

PART I
THE FAMILY LAW CODE

FAMILY LAW CODE

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PART 1 MARRIAGE

1 Prohibited degrees of consanguinity or affinity

(1) A marriage forbidden by the following Schedule is void—

SCHEDULE Forbidden Marriages

1 A man may not marry his—

- (1) Grandmother
- (2) Grandfather's wife
- (3) Wife's grandmother
- (4) Father's sister
- (5) Mother's sister
- (6) Mother
- (7) Stepmother
- (8) Wife's mother
- (9) Daughter
- (10) Wife's daughter
- (11) Son's wife
- (12) Sister
- (13) Son's daughter
- (14) Daughter's daughter
- (15) Son's son's wife
- (16) Daughter's son's wife
- (17) Wife's son's daughter
- (18) Wife's daughter's daughter
- (19) Brother's daughter
- (20) Sister's daughter

2 A woman may not marry her—

- (1) Grandfather
- (2) Grandmother's husband
- (3) Husband's grandfather
- (4) Father's brother
- (5) Mother's brother
- (6) Father
- (7) Stepfather
- (8) Husband's father
- (9) Son
- (10) Husband's son
- (11) Daughter's husband
- (12) Brother
- (13) Son's son
- (14) Daughter's son
- (15) Son's daughter's husband
- (16) Daughter's daughter's husband
- (17) Husband's son's son
- (18) Husband's daughter's son
- (19) Brother's son
- (20) Sister's son

3 This Schedule shall apply whether the relationship is by whole blood or by the half blood.

4 In this Schedule, "wife" includes a former wife, whether she is alive or deceased, and whether her marriage was terminated by death or divorce or otherwise; and "husband" has a corresponding meaning.

(2) Notwithstanding subsection (1), any persons who are not within the degrees of consanguinity but are within the degrees of affinity so prohibited may apply to the Court for its consent to their marriage, and the Court may make an order dispensing with that prohibition so far as it relates to the parties to the application, and, if such an order is made, that prohibition shall cease to apply to the parties.

2 Marriages to take place before Marriage Officer

(1) Every marriage shall take place in the presence of a Marriage Officer and of at least 2 other witnesses.

(2) In this section, "Marriage Officer" means any Judge or Commissioner of the High Court, the Registrar of the High Court, or any person appointed as a Marriage Officer under subsection (3).

(3) The Cabinet may appoint any minister of religion, or person whom it believes to be a fit and proper person, as a Marriage Officer.

(4) A marriage celebrated other than in accordance with this section is void.

3 Offence

If any person acts as a Marriage Officer in Niue without being qualified by office or appointment so to act, he is liable to imprisonment for a term not exceeding 3 years.

4 Notice of marriage

(1) A Marriage Officer shall not solemnise or record any marriage, unless notice in writing of the intention of the parties to enter into the marriage has been given to the Marriage Officer by one of the parties at least 2 clear days before the day of the marriage.

(2) On receipt of that notice, the Marriage Officer shall publish it in such manner as he thinks sufficient to give due publicity to the intended marriage.

(3) On every such notice, there shall be payable by the person giving it such fee (if any) as may be prescribed by regulations, and all such fees shall be payable into the Niue Government Account.

(4) No marriage shall be invalidated by any breach of the requirements of this section.

5 Mode of solemnisation

Every marriage shall, subject to this Part, be solemnised in such manner as the Marriage Officer thinks fit.

6 Record of marriage

Every marriage shall, at the time of the solemnisation, be recorded in writing by the Marriage Officer in the form and with the several particulars prescribed by regulations under this Act, but no marriage shall be invalidated by any error or defect in that form or in the particulars so required to be recorded.

7 Signature of record

The aforesaid record of every marriage shall be signed by the parties, and by 2 witnesses, and by the Marriage Officer, all being present at the same time, and when the record has been so signed the marriage shall be deemed to be fully solemnised and shall take effect.

8 Transmission of record

The record of every marriage shall be forthwith delivered by the Marriage Officer to the Registrar of the Court, and shall be preserved by the Registrar in the same manner as if it was a record of the High Court.

9 Minimum age of marriage

A Marriage Officer shall not solemnise or record any marriage, unless the husband is at least 18 years of age and the wife is at least 15 years of age, but no marriage shall be invalidated by a breach of this section.

10 Marriage of minors

(1) A Marriage Officer shall not solemnise or record the marriage of any man under the age of 21 years or of any woman under the age of 19 years without the consent of one of the parents of the man or woman, if either of those parents is alive and resident in Niue.

(2) A Judge of the Court may in any case, if he thinks fit so to do, grant exemption from the requirements of this section.

(3) No marriage shall be invalidated by any breach of this section.

11 Offence by Marriage Officer

If any Marriage Officer commits any breach of the provisions of this Part, or signs any record of a marriage containing any statement known by him to be false, he is liable to a fine not exceeding 1 penalty unit.

12 Signature of false record by party or witness

Every party or witness to a marriage who signs a record of it containing any statement known by him or her to be false is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 0.5 penalty units.

13 Misrepresentation as to facts to procure marriage

Every person who, by any wilful misrepresentation made to a Marriage Officer, procures or attempts to procure the solemnisation by that officer of any marriage is liable to imprisonment for a term not exceeding one year.

14 Sanction of Court to be obtained

(1) Every minor in contemplation of his marriage may, with the sanction of the Court, given on the application of the minor or his guardian, make a valid and binding settlement or contract for a settlement of all or any part of his property, or property over which he has a power of appointment whether in possession, reversion, remainder or expectancy.

(2) Every conveyance, appointment and assignment of any such property, and every contract to make a conveyance of it, appointment, or assignment of it executed by the minor with the sanction of the Court for the purpose of giving relief to the settlement shall be as valid and effectual as if the minor were of full age.

(3) Where there is no guardian the Court may require a guardian to be appointed, and may also require that any persons interested or appearing to be interested in the property be served with notice of the application to the Court for its sanction.

(4) Where any appointment under a power of appointment or any disentailing assurance, has been executed under this section by any minor as tenant in tail, and afterwards that minor dies under age, the appointment or disentailing assurance shall thereupon become absolutely void.

(5) [Repealed]

(6) The authority conferred by this section shall not extend to powers of which it is expressly declared that they shall not be exercised by a minor.

15 Legal status of married women

(1) Save where otherwise provided by this Act, the legal capacity of a married woman, whether contractual, proprietary, testamentary, or of any other kind whatsoever, shall be the same as that of an unmarried woman.

(2) Save in respect of intestate succession, marriage shall not confer on either party any rights to or in respect of the property of the other.

(3) The rule of the common law that for certain purposes a husband and wife are deemed to be one person only is hereby abolished for all purposes, including the law of domicile.

(4) A husband shall not be responsible, as such, for torts committed by his wife.

(5) Nothing in this section shall affect the validity or operation of a restraint on anticipation.

PART 2
DIVORCE

16 Nullity of marriage

The Court shall in proceedings for nullity of marriage have and exercise in Niue the same jurisdiction as is possessed for the time being by the courts in New Zealand.

17 Domicile of a married woman

The domicile of a married woman shall be determined as if she were an adult and single.

18 Grounds of divorce and jurisdiction of High Court

(1) Subject to subsection (2), any married person (hereinafter called the petitioner) may take proceedings in the High Court for the dissolution of his or her marriage with the other party to the marriage (hereinafter called the respondent) on any ground specified in subsection (3).

(2) No proceedings for divorce may be taken in the High Court unless—

(a) The petitioner or the respondent is at the commencement of the proceedings domiciled in Niue; and

(b) Where the ground alleged in the petition is one of those specified in subsection (3) (l)(m) and (n), has been domiciled or resident in Niue for 2 years at least immediately preceding the filing of the petition.

(3) A petition for divorce may be presented to the High Court on one or more of the following grounds, and on no other ground—

(a) That the respondent has since the solemnisation of the marriage been guilty of adultery;

(b) That the respondent, being the wife of the petitioner, has since the solemnisation of the marriage and without the consent of the petitioner been artificially inseminated with the semen of some man other than the petitioner;

(c) That the respondent without just cause has wilfully deserted the petitioner and without just cause has left the petitioner continuously so deserted for 3 years or more;

(d) That the respondent—

(i) Being the petitioner's husband, has for 3 years or more been an habitual drunkard or drug addict, and has either habitually left his wife without means of support or habitually been guilty of cruelty towards her; or

(ii) Being the petitioner's wife, has for a like period been an habitual drunkard or drug addict, and has either habitually neglected her domestic duties and rendered herself unfit to discharge them or habitually been guilty of cruelty towards him;

- (e) That the respondent has since the solemnisation of the marriage been convicted of attempting to commit the murder of the petitioner or any child (of any age) of the petitioner or respondent, or has been convicted of any offence under section 151 of the Niue Act against the petitioner or any such child;
- (f) That the respondent has since the solemnisation of the marriage been convicted of incest, attempted rape or assault with intent to commit rape against any child (of any age) of the petitioner or respondent, or of sexual intercourse or attempted sexual intercourse with any such child under 15 years of age;
- (g) That the respondent, being the husband of the petitioner, has committed rape or buggery since the solemnisation of the marriage;
- (h) That the respondent has since the solemnisation of the marriage been convicted of murder;
- (i) That the respondent is a person of unsound mind and is unlikely to recover, and has been a patient for a period or periods of not less in the aggregate than 7 years within the period of 10 years immediately preceding the filing of the petition;
- (j) That the respondent is a person of unsound mind and is unlikely to recover, and has been continuously a person of unsound mind for a period of 7 years immediately preceding the filing of the petition, and has been a patient during the final 3 years of the said period of 7 years;
- (k) That the respondent is a person of unsound mind and is unlikely to recover, and has been a patient for a period of 5 years immediately preceding the filing of the petition;
- (l) That the petitioner and respondent are parties to an agreement for separation, whether made by deed or other writing or orally, and that the agreement is in full force and has been in full force for not less than 3 years;
- (m) That—
 - (i) the petitioner and respondent are parties to a decree, order, or judgment made in Niue or in any country if that decree, order, or judgment has in that country the effect that the parties are not bound to live together; and
 - (ii) that decree of separation, separation order, or other decree, order, or judgment is in full force and has been in full force for not less than 3 years;
- (n) That the petitioner and respondent are living apart and are unlikely to be reconciled, and have been living apart for not less than 7 years.

19 Grounds of refusal of divorce

If the Court is of opinion—

- (a) That, in the case of a petition based on a matrimonial wrong, the petitioner's own habits or conduct induced or contributed to the wrong complained of so as to disentitle the petitioner to a divorce or the petitioner has condoned the wrong complained of; or
- (b) That, in the case of the adultery of the respondent, the petitioner has been in any manner accessory to or has connived at the adultery—

the Court shall dismiss the suit; but, subject to section 20, in all other cases, if the Court is satisfied that the case of the petitioner has been established, the Court shall pronounce a decree of divorce.

20 Discretion to refuse decree in certain cases

- (1) (a) Where a petition for divorce is presented on any of the grounds specified in section 18 (3) (1) (m) and (n), and the petitioner has proved his or her case, the Court shall have a discretion whether or not to grant a decree of divorce.
- (b) The Court shall not, in the exercise of that discretion, refuse to grant a decree by reason only of the adultery of either party after their separation.

(2) The Court may dismiss any petition for divorce if there has been collusion between the petitioner and the respondent with intent to cause a perversion of justice.

21 Co-respondent as a party

In any proceedings in the Court for divorce on the ground of adultery, the Court may make the person with whom the respondent is alleged to have committed adultery a co-respondent in the proceedings.

22 Agreement no bar to divorce

No covenant or agreement between the parties to proceedings for divorce shall operate as a bar to the institution or prosecution of the proceedings.

23 No appeal to Court of Appeal

No appeal shall lie to the Court of Appeal from any decree of the Court for divorce.

24 Order for maintenance of divorced wife

(1) When a decree of divorce is made by the Court, the Court may, in and by the decree, order the husband to pay towards the future maintenance of his wife (whether petitioner or respondent), so long as she remains unmarried, a reasonable sum at such times and in such manner as the Court thinks fit.

(2) Every such order shall be deemed to be a maintenance order under Part 23 and all the provisions of that Part shall, so far as applicable, apply to it accordingly.

(3) In addition to or instead of making an order under subsection (1), the Court may, when making any such decree, order the husband to pay to the wife such capital sum as the Court thinks fit.

25 Order as to custody of children

The Court may in and by any decree of divorce or of nullity, or at any time and from time to time thereafter, make such order as it thinks fit as to the custody of the children of the marriage.

26 Molestation of divorced wife by her husband

If, at any time after a decree of divorce or of dissolution of a voidable marriage has been pronounced at the suit of the wife, her former husband—

- (a) Commits any trespass by entering or remaining upon or in any land, house, or building which is in her occupation or in which she dwells or is present; or

- (b) Attempts or threatens to commit any such trespass; or
- (c) Molests her by watching or besetting her dwellinghouse or place or business, employment, or residence, or by following or waylaying her in any road or other public place—

he is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units.

PART 3 BIRTHS

27 Births and deaths

The Cabinet may make regulations to provide for the registration of births and deaths and the due administration of it.

