both Tokelauans and we both ordinarily reside in Tokelau.

OR

1 1, [Give full name of one of the applicants] am a Tokelauan and I ordinarily reside in Tokelau in the village [Name of village].

2 We are living apart.

3 We will, at the lodging of this application, have been living apart for the period of 3 years immediately preceding the lodging of this application.

4 We ceased living together on [Insert date].

5 There are no children of our marriage.

OR

5 We have the following natural and adopted children of our marriage:

Full name of each child	Age at application	Name of person with whom each child is living at the time of application, and the relationship (if any) of that person to the child.

Signatures of applicants .....

Severally sworn at [Place] this .....day of ..... before me —

Commissioner .....

[or other person authorized under the Affidavits and Declarations Rules 1986 to take an affidavit]

Documents to accompany this application. At the time of the lodging of this application, it must be accompanied by the original or a certified copy of the certificate of the marriage to which it relates

Application fee. An application fee of \$10 must accompany this application.

\_\_\_\_\_

**FORM 3**  
rule 6  
**NOTICE TO RESPONDENT OF APPLICATION FOR ORDER  
DISSOLVING A MARRIAGE**

To .....

Your [Wife or husband], [Insert name], has lodged with the Council for the Ongoing Government an application for an order dissolving your marriage under the Divorce Rules 1987. Copies of that application, those Rules, and of any relevant affidavits, are attached for your information.

**Notice of defence**

If you wish to make a statement in answer to anything contained in the application, you may do so by means of a notice of defence.

The notice of defence must be in form 6 in the Schedule to the Divorce Rules 1987. Any facts stated in that notice must be supported by a sworn affidavit, which should accompany the notice.

**Time for lodging notice of defence**

If you reside in Tokelau, you must lodge your notice of defence (and any supporting affidavits) within 30 days after the date of this notice.

If you reside outside Tokelau, you must lodge your notice of defence (and any supporting affidavits) within 3 months after the date of this notice.

You may lodge your notice of defence with—

- (i) the Office for Tokelau Affairs at Apia in Samoa; or
- (ii) the Administration Officer on any island of Tokelau.

**Method of lodging notice of defence**

Your notice of defence may be lodged by delivering it by hand or by sending it by registered airmail.

**Consideration of application by Taupulega**

As soon as possible after the receipt of your notice of defence, or after the time for lodging, a notice of defence has expired, the application for an order dissolving your marriage will be considered by the Taupulega on the relevant island of Tokelau. The Taupulega will then report to the Council for the Ongoing Government on whether your marriage should be dissolved.

**Making or refusal of order dissolving marriage**

An order under the Divorce Rules 1987 dissolving a marriage becomes effective on being made. You will be notified if an order is made or refused.

**Power to make other orders**

You may also request the Council for the Ongoing Government to make orders in relation to certain matters, including the custody of your children (if any), and the division of any property owned by you and your spouse, if your marriage is dissolved. The matters on which such orders may be made are set out in rule 13 of the attached copy of the Divorce Rules 1987. If you wish to make a request, you should write to the Council for the Ongoing Government without delay.

Signed ..... Date .....

\_\_\_\_\_

*Divorce*

**FORM 4**

rule 6(5)(i)

**AFFIDAVIT GIVING NOTICE TO RESPONDENT RESIDING IN TOKELAU**

Application No .....

Applicant [Give full name, place of residence, and occupation]

Respondent [Give full name, place of residence, and occupation]

I, [Full name], of [Place of residence], [Occupation] swear:

- 1 On [Insert date] I delivered to the respondent a copy of the notice annexed to this affidavit and marked with the letter "A" by delivering it to the respondent personally at [Address].
- 2 At the same time I delivered to the respondent—
  - (i) a copy of the application annexed to this affidavit and marked with letter "B"; and
  - (ii) a copy of the affidavit lodged with that application (a copy of which affidavit is annexed to this affidavit and marked with the letter "C"); and
  - (iii) a copy of the Divorce Rules 1987 by delivering personally to the respondent at [Address].
3. The respondent is personally known to me by reason of the following facts, namely, [State the facts establishing personal knowledge].

OR

- 3 The respondent is not personally known to me, but I believe that the person to whom I delivered the above documents is the respondent by reason of the following facts, namely, [State the fact relied on].

..... (Signature of person making the affidavit)  
Sworn at [Place] this .....day of ..... before me

Commissioner ..... (Signature of person taking the affidavit)  
[or other person authorized under the Affidavits and Declarations Rules 1986 to take an affidavit].

---

**FORM 5**

rule 6(5)(ii)

**AFFIDAVIT GIVING NOTICE TO RESPONDENT RESIDING OUTSIDE TOKELAU**

Application No.....

Applicant [Give full name, place of residence, and occupation]

Respondent [Give full name, place of residence, and occupation]

I, [Full name], of [Place of residence], [Occupation] swear:

On [Insert date] I sent to the respondent, by registered post, addressed to him (or her) at [State address]—

- (i) a copy of the notice annexed to this affidavit and marked with the letter "A"; and
- (ii) a copy of the application annexed to this affidavit and marked with letter "B"; and
- (iii) a copy of the affidavit lodged with that application (a copy of which affidavit is annexed to this affidavit and marked with the letter "C"); and
- (iv) a copy of the Divorce Rules 1987.

OR

- 1 I am [Give details of occupation, etc.).
- 2 I have taken the following steps to bring to the notice of the respondent the application by the applicant for an order dissolving the marriage between the applicant and the respondent: [state the steps taken. If notice has been given by advertisement in any newspaper, state the name of the newspaper, where it is published, and the date of publication, and annex extracts taken from the newspaper which contain such advertisement].

OR

- 2 The respondent's address outside Tokelau is unknown, and it is not practicable, by reason of the following facts, to take any steps to bring to the notice of the respondent the application by the applicant for an order dissolving the marriage between the applicant and the respondent: [State the facts relied on].

..... (Signature of person making the affidavit)  
Sworn at [Place] this .....day of ..... before me

Commissioner ..... (Signature of person taking the affidavit)  
[or other person authorised under the Affidavits and Declarations Rules 1986 to take an affidavit].

**FORM 6**  
rule 7  
**NOTICE OF DEFENCE TO APPLICATION FOR ORDER  
DISSOLVING A MARRIAGE**

To: The Council for the Ongoing Government

I, [Full name], of [Place of residence], (Occupation), wish to make the following statement in answer to the application by my spouse, [Insert name], for an order dissolving our marriage.

I say, in answer to the applicant,

- 1 The following facts stated in the application are accepted by me as correct: [Here set out the facts accepted as correct].
- 2 The following facts stated in the application are not accepted by me as correct: [Here set out the facts not accepted as correct].
- 3 [Here set out any other facts relating to the application or to the circumstances which have existed or are existing between the parties which the Council for the Ongoing Government should be told about].

Signature of respondent .....

Sworn at (Place) this .....day of ....., before me

Commissioner .....  
[or other person authorised under the Affidavits and Declarations Rules 1986 to take an affidavit].

Documents to company this notice. At the time of the lodging of this notice, it must be accompanied by affidavits verifying any facts stated by the respondent in the notice.

---

**FORM 7**  
rule 10  
**ORDER DISSOLVING MARRIAGE**

Upon application made under the Divorce Rules 1987, we, the Council for the Ongoing Government, by this order, dissolve the marriage that took place on the ..... day of..... at [State Church, or other place at which the marriage took place] in [Name of village, etc.] between [Names of the parties to the application].

Council for the Ongoing Government .....

Date ..... This order takes effect on being made.