28 Legitimacy

(1) Every person, whether born before 1 January 1967, and whether born in Niue or not, and whether or not his parents or either of them were domiciled in Niue at the time of his birth, shall for all the purposes of the law of Niue be deemed to be the legitimate child of each of his parents, and all other relationships in respect of that person shall be deemed to be traced through lawful wedlock accordingly.

(2) The provisions of this section—

(a) In so far as it affects wills, shall have effect only in relation to the wills of testators who die after 1 January 1967, and

(b) In so far as it affects instruments other than wills, shall have effect only in relation to instruments executed after the commencement of this Act.

(3) All wills of testators who have died before 1 January 1967, and all other instruments executed before 1 January 1967, shall be governed by the enactments and rules of law which would have applied to them if this Act had not been passed.

(4) The estates of all persons who have died intestate as to the whole or any part of it before 1 January 1967 shall be distributed under the enactments which would have applied to them if this Act had not been passed.

(5) No action shall lie against any executor or administrator or trustee of the estate of any person who dies after 1 January 1967 or the trustee under any instrument executed after 1 January 1967 by any person whose relationship to the deceased or to any other person or, as the case may be, to the settlor or to any other person is in any degree traced otherwise than through lawful wedlock, by reason of the executor or administrator or trustee having made any distribution of the estate or trust disregarding the claims of the person so related where at the time of making the distribution the executor, administrator, or trustee had no notice of the relationship of that person to the deceased or the settlor or any other person.

PART 4 ADOPTION

29 Interpretation

In this Part —

“adopted child” means any person in respect of whom an adoption order is in force;

“adoption order” means an adoption order made by the Land Court;

"adoptive parent" means any person who adopts a child under an adoption order; and, in the case of an order made in favour of a husband and wife on their joint application, means both the husband and wife; but does not include a spouse who merely consents to an adoption;

"child" means a person who is under the age of 21 years;

"father", in relation to any child born out of wedlock, means the natural father;

"Land Court" means the Land Division of the High Court.

30 Adoption by Niuean custom invalid

No adoption by Niuean custom made after 1 November 1969 shall be of any force or effect, whether in respect of intestate succession or otherwise.

31 Land Court may make adoption orders

(1) Subject to this Part, the Land Court may, upon an application made by any person, whether domiciled in Niue or not, make an adoption order in respect of any child, whether Niuean or European, and whether domiciled in Niue or not.

(2) An adoption order may be made on the application of spouses jointly in respect of a child.

(3) An adoption order may be made in respect of the adoption of a child by the mother or father or the child, either alone or jointly with his or her spouse.

32 Prohibition of payments in consideration of adoption

Except with the consent of the Land Court, it shall not be lawful for any person to give or receive or agree to give or receive any payment or reward in consideration of the making of arrangements for an adoption or proposed adoption.

33 Restrictions on making adoption orders

(1) No adoption order shall be made under this Part unless the Land Court is satisfied that –

- (a) The child to be adopted is under the age of 21 years at the date of the filing of the application; and
- (b) The applicant or, in the case of a joint application, one of the applicants, has attained the age of 25 years and is at least 21 years older than the child, or is the mother or father of the child; and
- (c) The applicant (if unmarried) is at least 30 years older than the child; and
- (d) Where the child is female and the sole applicant is male, the applicant is the father of the child, or there are special circumstances which justify the making of an order; and
- (e) The child, if in the opinion of the Land Court is above the age of 12 years, consents to the adoption; and
- (f) The applicant is a fit and proper person to have the care and custody of the child and of sufficient ability to maintain the child, and the adoption will not be contrary to the welfare and interests of the child.

(2) In order to satisfy itself as to the matters mentioned in subsection (1)(f) the Land Court shall call for a report on it by Cabinet or by an officer of the Niue Public Service nominated for the purpose by Cabinet.

(3) No adopted child shall, in the lifetime of an adoptive parent and while the adoption order remains in force, be adopted by any other person save the husband or wife of that parent.

34 Consents to adoptions

(1) No adoption order shall be made without the consent of the parents or of the surviving parent (if any) of the child, whether that child is born in lawful wedlock or not, but no such consent shall be required from any parent if the Land Court is satisfied that the child has been deserted by that parent, or that that parent is for any reason unfit to have the care and custody of the child, or if the Land Court for any other reason whatsoever considers that the consent of that parent should be dispensed with.

(2) Every consent given under subsection (1) shall be given in writing and witnessed by one of the persons specified in section 78(1) of the Niue Act 1966 and every such witness shall certify that the parent signing the consent fully understands the effect of an adoption order.

(3) Where the application for an adoption order is made by either a husband or a wife alone, no order shall be made without the consent of the spouse of the applicant, save that no such consent shall be required if the Land Court is satisfied that the spouses are living apart and that their separation is likely to be permanent.

35 Effect of adoption order

(1) Every adoption order shall confer the surname of the adoptive parent on the adopted child, with such first or Christian name as the Court, on the application of the person who is applying for the adoption order, may fix.

(2) Upon an adoption order being made, the following shall have effect for all purposes, whether civil, criminal, or otherwise, but subject to the provisions of any enactment which distinguishes in any way between adopted children and children other than adopted children, namely –

(a) The adopted child shall be deemed to be the child of the adoptive parent, and the adoptive parent shall be deemed to be the parent of the child, as if the child had been born to that parent in lawful wedlock:

Provided that, where the adopted child is adopted by his mother either alone or jointly with her husband, the making of the adoption order shall not prevent the making of an affiliation order or maintenance order, or of an application for an affiliation order or maintenance order, in respect of the child;

(b) The adopted child shall be deemed to cease to be the child of his existing parents (whether his natural parents or his adoptive parents under any previous adoption), and the existing parents of the adopted child shall be deemed to cease to be his parents, and any existing adoption order in respect of the child shall be deemed to be discharged under section 37:

Provided that, where the existing parents are the natural parents, this paragraph shall not apply for the purposes of any enactment relating to forbidden marriages or to the crime of incest;

- (c) The relationship to one another of all persons (whether the adopted child, the adoptive parent, the existing parents, or any other persons) shall be determined under this subsection so far as they are applicable;
- (d) The foregoing provisions shall not apply for the purposes of any deed, instrument, will, or intestacy, or affect any vested or contingent right of the adopted child or any other person under any deed, instrument, will, or intestacy, where the adoption order is made after the date of the deed or instrument or after the date of the death of the testator or intestate, as the case may be, unless in the case of a deed, instrument, or will, express provision is made to that effect;
- (e) The adoption order shall not affect the race, nationality, or citizenship of the adopted child;
- (f) The adopted child shall acquire the domicile of his adoptive parent or adoptive parents, and the child's domicile shall thereafter be determined as if the child had been born in lawful wedlock to the said parent or parents:
Provided that nothing in this paragraph shall affect the domicile of origin of the child;
- (g) In any case where the adoption order was made before the adopted child attained the age of 3 years, the child's domicile of origin shall be deemed to be the domicile which he first acquired under paragraph (f) upon the making of the adoption order, but nothing in this Act shall affect the domicile of origin of an adopted child in any other case;
- (h) Any existing appointment as guardian of the adopted child shall cease to have effect;
- (i) Any affiliation order or maintenance order in respect of the adopted child and any agreement (not being in the nature of a trust) which provides for payments for the maintenance of the adopted child shall cease to have effect:
Provided that, where the adopted child is adopted by his mother either alone or jointly with her husband, the order or agreement shall not cease to have effect by reason of the making of the adoption order:
Provided also that nothing shall prevent the recovery of any arrears which are due under any order or agreement at the date on which it ceases to have effect.

36 Adoption order may be varied or discharged

- (1) The Land Court may vary or discharge any adoption order subject to such terms and conditions as it thinks fit, on the application of any adoptive parent or of the adopted child.
- (2) The Land Court may, subject to such terms and conditions as it thinks fit, discharge any adoption made in any place outside Niue either before or after 1 November 1969 if –
 - (a) The person adopted is living and is domiciled in Niue; and
 - (b) Every living adoptive parent is domiciled in Niue.

(3) No application for discharge of any adoption shall be made without the prior approval of Cabinet and no adoption order or adoption shall be discharged unless the adoption order was made by mistake as to a material fact in consequence of a material misrepresentation to the Land Court or to any person concerned.

(4) Where the Land Court discharges an adoption order or adoption as aforesaid, it may confer on the person to whom the order or adoption related such surname with such first or Christian name as the Land Court thinks fit; but, if it does not do so, the names of the person shall not be affected by the discharge of the order.

37 Adoption order discharged

Upon an adoption order being discharged –

- (a) The relationship to one another of all persons (whether the adopted child, the adoptive parents, the natural parents, the guardians of the child at the date of the adoption order or adoption, or any other persons) shall be determined as if the adoption order or adoption had not been made; and any appointment as guardian of the adopted child which was made while the adoption order or adoption was in force shall cease to have effect: Provided that the discharge of the order or adoption shall not affect anything lawfully done or the consequences of anything unlawfully done while the order or adoption was in force;
- (b) No change in the child's domicile shall occur by reason only of the discharge; but, where during the infancy of the child any natural parent resumes custody of the child to whom the discharged order or adoption related, the domicile of the child shall be determined as if neither the discharged order or adoption nor any prior adoption order or adoption in respect of the child had been made;
- (c) Any affiliation order, maintenance order, or agreement for payment of maintenance which ceased to have effect under section 35 (2) (i) have effect under its terms: Provided that nothing in this paragraph shall cause the order or agreement to have any effect in respect of the period while the adoption order or adoption remained in force: Provided also that notice of the discharge of the adoption order or adoption shall be served on every person who is bound by the affiliation order, maintenance order, or agreement, but nothing in this proviso shall restrict the effect of the affiliation order, maintenance order, or agreement between the date of the discharge of the adoption order or adoption and the service of notice of the discharge;
- (d) For the purposes of any other deed or instrument (except a will) made while the order or adoption was in force, or of the will or intestacy of any testator or intestate who died while the order or adoption was in force, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will or intestacy, the order or adoption shall be deemed to continue in force.

PART 5
GUARDIANSHIP

38 Objective of Part

The objective of this Part is to define and regulate the authority of parents as guardians of their children, their power to appoint guardians, and the powers of the courts in relation to the custody and guardianship of children.

39 Interpretation

In this Part –

“child” means a person under the age of 20 years;

“near relative” means a step-parent, grandparent, aunt, uncle, brother, or sister; and includes a brother or sister of the half-blood as well as of the full-blood;

“upbringing” includes education and religion.

40 Definition of custody and guardianship

For the purposes of this Part –

“custody” means the right to possession and care of a child;

“guardianship” means the custody of a child (except in the case of a testamentary guardian and subject to any custody order made by the Court) and the right of control over the upbringing of a child, and includes all rights, powers, and duties in respect of the person and upbringing of a child that were at 1 January 1970 vested by any enactment or rule of law in the sole guardian of a child.

Jurisdiction

41 Personal jurisdiction

(1) The Court shall have jurisdiction under this Part –

- (a) Where any question of custody, guardianship, or access arises as an ancillary matter in any proceedings in which the Court has jurisdiction; or
- (b) Where the child who is the subject of the application or order is present in Niue when the application is made; or
- (c) Where the child, or any person against whom an order is sought, or the applicant, is domiciled or resident in Niue when the application is made.

(2) Notwithstanding subsection (1) the Court may decline to make an order under this Part if neither the person against whom it is sought nor the child is resident in Niue and the Court is of the opinion that no useful purpose would be served by making an order or that in the circumstances the making of an order would be undesirable.

Natural Guardianship

42 Guardianship of children

(1) Subject to this Part, the father and the mother of a child shall each be a guardian of the child.

(2) Subject to this Part, the mother of a child shall be the sole guardian of the child if –

- (a) She is not married to the father of the child, and either –
 - (i) has never been married to the father; or

(ii) her marriage to the father of the child was dissolved before the child was conceived; and

(b) She and the father of the child were not living together as husband and wife at the time the child was born.

(3) Where the mother of a child is, or was at the time of her death, its sole guardian by virtue of subsection (2) the father of the child may apply to the Court to be appointed as guardian of the child, either in addition to or instead of the mother or any guardian appointed by her, and the Court may make such order on the application as it thinks proper.

(4) On the death of the father or the mother the surviving parent, if he or she was then a guardian of the child, shall, subject to this Part, be the sole guardian of the child.

43 Declaration as to guardianship of father

Any man who alleges that he is a guardian of a child by virtue of section 6 (other than by a virtue of an order under subsection (3)) may apply to the Court for an order declaring that he is a guardian of the child, and, if it is proved to the satisfaction of the Court that the allegation is true, and that the man has not been deprived of his guardianship the Court may make the order.

Appointment and Removal of Guardians

44 Testamentary guardians

(1) The father or the mother of a child (including an unborn child) may by deed or will appoint any person to be a guardian of the child after his or her death, and that person is in this Part referred to as a testamentary guardian.

(2) If the person appointing a guardian under subsection (1) is himself a guardian of the child at his death, the testamentary guardian shall thereupon if he is of full age and capacity be either sole guardian or a guardian in addition to any other guardian.

(3) If the person appointing a guardian under subsection (1) is not himself a guardian at his death, the testamentary guardian may apply to the Court, and the Court may appoint him as a guardian accordingly.

(4) Notwithstanding any enactment or rule of law, a child may appoint a guardian by deed or will under subsection (1).

45 Court-appointed guardians

(1) Subject to the provisions of this section, the Court may on application made for the purpose or on the making of an order under section 47, appoint a guardian of a child either as sole guardian or in addition to any other guardian, and either generally or for any particular purpose, and either until the child attains the age of 20 years or sooner marries, or for any shorter period.

(2) The High Court shall have exclusive jurisdiction to appoint and remove a guardian *ad litem* in respect of any proceedings before that or any higher court, and may appoint or remove a guardian *ad litem* in respect of any proceedings before any other court.

46 Wards of Court

(1) The Court may upon application order that any unmarried child be placed under the guardianship of the Court, and may appoint any person to be the agent of the Court either generally or for any particular purpose.

- (2) An application under subsection (1) may be made –
 - (a) By a parent, guardian or near relative of the child;
 - (b) [Repealed by 2004/270]
 - (c) By the child, who may apply without guardian *ad litem* or next friend;
 - (d) With the leave of the Court, by any other person.
- (3)
 - (a) Between the making of the application and its disposal, and after it if an order is made, the Court shall have the same rights and powers in respect of the person and property of the child as the Court possessed immediately before 1 January 1970 in relation to wards of Court.
 - (b) The Court shall not direct any child of or over the age of 18 years to live with any person unless the circumstances are exceptional.
 - (c) Where any child under the guardianship of the Court marries without the Court's consent the Court shall not have the power to commit that child or his or her spouse for contempt of Court for so marrying.
- (4) A child who has been placed under the guardianship of the Court shall cease to be under such guardianship when the Court so orders or when the child reaches the age of 20 years or sooner marries, whichever first occurs.

47 Removal of guardian

(1) The Court may on application by the other parent or by a guardian or near relative or, with the leave of the Court, by any other person deprive a parent of the guardianship of his child or remove from his office any testamentary guardian or any guardian appointed by the Court.

(2) No parent shall be deprived of the guardianship of his child under subsection (1) unless the Court is satisfied that the parent is for some grave reason unfit to be a guardian of the child or is unwilling to exercise the responsibilities of a guardian.

48 Custody orders

(1) Subject to section 61 the Court may on application by the father or mother, or a step-parent, or a guardian, of a child or with the leave of the Court by any other person, make such order with respect to the custody of the child as it thinks fit.

(2) Any order made under subsection (1) may be made subject to such conditions as the Court thinks fit.

49 Orders in other proceedings

(1) Subject to section 61, in any proceedings for nullity, separation or divorce the Court may, before or by or after the principal decree or order, make such order (whether an interim order or a permanent order) as it thinks just with respect to the custody and upbringing of any child of the marriage.

(2) In any such case the Court may make a guardianship order vesting the sole guardianship of the child in one of the parents, or make such other order with respect to the guardianship of the child as it thinks fit.

(3) An order may be made under subsection (1) or (2) and any such order may be varied or discharged, notwithstanding that the Court has refused to make a decree or to give any other relief sought.

(4) Unless the Court makes a guardianship order every person who was a guardian of the child shall continue to be a guardian of the child.

Disputes

50 Disputes between guardians

(1) When more than one person is a guardian of a child, and they are unable to agree on any matter concerning the exercise of their guardianship, any of them may apply to the Court for its direction, and the Court may make such order relating to the matter as it thinks proper.

(2) Where more than one person has custody of a child, and they are unable to agree on any matter affecting the welfare of the child, any of them may apply to the Court for its direction, and the Court may make such order relating to the matter as it thinks proper.

(3) Where under an order of the Court more than one person is a guardian or has custody of a child the Court shall have exclusive jurisdiction to settle disputes.

51 Review of guardian's decision or refusal to give consent

A child of or over the age of 16 years who is affected by a decision or by a refusal of consent by a parent or guardian in an important matter may apply to the Court which may review the decision or refusal and make such order in respect of the matter as the Court thinks fit.

Access

52 Access rights

(1) On making any order with respect to the custody of a child the Court may make such order with respect to access to the child by a parent who does not have custody of it under the order as it thinks fit.

(2) A parent who does not have custody of his child may apply to the Court for an order granting him access to the child, and the Court may make such order as it thinks fit.

(3) In this section "parent" includes a step-parent, and "child" has a corresponding meaning.

53 Access of other relatives on death of parent

If a parent of a child has died, the Court may order that the parents of the deceased parent, or either of them, or any brother or sister of the deceased parent, or any brother or sister of the child, shall have access to the child at such times and places as the Court thinks fit.

Variation and Enforcement of Orders

54 Variation or discharge of orders

(1) The Court may vary or discharge any order with respect to the custody or upbringing of a child, or with respect to access to a child.

(2) (a) The Court may vary or discharge any order vesting the guardianship of a child in one parent or in any other person or persons.

(b) If any such guardianship order is discharged, and no other guardianship order is made, guardianship shall vest in the person (if any) who would be the guardian if the order discharged had not been made.

(3) An application to vary or discharge any order to which this section applies may be made by any person affected by the order, or by any person on behalf of the child who is the subject of the order.

(4) This section does not apply to an interim order or to an adoption order.

55 Effect of custody agreements

An agreement between the father and mother of a child with respect to the custody or upbringing of or access to the child shall be valid, whether or not either of the parties is a minor, but shall not be enforced if the Court is of opinion that it is not for the welfare of the child to give effect to it.

56 Enforcement of custody and access rights

(1) (a) Where any person is entitled to the custody of a child, whether under this Part or to the order of a court, the Court may on the application of the person so entitled to custody, issue a warrant authorising any constable or social worker or any other person named in the warrant to take possession of the child and to deliver him to the person entitled to custody.

(b) Where more than one person is entitled to the custody of a child no warrant issued under this subsection shall authorise the removal of the child from the possession of one of those persons and the delivery of him to another of them.

(2) The Court may on the application of the person entitled to access to a child under an order of the Court, issue a warrant authorising any constable or social worker or any other person named in the warrant to take possession of the child and deliver him to the person entitled to access in accordance with the order.

(3) The powers conferred on a court by subsections (1) and (2) may be exercised on the making of the order.

(4) For the purpose of executing any warrant issued under subsection (1) or (2), any constable or social worker or any other person named in the warrant, may enter and search any building, aircraft, ship, vehicle, premises, or place, with or without assistance and by force if necessary.

(5) The constable, social worker or other person executing any such warrant shall have it with him and shall produce it if required to do so.

(6) Every person who wilfully resists or obstructs any person in the execution of any such warrant, or who wilfully fails or refuses to afford to any person engaged in the execution of any such warrant immediate entrance to any premises or to any part of them, commits an offence and shall be liable on conviction to a fine not exceeding 4 penalty units.

(7) Nothing in subsections (1) to (3) shall limit or affect any other power to enforce a right of custody or access exercisable by any court at 1 January 1970.

(8) Where the Court declines to enforce a right of custody or access it may of its own motion vary or discharge any existing order of custody or access accordingly.

(9) Subject to section 46 (3)(b) in considering an application under subsection (1) or (2) of this section, or any other application to enforce a right of custody or access, the Court shall not grant the application contrary to the wishes of the child if the child is of or over the age of 18 years.

57 Preventing removal of child from Niue

(1) A Judge or the Registrar of the Court who has reason to believe that any person is about to take a child out of Niue with intent to defeat the claim of any person who has applied for or is about to apply for custody of or access to the child, or to prevent any order of any Court as to custody of or access to the child from being complied with, may issue a warrant directing any constable or social worker to take the child (using such reasonable force as may be necessary) and place it in the care of

some suitable person pending the order or further order of the court having jurisdiction in the case.

(2) Any person who without the leave of the Court takes or attempts to take any child out of Niue knowing that proceedings are pending or are about to be commenced under this Part in respect of the child or that an order of any Court conferring custody of or access to the child on any other person is in force or with intent to prevent any order of any Court as to custody of or access to the child from being complied with commits an offence and shall be liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 3 months or to both.

(3) No proceedings for contempt of court shall be taken against any person in respect of any act to which this section applies.

Marriage of Child

58 Termination of guardianship

(1) Guardianship of a child shall terminate when the child attains the age of 20 years or marries under that age.

(2) Nothing in subsection (1) shall limit or affect the appointment of a guardian *ad litem* or the powers of the Court in respect of any such guardian.

59 Domicile of married minor

The domicile of a minor who is or has been married shall be determined as if the minor were an adult.

Miscellaneous Provisions

60 Welfare of child paramount

(1) (a) In any proceedings where any matter relating to the custody or guardianship of or access to a child, or the administration of any property belonging to or held in trust for a child, or the application of the income thereof, is in question, the Court shall regard the welfare of the child as the first and paramount consideration.

(b) The Court shall have regard to the conduct of any parent to the extent only that such conduct is relevant to the welfare of the child.

(2) In any such proceedings the Court shall ascertain the wishes of the child, if the child is able to express them, and shall, subject to section 56(9), take account of them to such extent as the Court thinks fit, having regard to the age and maturity of the child.

(3) Nothing in this section shall limit sections 64 and 64A of the Trustee Act 1956.

61 Custody of children over 16

(1) An order with respect to the custody of a child of or over the age of 16 years shall not be made unless there are special circumstances.

(2) An order in respect of a child under the age of 16 years in so far as it relates to custody shall expire when the child attains that age unless the Court in special circumstances otherwise orders at the time of making the order or subsequently.

(3) Nothing in this section shall limit or affect the power of the Court to make orders in respect of the upbringing of a child, or to appoint or remove guardians.

(4) Nothing in this section shall apply in respect of children who are under the guardianship of the Court.

62 Consents to operations

(1) Subject to subsection (6), the consent of a child of or over the age of 16 years to any donation of blood by him, or to any medical, surgical, or dental procedure (including a blood transfusion) to be carried out on him for his benefit by a person professionally qualified to carry it out, shall have the same effect as if he were of full age.

(2) The consent of or refusal to consent by a child to any donation of blood or to any medical, surgical, or dental procedure (including a blood transfusion) whether to be carried out on him or on any other person, shall if the child is or has been married have the same effect as if he were of full age.

(3) Where the consent of any other person to any medical, surgical, or dental procedure (including a blood transfusion) to be carried out on a child is necessary or sufficient, consent may be given –

(a) By a guardian of the child; or

(b) If there is no guardian in Niue or no such guardian can be found with reasonable diligence or is capable of giving consent, by a person in Niue who has been acting in the place of a parent; or

(c) If there is no person in Niue who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by the Court.

(4) Where a child has been lawfully placed for the purpose of adoption in the home of any person that person shall be deemed to be a guardian of the child for the purposes of subsection (3).

(5) Nothing in this section shall limit or affect any enactment or rule of law whereby in any circumstances –

(a) No consent or no express consent is necessary; or

(b) The consent of the child in addition to that of any other person is necessary; or

(c) Subject to subsection (2), the consent of any other person instead of the consent of the child is sufficient.

63 Procedure and costs

(1) All proceedings under this Part shall, unless the Court otherwise directs, be heard in private.

(2) In any proceedings under this Part the Court may make such order as to costs as it thinks fit.

64 Evidence

In all proceedings under this Part (other than criminal proceedings), and whether by way of hearing in the first instance or by way of appeal, or otherwise howsoever, the Court may receive any evidence that it thinks fit, whether it is otherwise admissible in a court of law or not.

65 Solicitor or counsel may be appointed

The Court may appoint a solicitor or counsel to assist it or to represent any child who is the subject of or who is otherwise a party to proceedings under this Part, and where any solicitor or counsel is so appointed his fees and expenses shall be paid by such other party or parties to those proceedings as the Court shall order or, if the Court so decides, shall be paid out of money appropriated for the purpose by Assembly.

66 Appeals

(1) [Repealed by 2004/270]

(2) An appeal shall lie to the Court of Appeal from any order or decision of the High Court under this Part, other than an order or decision under section 50.

(3) Except on an appeal on a question of law, the Court of Appeal may rehear the whole or any part of the evidence, or may receive further evidence, if it thinks that the interests of justice so require.

(4) The decision of the Court of Appeal shall in every case be final.

67 Regulations

Cabinet may make regulations for the purposes of this Act and for providing for the enforcement in Niue of orders with respect to the custody and upbringing of and access to children made in other countries, and relating to the enforcement in other countries of orders made in Niue with respect to the custody and upbringing of and access to children.

68 Part to be code

(1) Except as otherwise expressly provided in this Part, this Part shall have effect in place of the rules of the common law and of equity relating to the guardianship and custody of children.

(2) (a) Subject to section 46, no person shall be appointed as or shall have any powers as guardian of the property of any child.

(b) Nothing in this Part shall limit or affect any power of the Court in relation to any property held on trust or to the administration thereof.

(3) In matters not provided for by this Part, the Court shall have all the powers in respect of the persons of children as does the High Court of New Zealand.

69 Custody of minors

(1) The High Court may, on the application of any person, make such order as it thinks fit with respect to the custody of any minor (being unmarried) by any parent or guardian of that minor.

(2) Where the Court is satisfied that the minor has no parent or guardian fit to have such custody, the Court may make such order as it thinks fit for the custody of the minor by any other person.

(3) The jurisdiction conferred by this section shall in all cases be exercised in such manner as the Court deems most conducive to the welfare of the minor.

PART 6
CHILD ALLOWANCE

70 Interpretation

In this Part –

“applicant” means the person who makes an application for a child allowance;

- “application” means a form filled out by the applicant when applying for a child allowance;
- “beneficiary” means a person who receives a child allowance in that year;
- “Director” means the Director of Community Affairs;
- “qualifying child” means a child who meets the criteria under section 73 and includes a stepchild, an adopted child and any child who, if not a member of the applicant’s family is recognised by the Director as a member of the applicant’s family;
- “recognised school” means a school that is recognised and approved by the Director for the purposes of this Part;
- “Welfare Committee” means the committee constituted under section 5 of the Pensions and Benefits Act 1991.

71 Payment out of Government Account

Child allowance payable under this Part shall be paid from the Niue Government Account out of money appropriated by the Niue Assembly for the purpose.

72 Amount and payment date

(1) The rate of child allowance payable shall be such amount as may be determined by Cabinet to regulations made under this Part, such amount to be paid out to a qualifying person as defined in section 78 for each qualifying child as defined in section 75.

(2) No child allowance shall be payable in respect of any period before the first payment date pursuant to subsection (1).

73 Qualifying child

(1) A qualifying child shall be a child who qualifies on a residence basis as set out in section 75 and who is –

- (a) Either a Niuean by descent;
- (b) A permanent resident of Niue; or
- (c) A New Zealand citizen.

(2) A qualifying child may apply for a child allowance who, at the time of application –

- (a) Is ordinarily resident in Niue;
- (b) Is not married;
- (c) Is financially dependent; and
- (d) Is attending a recognised school in Niue.

74 Disabled/disadvantaged persons

(1) Notwithstanding section 73 a disabled/disadvantaged person, who is not required or is unable to attend school shall be eligible for child allowance up to the age of 18 years.

(2) The Director on advice of the Welfare Committee shall have sole discretion to determine whether any child comes within the definition of disabled/disadvantaged to such an extent as to qualify for the exemptions referred to herein.

75 Residence qualifications

Subject to section 76 an applicant and/or the child the subject of the application who has been absent from Niue for a continuous period of more than 12 months immediately preceding the application shall not be eligible for child allowance until a period of 6 months has elapsed since returning to Niue.

76 Exemptions

(1) Any person being the child of an Award Holder who as a direct consequence of being overseas in the years immediately preceding application cannot fulfil the residence requirement in section 75 shall not be required to complete such requirement before being eligible to become a qualifying child.

(2) For the purposes of this section an "Award Holder" is a person who has taken up study or training overseas which will be of benefit to the Award Holder and Niue's development.

77 Period allowance is payable

(1) Child allowance payable in respect of a qualifying child shall, subject to this Part, commence on the day the application is approved by the Director and shall continue until the day on which the child leaves a recognised school.

(2) No allowance shall be payable in respect of any period before 31 December 1997.

(3) If an application is received by the Director after the closing date as determined by the Director, the allowance shall not commence until the following year.

(4) (a) It is the responsibility of the qualifying person to inform the Director in writing of any intended absence from Niue, of the child or themselves.

(b) Failure to inform the Director in writing will result in the loss of future allowances.

78 Person allowance is payable to

(1) A qualifying person shall be a parent or guardian whose application for child allowance has been granted by the Director.

(2) Unless otherwise provided, child allowance shall be payable only to the mother of a qualifying child (whether application for the allowance has been made by the mother or father or another person).

(3) The child allowance may be paid to the father of that child, if –

(a) The mother of the child has passed away, or has left permanently for overseas, or has left the family permanently without the child; and

(b) The child is living with the father and under his care and control.

(4) In any other case the Director may determine that the child allowance shall be paid to any person who has care and control of the child.

(5) No child allowance shall be payable to any applicant if another allowance is being paid in another country or received from overseas for that child.

79 Application of child allowance

(1) Money received by way of child allowance shall be used towards the maintenance, education, or welfare of the child or children in respect of whom it is paid, with a sum allocated by Cabinet under regulations, for assisting the school committee at the school the child attends.

- (2) (a) The Director may refuse to grant an allowance or may terminate or suspend an allowance if the Director is satisfied that the allowance will not be or has not been properly applied.
- (b) Any person aggrieved by a decision of the Director made pursuant to this section may appeal to the Court for a ruling.
- (3) A child allowance cannot be used as collateral or for guaranteeing a loan.

80 Applying for allowance

An application for a child allowance shall be on an approved application form and addressed to the Director and shall be by way of statutory declaration in such form with such information and evidence as the Director may determine.

81 Investigation of applications

(1) Every application shall be investigated by the Director, who shall decide as to whether the allowance is payable and if so, to whom.

(2) It shall be the duty of every person to answer all questions put by the Director concerning any application for a child allowance, or concerning any statements contained in any application for a child allowance.

(3) For the purpose of ascertaining the child's enrolment and attendance the Director shall have access to the child's school attendance records when required.

82 Recovery of allowance

(1) If any allowance is procured or paid by fraud or false information, the amount so paid may be recovered from the qualifying person as a debt due to the Crown.

(2) The Director may make any necessary adjustments in any future allowance or any other benefit or allowance (whether payable under this or any other enactment) thereafter becoming payable to the qualifying person.

83 Offences

Every person who –

- (a) Makes any statement knowing it to be false in any material particular;
- (b) Wilfully does or says anything or omits to do or says anything for the purpose of misleading or attempting to mislead any officer concerned in the administration of this Part or any other person whomsoever for the purpose of obtaining (for himself or any other person) or which results in himself or any other person obtaining any allowance under this Part;
- (c) Demands or accepts from any applicant or from any other person any fee or other consideration for procuring or endeavouring to procure any allowance under this Part for that child, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 months, or to a fine not exceeding 2 penalty units or to both such imprisonment and fine.

84 Proceedings for offences

(1) Notwithstanding any other enactment, an information for an offence against this Part may be laid at any time within 5 years after the facts alleged in the information have been brought to the knowledge of any person concerned in the administration of this Part.

(2) Every information relating to an offence may, notwithstanding any other enactment, be heard and determined before the Court.

85 Delegation of powers of Director

(1) The Director may either generally or particularly, delegate to another officer of the Department such of his powers under this Part or its regulations as the Director may determine.

(2) Subject to this section and to any general or special directions given or conditions attached by the Director, the officer to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

86 Regulations

Cabinet may make all necessary regulations to carry out the provisions of this Part.

PART 7

MAINTENANCE AND AFFILIATION ORDERS

87 Interpretation

In this Part –

“adequate maintenance” means maintenance reasonably sufficient for the necessities of the person to be maintained, irrespective of the means or ability of the person who is bound to afford such maintenance;

“child” means a person under the age of 16 years;

“defendant” means any person against whom a maintenance order or affiliation order is or has been made under this Part or is applied for under this Part;

“destitute person” means any person unable, whether permanently or temporarily, to support himself by his own means or labour;

“maintenance” includes lodging, feeding, clothing, teaching, training, attendance, and medical and surgical relief;

“maintenance order” means an order under this Part for the payment of money for or in respect of the past or future maintenance of any person.

88 Applications

Any application to the Court for or in relation to a maintenance order or an affiliation order may, except where otherwise expressly provided, be made either by the person in whose favour the order is to be or has been made or by any other person.

89 Affiliation orders

(1) On application made to the Court by or by the authority of a woman who is the mother of a child or who is with child, the Court may, if it is satisfied that the defendant (not being her husband) is the father of that child, make an order (herein called an affiliation order) adjudging the defendant to be the father of that child accordingly.

(2) No affiliation order shall be so made unless the application is made before or within 6 years after the birth of the child, unless the defendant has contributed to or made provision for the maintenance of the child, or has since the birth of the child cohabited with the mother as man and wife, in which case the application may be

made at any time after the expiration of the said period of 6 years, if within 2 years immediately preceding the application the defendant has contributed to or provided for the maintenance of the child or has so cohabited with its mother.

(3) If at any time the defendant has been absent from Niue, the period of his absence shall not be counted in computing the respective periods of 6 years or 2 years.

(4) No such application shall be made unless the child is under 16 years of age at the time of the application.

90 Evidence

(1) The evidence of the mother of the child or of any woman who is with child as aforesaid shall not be necessary for the making of an affiliation order.

(2) No person shall be adjudged to be the father of a child upon the evidence of the mother or of a woman who is with child as aforesaid, unless her evidence is corroborated in some material particular to the satisfaction of the Court.

91 Maintenance order in favour of illegitimate child

When an affiliation order has been made by the Court against any person as the father of a child, whether already born or not, the Court may, at the same time or at any time thereafter, make a maintenance order in favour of the child against the person so adjudged to be the father of the child.

92 Maintenance order against father in favour of child

(1) The Court may make a maintenance order against the father of any child (not being an illegitimate child) in favour of that child if the Court is satisfied that the father has failed or intends to fail to provide that child with adequate maintenance.

(2) When the father and child are living apart from each other, and the Court is satisfied that there is reasonable cause for the child continuing so to live apart from the father, the father shall not be deemed to have made provision for the adequate maintenance of the child merely by reason of the fact that he is ready and willing to support the child if and so long as the child lives with him.

93 Maintenance order against mother in favour of child

(1) The High Court may make a maintenance order in favour of a child against the mother of that child, if it is satisfied that the mother is of sufficient ability in that behalf and has failed or intends to fail to make provision for the adequate maintenance of the child.

(2) When the mother and child are living apart from each other, and the Court is satisfied that there is reasonable cause for the child continuing so to live apart from the mother, the mother shall not be deemed to have made provision for the adequate maintenance of the child merely by reason of the fact that she is ready and willing to support the child if and so long as the child lives with her.

94 Maintenance order against husband

(1) The Court may make a maintenance order against a husband in favour of his wife, if it is satisfied that the husband has failed or intends to fail to provide his wife with adequate maintenance.

(2) Unless the Court is satisfied that the wife is a destitute person, no maintenance order shall be made against the husband if it is proved that he is not of sufficient ability to contribute to her maintenance.

(3) When the husband and wife are living apart from one another and the wife has, in the opinion of the Court, reasonable cause for refusing or failing to live with her husband, the husband shall not be deemed to have provided her with adequate maintenance merely by reason of the fact that he is ready and willing to support her if and so long as she lives with him.

95 Maintenance order against wife

(1) The Court may make a maintenance order against a married woman in favour of her husband, if it is satisfied that the husband is a destitute person and that his wife is of sufficient ability to contribute to his maintenance.

(2) No such order shall be made if the Court is satisfied that there is reasonable cause for the failure of the wife to contribute to the maintenance of her husband.

96 Maintenance order against any person in favour of father or mother

The Court may make a maintenance order against any person in favour of the father or mother of that person, if it is satisfied that the father or mother, is a destitute person and that the defendant is of sufficient ability to contribute to the maintenance of that destitute person.

97 Disobedience to maintenance order

Every person who disobeys a maintenance order commits an offence and is liable on conviction to a fine not exceeding 1 penalty unit and imprisonment for a term not exceeding 6 months.

98 Maintenance money a debt

All money due under a maintenance order shall constitute a debt due by the defendant to the person to whom the money is payable under the terms of the order.

99 Order in favour of non-residents

A maintenance order may be made in favour of any person otherwise entitled to it although not present or resident in Niue.

100 Order against non-residents

A maintenance or affiliation order may be made against any defendant otherwise liable although not present or resident in Niue.

101 Orders *in absentia*

If the Court is satisfied that a defendant is absent from Niue, or that his residence is unknown, or that he cannot be found, the Court may hear and determine the application *ex parte* and make a maintenance order or affiliation order accordingly.

102 Repeated applications

The dismissal of an application for a maintenance order or affiliation order shall not, unless the Court so orders, be a bar to the making of a further application in the same matter against the same defendant.

103 Payments not to be made in advance

(1) No money payable under a maintenance order shall, without the precedent consent of a Judge of the High Court, be paid more than one year in advance of the due date of it.

(2) If any money is paid in breach of this section, it shall not be taken into account in any proceedings for the enforcement of the maintenance order or for the punishment of any disobedience to it; but no money so paid in breach of this section shall be recoverable by the person by whom it was paid.

104 Cancellation, variation, and suspension of orders

(1) The High Court may at any time make an order cancelling an affiliation order, or cancelling, varying, or suspending any maintenance order or substituting a new maintenance order, on the grounds—

(a) That the order was obtained by fraud or perjury; or

(b) That since the making of the order new and material evidence has been discovered; or

(c) That since the making of the order the circumstances have so changed that the order ought to be so cancelled, varied, or suspended, or that a new order ought to be substituted for it.

(2) The power hereby conferred to cancel or vary an order shall include the power to remit wholly or in part any arrears due under the order, and any such arrears may be remitted either on the grounds hereinbefore in this section mentioned or, if the Court thinks fit, on the ground that the defendant is not of sufficient ability to pay them.

105 Payment of maintenance money

Any maintenance order may direct the money payable under it to be paid either to the person in whose favour the order is made or to any other person on behalf of that person.

106 Security for obedience to maintenance orders

(1) Whenever a maintenance order is made, the High Court may, by the same order or by order made at any later time, direct the defendant to give security for his obedience to the maintenance order.

(2) Every such security shall, as the Court determines, be either the payment into Court of such sum of money, not exceeding 4 penalty units, as the Court directs, or the giving of a bond to Her Majesty with one or 2 sureties to be approved by the Court in a sum not exceeding 4 penalty units, conditioned for due obedience to the maintenance order.

(3) When such security has been required, the Court may commit the defendant to prison until the order requiring security has been complied with, but no person shall be so detained in custody for a longer period than 6 months.

(4) All money so paid into Court or recovered by suit or otherwise under any such bond shall be available, under the direction of the Court, for the satisfaction of all claims under the maintenance order.

(5) The Court may, on being satisfied that the security is no longer required, order any amount so paid into Court to be repaid to the defendant, or cancel any bond so given.

107 Operation of agreements

No agreement shall be effective so as to take away or restrict any liability imposed on any person by this Part to contribute to the maintenance of any other person, or affect the operation of any maintenance order or the right of the High Court to make any such order.

108 Purport and duration of maintenance orders

(1) Every maintenance order shall be an order for the periodical payment, at such times and in such manner as the Court thinks fit, of such sum of money as the Court thinks reasonable.

(2) The intervals between the successive payments shall not exceed 28 days.

(3) When any such order is made in respect of the maintenance of a child, the order shall cease to be in force so soon as that child attains the age of 16 years.

109 Order for past maintenance

Any maintenance order may require the defendant, in addition to making such periodical payments as aforesaid, to pay such sum as the Court thinks reasonable, not exceeding 1 penalty unit, on account of the past maintenance, previous to the making of the order, of the person in respect of whose maintenance the order is made.

110 Leaving Niue while maintenance money in arrear

(1) Every person against whom a maintenance order has been made is liable to imprisonment for a term not exceeding 2 years, if, while any money payable under the order is in arrear and unpaid, he leaves or attempts to leave Niue without the permission in writing of a Judge of the High Court.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so given shall be upon the accused.

111 Leaving Niue after affiliation order and before birth of child

(1) Every person against whom an affiliation order is made before the birth of the child is liable to imprisonment for a term not exceeding 2 years, if he leaves or attempts to leave Niue without the permission in writing of a Judge of the Court at any time within 12 months after the making of the order.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so given shall be upon the accused.

112 Leaving Niue with intent to disobey maintenance order

Every person against whom a maintenance order has been made is liable to imprisonment for a term not exceeding 2 years, if he at any time after it leaves or attempts to leave Niue with intent to make default in obeying that order.

113 Leaving Niue while failing to maintain wife

(1) Every person is liable to imprisonment for a term not exceeding 2 years, if he without reasonable cause fails to provide his wife with adequate maintenance and at any time while failing so to do leaves or attempts to leave Niue without the permission in writing of a Judge of the High Court.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so obtained shall be upon the accused.

114 Leaving Niue while failing to maintain child

(1) Every person who is the father of a child is liable to imprisonment for a term not exceeding 2 years, if he without reasonable cause fails to provide that child with adequate maintenance and at any time while failing so to do leaves or attempts to leave Niue without the permission in writing of a Judge of the High Court.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so given shall be upon the accused.

115 Leaving Niue with intent to desert wife or child

Every person who is the husband of any woman or the father of any child is liable to imprisonment for a term not exceeding 2 years, if he leaves or attempts to leave Niue with the intention of failing without reasonable cause to make adequate provision for the maintenance of that wife or child during his absence.

116 Evidence of intent

In any prosecution for an offence against this Part, the fact that the defendant has at any time within 3 years after leaving Niue habitually made default in obeying an order of maintenance or in providing his wife or child with adequate maintenance shall be sufficient evidence, unless the contrary is proved, that the defendant left Niue with intent so to make default.

**PART 8
WILLS AND SUCCESSION**

117 Meaning

That the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Part, except where the nature of the provision or the context of the Part shall exclude such construction, be interpreted as follows; (that is to say,) the word "Will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an Act, 12 Car. 2. c. 24, intituled, 'An Act for taking away the Court of Wards and Liveries, and Tenures in capite and by Knights Service, and Purveyance, and for settling a Revenue upon His Majesty in lieu thereof,' or by virtue of an Act, 14 & 15 Car. 2 (I.), intituled, 'An Act for taking away the Court of Wards and Liveries, and Tenures in capite and by Knights Service,' and to any other testamentary disposition; and the words "Real Estate" shall extend to manors, advowsons, messuages, lands, tithes, rents and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "Personal Estates" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the single number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

118 All property may be disposed of by will

That it shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which if not so devised, bequeathed, or disposed of would devolve upon the heir at law, or customary heir of him or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and that the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this Part had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Part, if this Part had not been made; and also to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

119 Devisees of customary and copyhold estates

Provided always, That where any real estate of the nature of customary freehold or tenant right, or customary or copyhold, might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will, or in respect of presenting, registering, or enrolling such surrender, if the same real estate had been surrendered to the use of the will of such testator: Provided also that where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted *hereto, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled to claiming to be entitled to such real estate in consequence of such will shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, fine, and sums of money as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of

presenting, registering, or enrolling such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will; all which stamp duties, fees, fine, or sums of money due as aforesaid shall be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of such person, so entitled or claiming to be entitled to the same real estate as aforesaid.

120 Wills of customary freeholds

That when any real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by the will, the lord of the manor or reputed manor of which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such disposition shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court rolls of such manor or reputed manor; and when any trusts are declared by the will of such real estate, it shall not be necessary to enter the declaration of such trusts; but it shall be sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by such will; and when any such real estate could not have been disposed of by will if this Part had not been made, the same fine, heriot, dues, duties, and services shall be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall as against the devisee of such estate have the same remedy for recovering and enforcing such fine, heriot dues, duties, and services as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent.

121 Estates pur autre vie

That if no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Part, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

122 Will of a person under age

That no will made by any person under twenty-one years shall be valid.

123 Will of a married woman

Provided also, That no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act.

124 Every will shall be in writing and signed by the testator in the presence of two witnesses at one time

That no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

125 Appointments by will

That no appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

126 Soldiers and mariners wills

Provided always, That any soldier being in actual military service, or any mariner or seamen being at sea, may dispose of his personal estate as he might have done before the making of this Act.

127 Wills of seamen

That this Part shall not prejudice or affect any of the provisions contained in an Act intituled, 'An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy,' respecting the wills of petty officers and seamen in the Royal Navy, and non-commissioned officers of marines, and marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other monies payable in respect of services in Her Majesty's Navy. [That Act is not Niue law.]

128 Publication not to be requisite

That every will executed in manner hereinbefore required shall be valid without any other publication thereof.

129 Incompetency of attesting witness

That if any person who shall attest the execution of a will shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

130 Gifts to an attesting witness

That if any person who shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the

execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

131 Creditor attesting to be admitted a witness

That in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

132 Executor to be admitted a witness

That no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

133 Will revoked by marriage

That every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under Part 9).

134 No will revoked by presumption

That no will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

135 Revocation of will

That no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

136 Alteration in a will

That no obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as is hereinbefore required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

137 Revival of will

That no will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and shewing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shewn.

138 A devise not to be rendered inoperative by any subsequent conveyance or act

That no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

139 A will to speak from the death of the testator

That every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

140 A residuary devise

That, unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

141 A general devise

That a devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

142 A general gift

That a general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any

personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

143 A devise without any words of limitation

That where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

144 The words "die without issue," or "die without leaving issue" shall be construed to mean die without issue living at the death

That in any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: Provided, that this Part shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

145 No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest

That where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

146 Trustees under an unlimited devise

That where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

147 Devises of estates tail

That where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

148 Gifts to children

That where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

149 Position of testator's signature

Where by section 124 it is enacted, that no will shall be valid unless it shall be signed at the foot or end of it by the testator, or by some other person in his presence, and by his direction: Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this section, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it nor shall it give effect to any disposition or direction inserted after the signature shall be made.

150 Wills of Niueans

No will made by a Niuean shall have any force or effect with respect to his interest in Niuean land.

151 Succession to deceased Niueans

Subject to Part 4 and to every other enactment, the persons entitled on the death of a Niuean to succeed to his estate (other than an interest in Niuean land) so far as not disposed of by his will, and the shares in which they are so entitled, shall be determined under Niuean custom, so far as such custom extends, and shall be determined, so far as there is no Niuean custom applicable to the case under Part 9.

152 Niuean land not to vest in administrator

The interest of a Niuean in Niuean land shall in no case vest in his administrator by virtue of letters of administration.

153 Niuean land not assets for payment of debts

The interest of any person in Niuean land shall not upon his death be assets available for the payment of his debts and liabilities, whether to the Crown or otherwise, but this section shall not affect the operation of any charge to which that land is subject at the death of the deceased.

**PART 9
ADMINISTRATION**

154 Objective of Part

To consolidate and amend certain enactments relating to the administration of the estates of deceased persons

155 Interpretation

(1) In this Part –

“administration” means probate of the will of a deceased person, and includes letters of administration of the estate of a deceased person, granted with or without a will annexed, for general, special, or limited purposes, and in the case of a trustee corporation includes an order to administer and an election to administer;

“administrator” means any person to whom administration is granted, and includes a trustee corporation in any case where it is deemed to be an executor or administrator by reason of having filed an election to administer;

“Commonwealth” means the Commonwealth of Nations, and includes every territory for whose international relations the Government of any country of the Commonwealth is responsible;

“Commonwealth country” means a country that is a member of the Commonwealth, and includes every territory for whose international relations the Government of that country is responsible;

“estate” means real and personal property of every kind, including things in action;

“intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

“personal chattels”, in relation to any person who has died, means all vehicles, boats, and aircraft and their accessories, garden effects, horses, stable furniture and effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors, and consumable stores, which immediately

before his death were owned by him or in which immediately before his death he had an interest as grantor under an instrument by way of security, or under an agreement that would have been such a hire purchase agreement if the purchaser were not engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement, but does not include any chattels used exclusively or principally at the death of the deceased for business purposes or money or securities for money;

“real estate” means lands, tenements, and hereditaments, corporeal or incorporeal, and whether in possession, reversion, remainder, or expectancy, and any estate or interest in them or any of them, whether freehold or chattel interests, and any possibility, right, or title of entry or action in or concerning them or any of them;

“Registrar” means the Registrar of the High Court;

“Rules” means rules made under the authority of this Part;

“securities” includes stocks, funds, shares and convertible notes;

“will” includes a codicil.

(2) References to a child or issue living at the death of any person include a child or issue who is conceived but not born at the death but who is subsequently born alive.

SUB-PART 1 ADMINISTRATION BY ADMINISTRATOR *Grant of Administration*

156 Probate jurisdiction

(1) The Court shall continue to have jurisdiction and authority in relation to the granting and revoking of probate of wills and letters of administration with or without a will annexed of the estates of deceased persons, and in regard to the hearing and determining of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

(2) Without restricting subsection (1) or any other enactment, the Court shall have jurisdiction to make a grant of probate or letters of administration in respect of a deceased person, whether or not the deceased person left any estate in Niue or elsewhere, and whether or not the person to whom the grant is made is in Niue.

157 Discretion of Court as to person to whom administration is granted

(1) (a) In granting letters of administration with or without a will annexed, or an order to administer with or without a will annexed, in respect of the estate of any deceased person or any part of it, the Court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale of it, and, in particular, administration with a will annexed may be granted to a devisee or legatee, and any such administration may be limited in any way the Court thinks fit.

(b) Subject to subsection (2) where the deceased died wholly intestate as to his estate, administration shall be granted to some one or more persons beneficially interested in the estate of the deceased, if they make an application for the purpose.

(2) Where by reason of the insolvency of the estate or other special circumstances the Court thinks it necessary or expedient to do so, it may –

(a) Grant administration to such person or persons as it thinks expedient notwithstanding that some other person is appointed an executor or that, apart from this subsection, some other person would by law be entitled to a grant of administration;

(b) Grant probate to one or more of the executors appointed by a will, notwithstanding that some other person or persons may also be appointed as an executor or executors.

(3) A grant may be made under subsection (2) notwithstanding that any person excluded from the grant would be competent to take it.

(4) Before determining to exclude from any such grant any person who, apart from this section, would by law be entitled to, or be included in, the grant, and wishes to have, or to be so included in, the grant, the Court shall have regard to his competency and solvency, his ability effectively to administer the estate, the rights of all persons interested in the estate, and any changes in circumstances between the making of the will (if any) and the time when the Court is asked to make the grant.

158 Administration pending legal proceedings

(1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling, or revoking any grant of administration, are pending, the Court may grant administration of the estate of the deceased to a temporary administrator, who shall, until he is discharged or removed under section 170, have all the rights and powers of a general administrator, other than the right of distributing the balance of the estate remaining after payment of debts, funeral and testamentary expenses, duties, and fees, and every such temporary administrator shall be subject to the immediate control of the Court and act under its direction.

(2) The Court may, out of the estate of the deceased, grant to a temporary administrator appointed under this section reasonable remuneration.

159 Grant of special administration where administrator is out of Niue

(1) (a) If at any time after the death of a person any administrator of his estate is residing out of Niue, the Court may, on the application of any creditor or person interested in the estate, grant to him or some other person special administration of the estate of the deceased in such form and with such powers as the Court may direct or approve.

(b) Unless the Court otherwise directs, every grant of special administration shall continue until the administrator to whom the grant is made is discharged or removed under section 170.

(2) While a grant of special administration of the estate of a deceased person remains in force the previously subsisting administration of that estate shall be deemed to be suspended, and the administrator shall not be liable for acts and things done by the administrator under the grant of special administration.

(3) The Court may, for the purpose of any legal proceedings to which the administrator under the special administration is a party, order the transfer into Court of any money or securities belonging to the estate, and all persons shall obey any such order.

(4) If the administrator capable of acting as such returns to and resides within the jurisdiction of the Court while any legal proceedings to which a special administrator is a party are pending, the administrator who so returns may be made a

party to the legal proceedings and the Court may order that the costs of and incidental to the special administration and the legal proceedings shall be paid by such person and out of such fund as it may specify.

(5) Nothing in this section shall restrict section 170.

160 Administration during minority of executor

(1) Where a person who is sole executor of a will is at the date of the testator's death a minor who is not entitled to a grant of probate under subsection (3), administration with the will annexed may be granted to such person as the Court thinks fit, until the minor becomes entitled to and obtains a grant of probate to him; and on his attaining full age or sooner becoming entitled to a grant of probate under that subsection and not before, probate of the will may be granted to him.

(2) Where a testator by his will appoints a person who at his death is a minor who is not entitled to a grant of probate under subsection (3) to be an executor, the appointment shall not operate to transfer any interest in the estate of the deceased to the minor or to constitute him an administrator for any purpose, unless and until probate is granted to him under this section.

(3) Where a testator by his will appoints a person who is a minor to be an executor, probate of the will may be granted to the person if, at the date of the grant –

(a) The person has attained full age; or

(b) The person has attained the age of 18 years and is or has been married.

(4) A minor to whom probate is granted under subsection (3) (b) shall have the same rights, powers, duties, and obligations as executor as he would have if he were of full age, and shall be liable accordingly for his acts and omissions as executor.

161 Administration with will annexed

Where the Court grants administration of the estate of a deceased person with the will annexed, the will of the deceased shall be performed and observed in like manner as if probate of it had been granted to an executor.

162 Cesser of right of executor to prove

(1) Where a person appointed executor by a will –

(a) Survives the testator but dies without having been granted probate of the will; or

(b) Is cited to take out probate of the will and does not appear to the citation; or

(c) Renounces probate of the will, his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of the testator's estate shall devolve and be committed as if that person had not been appointed executor.

(2) (a) Where a person is appointed by a will to be both executor and trustee and his rights in respect of the executorship wholly cease under subsection (1), his rights in respect of the trusteeship shall also wholly cease and the trusteeship shall devolve or be determined as if he had not been appointed as trustee.

(b) Nothing in paragraph (a) shall prevent his subsequent appointment as trustee.

163 Withdrawal of renunciation

(1) Notwithstanding section 162, an executor who has renounced probate may be permitted by the Court to withdraw the renunciation and prove the will.

(2) Where an executor who has renounced probate has been permitted to withdraw the renunciation and prove the will –

- (a) The probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other person to whom administration has been granted, and a memorandum of the subsequent probate shall be endorsed on the original grant of administration;
- (b) His rights (if any) in respect of the trusteeship shall revive except so far as the Court otherwise orders.

164 Executor of executor represents original testator

(1) (a) An executor of a sole or last surviving executor of a testator shall be the executor of that testator.

(b) A person who does not prove the will of his testator shall be deemed not to be an executor notwithstanding his appointment as such by the will, and in the case of an executor who on his death leaves surviving him some other executor of his testator who at the time of the testator's death has not proved but who afterwards proves the will of that testator, paragraph (a) shall cease to apply when probate to the surviving executor is granted.

(2) So long as the chain of representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(3) The chain of representation is broken by –

- (a) The failure to leave a will; or
- (b) The failure of a testator to appoint an executor; or
- (c) The failure to obtain probate of a will,

but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator –

- (a) Has the same rights in respect of the estate of that testator as the original executor would have had if living; and
- (b) Is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

165 Administration bond

(1) (a) Every person to whom a grant of administration (other than the probate of a will) is made shall, previously to the issue of it, execute a bond to the Registrar to enure for the benefit of the Registrar for the time being, with 2 sureties approved by the Court, conditioned for duly collecting, getting in, and administering the estate of the deceased, which bond shall be in such form as may be prescribed by rules.

(b) It shall not be necessary for any trustee, corporation or any person obtaining administration to the use or for the benefit of Her Majesty, to execute any such bond, and in any case in which the Court is willing to dispense with sureties under subsection (2) it may dispense with the bond.

(2) In every case in which a bond is required under subsection (1), the bond shall be in a penalty equal to the amount under which the estate of the deceased is sworn, if that amount does not exceed 20,000 dollars, and shall be in a penalty of 20,000 dollars where the amount exceeds that sum; but the Court may dispense with one or both of the sureties, or direct that the penalty be reduced in amount, and may also if it thinks fit direct that more bonds than one be given, so as to limit the liability of any surety to such amount as the Court thinks reasonable.

(3) The bond required under subsection (2) shall relate to both real and personal estate.

(4) The Court may in place of a bond, accept a security in favour of the Registrar of any corporation or guarantee society approved by Cabinet.

(5) Every such security shall be in such form and under such regulations as the rules direct.

166 Proceedings if condition of bond broken

The Court may, on being satisfied that the condition of any such bond or security has been broken, order the Registrar to assign the bond or security to some person to be named in the order and that person or his administrator may thereupon sue upon the bond or security in his own name as if the bond or security had been originally given to him, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond or security.

167 Administration as evidence

Every administration of a will or with a will annexed shall be evidence of that will upon all questions concerning real estate in the same manner and to the same extent as in questions concerning personal estate, and every administration shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of the death of the testator or intestate.

168 Certificates of administration

(1) Subject to subsection (2) at any time after the grant of the relevant administration the Registrar may, on the request of the administrator, issue under his hand and seal such number of certificates of administration, in the form set out in the Schedule, as may be required.

(2) [Repealed by 2004/270]

(3) (a) Every such certificate shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of death of the testator or intestate and of the grant of administration to the administrator for all purposes including registering the administrator as proprietor of any estate or interest in any land or of any securities issued by or property in any bank or company or body or association.

(b) No bank or company or body or association to which any such certificate is produced shall be concerned to inquire concerning the trusts on which the administrator holds any such land or securities or property, or as to the authority to transfer or deal with the same.

(4) The fee payable to the Registrar in respect of each such certificate shall be \$1 or such other amount as may be prescribed by the Cabinet.

169 Proceedings where executor neglects to prove will

(1) In any case where any executor named in a will neglects or refuses to prove the will, or to renounce probate of it, within 3 months from the death of the testator, the Court may, upon the application of any other executor or executors or of any person interested in the estate or of any creditor of the testator, grant an order *nisi* calling upon the executor who so neglects or refuses to show cause why probate of the will should not be granted to that executor alone or with any other executor or executors or, in the alternative, why administration should not be granted to the applicant or some other person.

(2) Upon proof (whether by affidavit or otherwise) of service of the order, or upon the Court dispensing with service of the order, if the executor who is so called upon does not appear or upon cause being shown, the Court may make such order for the administration of the estate, and as to costs, as appears just.

170 Discharge or removal of administrator

(1) Where an administrator is absent from Niue for 12 months without leaving a lawful attorney, or desires to be discharged from the office of administrator, or becomes incapable of acting as administrator or unfit to so act, or where it becomes expedient to discharge or remove an administrator, the Court may discharge or remove that administrator, and may appoint any person to be administrator in his place, on such terms and conditions in all respects as the Court thinks fit.

(2) The administrator so removed or discharged shall, from the date of that order, cease to be liable for acts and things done after that date.

(3) Upon any administrator being discharged or removed as aforesaid (whether or not any such administrator is appointed) all the estate and rights of the previous administrator or administrators which were vested in him or them as such shall become and be vested in the continuing administrator or administrators (including any administrator appointed under subsection (1) who shall have the same powers, authorities, discretions, and duties, and may in all respects act, as if he or they had been originally appointed as the administrator or administrators.

(4) This section shall, with all necessary modifications, extend to the case where an administrator dies, and the powers and authorities hereby conferred may be exercised and shall take effect accordingly.

(5) Nothing in this section shall restrict section 159.

Administering of Estates

171 Interim vesting of estate where no executor appointed

(1) Subject to this Part and any other Act, where a person dies without leaving a will that effectively appoints an executor, his estate shall, until administration is granted in respect of it, vest in the Crown in the same manner and to the same extent as formerly in England in the case of personal property it vested in the ordinary.

(2) While any estate remains vested in the Crown under this section, the Crown Proceedings Act 1950 shall apply to the service on the Crown of notices and documents relating to the estate as if they related to civil proceedings instituted against the Crown.

172 Executor not to act while another administrator is in office

Subject to this Part and any other Act, where administration has been granted in respect of any part of the estate of a deceased person, and is not for the time being suspended, no person other than the administrator of that part of the estate shall have power to bring an action or otherwise act as administrator of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

173 Estate to vest in administrator

(1) (a) Immediately upon the grant of administration of the estate of any deceased person, all the estate then unadministered of that person, whether held by him beneficially or held by him in trust, shall vest in the administrator to whom the administration is granted for all the estate therein of that person.

(b) Nothing in paragraph (a) shall affect the earlier vesting in an executor by operation of law.

(2) The title of every administrator to any part of the estate of a deceased person shall relate back to and be deemed to have arisen immediately upon the death of the deceased person, as if there had been no interval of time between the death and the grant of administration.

(3) If there are concurrently more administrators than one of any part of the estate that part shall vest in them as joint tenants.

174 How estate to be held by administrator

Subject to this Part, the administrator shall hold –

(a) The estate of any person who dies or who has died leaving a will according to the trusts and dispositions of the will, so far as the will affects that estate;

(b) The estate of any person who dies intestate as to that estate under Sub-Part 3.

175 Estate to be assets for payment of debts

The whole of the estate of every deceased person shall be assets in the hands of his administrator for the payment of all duties and fees payable under any Act imposing or charging duties or fees on the estates of deceased persons, and for the payment in the ordinary course of administration of his debts and of debts properly incurred by his administrator; and for those purposes the administrator may, in as full and effectual a manner in law as the testator or intestate could have done in his lifetime, sell, lease (with or without an optional or compulsory purchasing clause), or mortgage (with or without a power of sale), the estate, or any part of it.

176 Power of sale on intestacy

(1) On the death of a person intestate as to any real or personal estate, his administrator shall have power to sell that real estate and to call in, sell, and convert into money such part of that personal estate as may not consist of money, with power to postpone the sale, calling in, and conversion for such a period as the administrator, without being liable to account, may think proper, and so that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold under this section except for special reason.

(2) This section shall have effect notwithstanding that the administrator has ceased to hold the real or personal estate as administrator and holds it as trustee.

(3) Where the deceased leaves a will this section shall have effect subject to the will.

177 Method of sale or lease

(1) Sections 14 to 18 of the Trustee Act 1956 shall, so far as they are applicable and with any necessary modifications, apply to any sale or lease under sections 175 and 176 of this Act as if the sale or lease were under sections 14 to 18 of the Trustee Act 1956.

(2) Nothing in this section shall restrict the term of any lease which may be granted under section 175.

(3) Land of any value may be sold or leased under section 175, or may be sold under section 176 without the consent of the Court.

178 Administrator to represent real estate

In all actions concerning the real estate of a deceased person, his administrator shall represent his real estate and the persons interested in it in the same manner and to the same extent as, in actions concerning personal estate, the administrator represents that estate and the persons interested in it.

179 Rights and duties of administrator as to real estate

The administrator of any deceased person shall have the same rights and be subject to the same duties and liabilities with respect to the real estate of that person as he has and is subject to with respect to the personal estate of that person, and shall perform the duties imposed on the administrator by any Act imposing or charging duties or fees or liabilities on the estates of deceased persons.

180 Payment of claims where estate insufficient

Where the estate of any deceased person is insufficient to pay his debts, funeral, and testamentary expenses in full, it shall be lawful for the administrator to apply that estate under the priorities that would be applicable if it were being administered under Part 17 of the Insolvency Act 1967 (NZ), without the administrator being under any obligation to have recourse to that Part or to administer that estate under it and any surplus shall be held for the person or persons lawfully entitled.

181 Administration suits

(1) [Repealed by 2004/270]

(2) In any action or other proceeding for the administration by the Court of the estate of any deceased person, no court shall have jurisdiction to order or allow payment of costs out of the estate to the party responsible for the commencement or continuance of the action or proceeding, unless the Court first certifies that there were reasonable grounds for the action being commenced or continued, and then only to the extent to which the continuance was necessary.

182 Debts under deeds and simple contracts to stand in equal degree

(1) Subject to this Part and any other Act, in the administration of the estate of every person who has died no debt or liability of the person shall be entitled to any priority or preference by reason merely that it arises under a bond, deed, or instrument under seal; but all the creditors of that person shall be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person, whether those assets are legal or equitable.

(2) Nothing in subsection (1) shall prejudice or affect any lien, charge, mortgage, or other security which any creditor may hold or be entitled to for payment of his debt or liability.

183 Charges on property

(1) (a) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in property, or where an interest in property passes by survivorship on the death of a person, and at the time of his death the interest is charged with the payment of money, whether by way of mortgage, charge, or otherwise, and the deceased has not by will, deed, or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for payment of all amounts charged thereon; and every part of the said interest, according to its value, shall bear a proportionate part of the amounts charged on the whole.

(b) Where a person dies possessed of or entitled to an interest in any personal chattels that passes under the will or on the intestacy of the person to the person's husband or wife, nothing in this subsection shall apply to that interest in those personal chattels.

(2) Such a contrary or other intention shall not be deemed to be signified –

(a) By a general direction for payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate, or his residuary personal estate; or

(b) By a charge of debts upon any such estate –

unless that intention is further signified by words expressly or by necessary implication referring to all or some part of the charge on the interest in property.

(3) Nothing in this section shall affect the right of a person entitled to the payment with which the interest in property is charged to obtain payment or satisfaction out of the other assets of the estate or otherwise.

184 Liability of specific devise or bequest where estate is insufficient

If any testator's estate primarily liable for the payment of his debts is insufficient for that purpose, each of his specifically devised or bequeathed estates (if more than one) shall be liable to make good the deficiency, in the proportion that the value of each of those estates bears to the aggregate value of the specifically devised or bequeathed estates of the testator.

185 Proving executors may exercise powers

Where probate is granted to one or some of 2 or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are conferred by law or by the will on the administrator may be exercised by the proving executor or executors for the time being, and shall be as effectual as if all the persons named as executors had concurred in it.

186 Interest on legacies and annuities

(1) In any case where a legacy is charged upon both land and chattels, unless the will otherwise provides, interest shall be payable on the legacy and be a charge on the land and chattels under the rules of law that would apply if the legacy were charged upon the land only.

(2) While interest is payable on any legacy or on any arrears of an annuity, under the will or instrument under which the legacy or annuity is payable or any enactment or rule of law, unless the will or instrument otherwise provides or the Court otherwise orders, the interest on the legacy or arrears of the annuity shall be payable at the rate for the time being prescribed by Cabinet, and while no such regulation is in force at the rate of 5 percent per annum.

(3) Where an administrator (under any power conferred on him in that behalf) appropriates any property in or towards satisfaction of any legacy (other than an annuity), the legatee shall be entitled to the income from the property so appropriated, and interest shall not be payable out of any other part of the estate on so much of the legacy as has been satisfied by the appropriation.

187 No right of retainer by administrator

No person, being a creditor in his own right or as a trustee of any estate of which he is administrator, shall, by virtue of his office as administrator, have any right of retainer in priority to the other creditors of the estate in respect of any debt due to him; but every such creditor or administrator shall rank with other creditors, but without prejudice to any preferential claim or security which as a creditor he might have been able to enforce if he had not been the administrator.

188 Rights and liabilities of administrator

Every person to whom administration of the estate of a deceased person is granted, other than an executor, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

189 Liability of agent of administrator

No person appointed an administrator upon an application made by him as the attorney or agent for an administrator absent from Niue, shall be liable to account or pay money, or transfer property, to any one in respect of his administratorship excepting only to the administrator whose attorney or agent he was, or to any person who, after his appointment as administrator upon an application so made, is appointed administrator of the same estate.

190 Administrator's right to distrain

(1) An administrator may distrain for arrears of a rentcharge due or accruing to the deceased in his lifetime on the land affected or charged with it, so long as the land remains in the possession of the person liable to pay the rentcharge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(2) An administrator may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living. Any such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made –

- (a) Within 6 months after the termination of the lease or tenancy; and
- (b) During the continuance of the possession of the lessee or tenant from whom the arrears were due.

(3) The enactments relating to distress for rent shall apply to any distress made under subsection (2).

191 Administrator may be required to exhibit inventory

Every administrator shall, when required by the Court so to do, exhibit on oath in the Court a true and perfect inventory and account of the estate of the deceased, and the Court shall have power to require administrators to bring in inventories.

192 Protection of persons acting on administration

(1) Every administrator or person who makes any payment or disposition or assumes any liability, or who permits any payment or disposition to be made, or who does any act, or who permits any act to be done, in good faith under an administration shall, notwithstanding any defect or circumstances whatsoever affecting the validity of the administration or its subsequent revocation, have the same indemnity and protection in so doing and in respect of all commission and remuneration earned by him in so doing, as he would if the administration were valid and not revoked.

(2) Where an administration is revoked, all payments and dispositions made in good faith to an administrator before the revocation shall be valid discharges to the person making the same; and the administrator who acted under the revoked administration may retain and reimburse himself out of the estate that comes into his hands in respect of any acts, payments, dispositions, liabilities, commission, and remuneration in respect of which he is indemnified as aforesaid or which the person to whom administration is afterwards granted might have properly made.

(3) Nothing in subsection (1) shall affect or prejudice the rights of any person entitled to any money or property that has been the subject of a payment or disposition to which that subsection relates against any person (other than the administrator in that capacity) to whom the payment or disposition has been made, but the person so entitled shall have the same remedy against the person (other than the administrator in that capacity) to whom the payment or disposition was made as he would have had against the administrator if the payment or disposition had not been made.

(4) Nothing in this section shall restrict section 195.

193 Following of assets

(1) In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust and there is nothing in any Act to prevent the distribution from being disturbed, the Court may –

- (a) Make, subject to such terms and conditions as it thinks fit, in respect of any interest in any such assets that is for the time being retained by the person to whom those assets were distributed or his administrator or any person who has received any interest in those assets from either of them otherwise than in good faith and for full valuable consideration an order on any claim to which section 35 of the Trustee Act 1956 applies, or an order requiring the transfer of payment of any such interest in any such assets to the administrator of the deceased or the trustee or to any person who under any enactment or rule of law has a right to follow the assets;
- (b) Order that any person to whom any assets were so distributed or his administrator shall pay to any applicant for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee or to any person who under any enactment or rule of law has a right to follow the assets a sum not exceeding the net value of the assets at the date of the distribution, or in a case where full valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the Court thinks equitable) with interest on it from that date until the date of the order at such rate as the Court may specify;
- (c) Order that any person who has received any interest in any such assets from the person to whom they were distributed or his administrator, otherwise than in good faith and for full valuable consideration, shall pay to any applicant for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee, or to any person who under any enactment or rule of law has a right to follow the assets, a sum not exceeding the net value of that interest at the date of the distribution, or in a case where full valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the Court thinks equitable) with interest on it from that date until the date of the order at such rate as the Court may specify;
- (d) In making any such order fix such terms and conditions as the Court thinks fit and for the purpose of giving effect to any such order, make such further order as it thinks fit.

(2) The remedies given to any person by subsection (1) are in addition to all other rights and remedies (if any) available to that person, and nothing in that subsection shall restrict any such other rights and remedies.

(3) Subject to subsection (4), no application for an order under subsection (1) shall be heard by the Court –

- (a) [Repealed by 2004/270]

- (b) In the case of an application to which section 194 (b) (i) applies, unless that application is made within 1 year after the satisfaction by the administrator or trustee of any claim in respect of any right or remedy against him;
- (c) In any other case, unless the application for an order under subsection (1) is made within the time within which the applicant could have enforced his claim in respect of the estate without special leave of the Court if the assets had not been distributed:

Provided that, with the special leave of the Court, the application may be heard by the Court on an application made within the time within which the applicant could have enforced his claim in respect of the estate with special leave of the Court if the assets had not been distributed.

(4) Notwithstanding subsection (3), in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, and any person who is entitled to apply for an order under subsection (1) has, within the time specified in subsection (3), made an application to the Court for an order on any claim to which section 35 of the Trustee Act 1956 applies, and that person was not aware of the distribution at the time when he made that application, that person or any other person on whose behalf that application is deemed to be made, may apply to the Court under subsection (1), and the application may be heard by the Court after the expiration of the period prescribed by subsection (3) if it is made within 6 months after the date on which that person first became aware of the distribution.

194 Freedom to exercise remedies

Notwithstanding any rule of law to the contrary, in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust –

- (a) Any person may exercise the remedies (if any) given to him by section 193 (1) and all other rights and remedies available to him (including all rights which he may have to follow assets and any money or property into which they have been converted) without first exercising the rights and remedies (if any) available to him against the administrator or the trustee in consequence of the making of the distribution;
- (b) If any person exercises any right or remedy available against the administrator or the trustee in consequence of the distribution of any such assets, the administrator or trustee may –
 - (i) apply to the Court for any order which may be made under section 193 (1);
 - (ii) in any proceedings against him in respect of the exercise of any such right or remedy, by leave of the Court and in accordance with the rules of court relating to such notices, issue a third party notice against any person against whom he may apply for an order under subparagraph (i).

195 Restriction on following assets

In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, relief (whether under section 193 (1) or in equity or otherwise) against any person other than the administrator or trustee or in respect of any interest of any such person in any assets so distributed and in any money or property into which they have been converted, may be denied wholly or in part, if --

- (a) The person from whom relief is sought received the assets or interest in good faith and has altered his position in the reasonably held belief that the distribution was properly made and would not be set aside; and
- (b) In the opinion of the Court it is inequitable to grant relief or to grant relief in full, as the case may be.

196 Liability of person fraudulently obtaining or retaining estate of deceased

If any person other than the administrator, to the defrauding of creditors or without full valuable consideration, obtains or receives or holds any part of the estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the estate received or coming into his hands, or the debt or liability released, after deducting --

- (a) Any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death which might properly be retained by an administrator; and
- (b) Any payment made by him which might properly be made by an administrator.

Powers and Procedure of Court

197 Direction to executor to prove or renounce

The Court shall have power to direct any person named as executor in a will to prove or renounce probate of the will, and (subject to this Part and any other enactment and the Rules) to do such other things as it thinks fit concerning the granting and revocation of administration, and the hearing and determination of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

198 Production of instruments purporting to be testamentary

The Court may, whether any suit or other proceeding is or is not pending with respect to any administration, order any person to produce any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of that person; and if it is not shown that any such paper or writing is in the possession or under the control of any person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Court may direct that person to attend for the purpose of being examined in open court, or upon interrogatories, respecting the same; and that person shall be bound to answer any such questions or interrogatories, and, if so ordered, to produce and bring in any such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering any such questions or interrogatories, or not bringing in any such paper or writing, as he would have been

subject to in case he had been a party to a suit in the Court and had made any such default; and the costs of any such suit or proceeding shall be in the discretion of the Court.

199 Continuance of legal proceedings

If, while any legal proceeding is pending in any court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, the Court may order that the proceeding be continued by or against the new administrator in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations, if any, as that court directs.

200 Question of fact may be tried by a jury

(1) If any question of fact arises in any proceeding under this Part, the Court may cause the same to be tried by a jury before the Court itself, or before any Judge of the Court, and may settle an issue for that purpose.

(2) In every such case the subsequent proceedings in respect of that issue shall be the same as if it had been settled in an ordinary action.

201 Practice of Court in its administration jurisdiction

The practice of the Court in regard to administration shall, except where otherwise provided, be regulated, so far as the circumstances of the case will admit, by the practice of the Court.

202 Power to make rules

Cabinet may make rules of Court, including rules –

- (a) Prescribing the forms of administration;
- (b) Prescribing the practice in obtaining a grant of administration, and the procedure and practice of the Court and the duties of the Registrar;
- (c) Regulating the procedure and practice of the Court with respect to non-contentious or common form probate business;
- (d) Regulating the procedure and practice of the Court with respect to contentious probate business;
- (e) Regulating the practice and procedure of the Court in relation to the resealing of probates or letters of administration under Part 2, and in particular for the purpose of imposing upon persons applying under it for the resealing of probates or letters of administration, or relieving any such persons from, any requirements that may be imposed upon persons applying to the Court for original grants of probate or letters of administration;
- (f) Prescribing orders of priority among applicants for administration which shall apply unless the Court in special circumstances otherwise directs;
- (g) Generally for carrying the provisions of this Act into effect.

Caveats

203 Caveat may be lodged

(1) Any person may lodge with the Registrar a caveat against any application for administration at any time previous to the granting of administration, and every such caveat shall set forth the name of the person lodging it, and an address within Niue at which notices may be served on him.

(2) Every such caveat shall, unless application for administration is sooner made, lapse upon the expiration of one year from the date of the lodging of the caveat.

(3) (a) Any such caveat may be withdrawn by the caveator at any time by notice in writing lodged with the Registrar.

(b) A copy of every such notice shall be served on any person who has applied for administration or to whom an order *nisi*, under section 204 has been granted.

(4) Nothing in this section shall prevent any person who has lodged a caveat from lodging a subsequent caveat, whether or not any caveat previously lodged has lapsed or been withdrawn.

204 Where a caveat lodged, Court may grant order *nisi*

In every case where a caveat has been lodged and has neither lapsed nor been withdrawn, the following provisions shall apply –

(a) The Court may, upon application on behalf of the person applying for administration, supported by affidavits upon which, if there had been no caveat, administration would have been granted, make an order *nisi* for the grant of administration to the person applying, and every such order shall name a time and place for showing cause against the same, and the Court may enlarge any such order;

(b) Every such order *nisi*, and every order enlarging the same, shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat;

(c) If before the day named in the order *nisi* or the day to which the order is enlarged the caveat is withdrawn, the order *nisi* may be made absolute at any time thereafter;

(d) In any case to which paragraph (c) does not apply, if on the day named in the order *nisi*, or on the day to which the order is enlarged, the caveator does not appear, the order *nisi* may be made absolute, upon an affidavit of service; but if the caveator appears, the hearing shall be conducted in the same manner as nearly as may be as in an ordinary action, and the Court may order –

(i) that the order *nisi* be made absolute or discharged; or

(ii) that the application for administration be made in solemn form, and any order made under subparagraph (i) or (ii) may be with or without costs as may be just, and, if the Court so directs, those costs may be paid out of the estate;

(e) Upon the hearing of the order *nisi* the parties may, subject to the Rules, verify their cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of the opposite party orally in open court, and after cross-examination may be re-examined orally in open court by or on behalf of the party by whom the affidavit was filed.

Miscellaneous Provisions

205 Administration granted to trustee companies

(1) No grant of probate of the will of any deceased person or letters of administration of the estate of a deceased person, either with or without a will annexed, shall be made to any company unless the company is expressly authorised by an Act to apply for and obtain the grant.

(2) A grant of probate or letters of administration to a syndic of a company shall be deemed to be a grant to that company; and where a power is granted to a company or to the directors of a company by will to nominate any person as executor of the will, a grant to a person so nominated shall be deemed to be a grant to the company.

(3) Nothing in this section shall –

(a) Prevent the grant of probate of the will of any deceased person to any company or to a syndic of the company in any case where the company is appointed as executor of the will and the actual document providing for the appointment was made before 1 January 1963;

(b) Prevent the grant of probate of the will of any deceased person to any person nominated as executor of the will by a company or the directors of a company pursuant to a power granted by any testamentary instrument, if the actual document granting the power was made before 1 January 1963;

(c) Prevent the resealing in Niue of probate or letters of administration granted to a company in any other country;

(d) Affect any grant of probate or letters of administration subsisting at 1 January 1971.

206 Other Acts providing for payment without administration

Nothing in this Part shall affect the powers of any person or body to make any payment to, or register any person to be, the owner of any property under any enactment authorising the payment of money belonging to the estate of a deceased person without requiring administration of the estate to be obtained.

207 Bondsmen and sureties deemed to be trustees

Every person who, in the capacity of bondsman or surety for another, receives money or other property belonging to the estate of any deceased person shall be deemed to be a trustee within the meaning of the Trustee Act 1956 in respect of that money or property, and may under that Act apply for relief and to be discharged from the custody of the money or property.

SUB-PART 2

ADMINISTRATION GRANTED OUT OF NIUE

208 Interpretation

(1) For the purposes of this Sub-Part “probate or letters of administration” includes an exemplification of any probate or letters of administration, or a duplicate of it sealed with the seal of the court granting the same, or a copy certified as correct by or under the authority of the court granting the same, and also includes an exemplification or a copy certified by or under the authority of any court, or a duplicate sealed under the seal of any court, of any instrument which is filed in or issued out of that court and which within the jurisdiction of that court operates to

make any person the administrator of any property of a deceased person as if probate or letters of administration had been granted to him by that court.

(2) The filing in or the issuing out of any court of any instrument which operates to make any person an administrator in the manner described in subsection (1) shall be deemed to be equivalent to the granting of probate or letters of administration by that court to that person.

209 Estate of person dying abroad not to vest without administration

(1) Estate in Niue belonging to any person who dies abroad shall not vest in any person under any bequest or devise, or under an intestacy, or by inheritance, until administration of that estate is obtained in Niue; or, if probate or letters of administration of the estate have been granted in any place out of Niue, unless the probate or letters of administration are resealed in Niue as provided in this Sub-Part.

(2) Upon the estate in Niue becoming legally vested under this section, the legal estate shall vest as from the time of the death of the person from whom it is obtained.

210 Rescaling of probate

(1) Where any probate or letters of administration granted in a competent court in any country are produced to and a copy deposited with the Registrar of the Court the probate or letters of administration may be sealed with the seal of the Court, and shall have the like force and effect and have the same operation in Niue, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if the probate or letters of administration had been originally granted by the Court.

(2) Nothing in this section shall prevent the Court from making an independent grant of administration in Niue.

211 Seal not to be affixed till fees are paid and administration bond effected

(1) The seal of the Court shall not be affixed to any probate or letters of administration granted in any Commonwealth country (other than Niue) or in the Republic of Ireland, or by a competent court in any other country, so as to give operation as if the grant had been made by the Court, until all such fees have been paid as would have been payable if the probate or letters of administration had been originally granted by the Court; and, further, no such letters of administration shall be so sealed until such bond is entered into as would have been required if the letters had been originally granted by the Court:

(2) The Court may if it thinks fit dispense with the bond or reduce the amount of the penalty thereunder.

(3) Where letters of administration are at any time granted to any Public Trustee or other like public official of any Commonwealth country (other than Niue) or of the Republic of Ireland or of any other country to which section 210 is declared to apply, it shall not be necessary, upon the resealing in Niue of the letters of administration, for the Public Trustee or other official, as the case may be, to execute any such bond.

212 No probate granted out of Niue to be evidence unless resealed

Probate or letters of administration granted in any place out of Niue shall not be received in evidence of the title of any person to any estate in Niue until the probate or letters of administration are resealed in Niue as provided in this Sub-Part.

213 Effect of sections 209 and 212

Nothing in sections 209 and 212 shall restrict any other enactment relating to the payment or devolution of any estate without administration.

SUB-PART 3

DISTRIBUTION OF INTESTATE ESTATES

214 Succession on intestacy

Where any person dies intestate as to any real or personal estate, that estate shall be distributed in the manner or be held on the trusts mentioned in this section, namely –

- (a) If the intestate leaves a husband or wife, the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residue of the estate shall stand charged with the payment of a sum of \$12,000 to the surviving husband or wife with interest on it from the date of the death until paid or appropriated, at the rate from time to time prescribed by or under section 186, and, subject to providing for that sum and the interest on it, the residue of the estate shall be held –
 - (i) if the intestate leaves issue, in trust as to one-third for the surviving husband or wife absolutely, and as to the other two-thirds on the statutory trusts for the issue of the intestate;
 - (ii) if the intestate leaves no issue, in trust as to two-thirds for the surviving husband or wife absolutely, and as to the other onethird if the intestate leaves both parents, in trust for the father and mother in equal shares absolutely or, if the intestate leaves only one parent, in trust for the surviving father or mother absolutely;
 - (iii) if the intestate leaves no issue or parent, in trust for the surviving husband or wife absolutely;
- (b) If the intestate leaves issue but no husband or wife, the estate shall be held on the statutory trusts for the issue of the intestate;
- (c) If the intestate leaves no husband or wife or issue but a parent or parents, the estate shall be held in trust for the parents in equal shares if they both survive the intestate but if only one of them survives the intestate for that one;
- (d) If the intestate leaves no husband or wife or issue or parent, the estate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:
Firstly, on the statutory trusts for the brothers and sisters (whether of full or of half blood) of the intestate; but if no person takes an absolutely vested interest under such trusts; then
Secondly, in trust for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then
Thirdly, on the statutory trusts for the uncles and aunts of the intestate, being brothers and sisters (whether of full or of half blood) of a parent of the intestate;
- (e) In default of any person taking an absolute interest under the foregoing provisions, the estate shall belong to the Crown as *bona vacantia*, and in place of any right to escheat; and the Crown may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether

kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

215 Statutory trusts in favour of issue and other classes of relatives

(1) Where the estate of any intestate, or any part of it, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely –

- (a) In trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, who attain full age or marry under that age, and for all or any of the issue living at the death of the intestate who attain full age or marry under that age of any child of the intestate who predeceases the intestate, the said issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent takes an absolutely vested interest:
Provided that if any person capable of taking under this paragraph (including this proviso) dies before taking an absolutely vested interest leaving any child or children who shall be living at the expiration of 21 years from the death of the intestate or who shall sooner attain full age or marry under that age, that child or those children shall take, in equal shares if more than one, the share which his, her, or their parent would have taken if he or she had not so died;
- (b) The statutory power of advancement, and the statutory provisions which relate to maintenance, education, and benefit, and the accumulation of surplus income, shall apply, and when a person becomes entitled to a vested share or interest under the statutory trusts, that person shall be entitled on attaining the age of 18 years or sooner marrying to give a valid receipt for his share or interest;
- (c) The administrator may permit any minor who has a vested or contingent interest in any personal chattels to have the use and enjoyment of the chattels in such manner and subject to such conditions (if any) as the administrator may consider reasonable, and without being liable to account for any consequential loss.

(2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest –

- (a) The estate of the intestate and the income of it and all statutory accumulations, if any, of the income, or so much of it as may not have been paid or applied under any power affecting the same, shall go, devolve, and be held under this Part as if the intestate had died without leaving issue living at the death of the intestate;
- (b) References in this Part to the intestate “leaving no issue” shall, subject to this section, be construed as “leaving no issue who attain an absolutely vested interest”;
- (c) References in this Part to the intestate “leaving issue” or “leaving a child or other issue” shall, subject to this section, be construed as “leaving issue who attain an absolutely vested interest”.

(3) Where under this Part the estate of an intestate or any part of it is directed to be held on the statutory trusts for any class of the relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate as if those trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

216 Application to cases of partial intestacy

(1) Where any person dies leaving a will effectively disposing of part of his estate this Sub-Part, shall have effect in respect of the part of his estate not so disposed of, subject to the will and subsection (2).

(2) Where the deceased leaves a husband or wife who acquires a beneficial interest under the will of the deceased, the references in section 214 to a sum of \$12,000 payable to a surviving husband or wife, and to interest on that sum, shall be taken as references to that sum diminished by the value of the beneficial interest at the date of death, and to interest on that sum as so diminished, and, accordingly, where the value exceeds that sum, section 214 shall have effect as if references to that sum and to interest were omitted.

(3) References in subsections (1) or (2) to a beneficial interest acquired under a will shall be construed –

(a) As including a reference to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment, but not a special power of appointment;

(b) As not including a reference to a beneficial interest in any personal chattels.

(4) For the purposes of this section the administrator may ascertain and fix the value of the beneficial interest under section 28 of the Trustee Act 1956, and no action shall lie against the administrator if he distributes the estate in accordance with the value that he has honestly and reasonably so fixed.

SUB-PART 4

MISCELLANEOUS PROVISIONS

217 Right of successor on intestacy to disclaim

(1) Subject to this section, where a successor has become entitled under this Part to an interest as a beneficiary in the whole or any part of the real and personal property which passes on the intestacy of any person –

(a) The successor may, by deed delivered to the intestate person's administrator, disclaim that interest if at the date of the disclaimer he has attained full age and is of sound mind;

(b) The Court may, by order, disclaim the interest on behalf of the successor or authorise the disclaimer of the interest by or on behalf of the successor if at the date of the disclaimer the successor has not attained full age or is not of sound mind.

(2) No disclaimer under this section shall be valid unless –

(a) The disclaimer is made by the successor in his lifetime; and

(b) The disclaimer relates to the whole of the successor's interest as a beneficiary in the real and personal property which passes on the intestacy of the person, including property which any other person has disclaimed under this section; and

- (c) The disclaimer is made within one year after the date of the first grant in Niue of administration in respect of the estate or will of the intestate person or within such extended period as may be allowed by the Court.
- (3) No disclaimer under this section shall be valid if –
 - (a) The successor has entered into enjoyment of the whole or any part of the interest to which he has become entitled as aforesaid; or
 - (b) The successor has transferred, assigned, mortgaged, settled, or otherwise disposed of that interest or of any part of it or of any property which would include that interest or any part of it if it were not disclaimed, or has covenanted or agreed to do any such thing; or
 - (c) There is any valuable consideration for the disclaimer; or
 - (d) The disclaimer provides for any assignment of the disclaimed interest or in any manner provides who is to be entitled to that interest; or
 - (e) The successor is bankrupt when the disclaimer is made.
- (4) Every disclaimer under this section shall be irrevocable.
- (5) Where a disclaimer which complies with all the requirements of this section has been made by or on behalf of any successor and the disclaimer is not void and does not become void by reason of its being deemed under section 218 to be a transfer of the disclaimed interest –
 - (a) The property which passes on the intestacy of the person shall be distributed, and estate duty in his estate shall be assessed, as if the successor had died immediately before the intestate person leaving only such issue (if any) as the successor would have left if he had died immediately before the intestate person;
 - (b) The successor shall be deemed for all purposes neither to have become entitled to nor to have disposed of the disclaimed interest or any part of it.
- (6) Nothing in this section shall affect any right which any successor may have to disclaim any property apart from this section.
- (7) Every disclaimer under this section shall be deemed to be made at the first point of time when everything has been done in respect of the disclaimer which is necessary to comply with the requirements of this section and of any order of the Court which relates to the disclaimer and is made under this section.

218 Effect of bankruptcy on disclaimer

- (1) Where a successor disclaims the interest as a beneficiary to which he is entitled in any real or personal property which passes on the intestacy of any person, or disclaims any interest as a beneficiary in any real or personal property to which he is entitled under the will of a deceased person, then, for the purposes of any rule of law relating to the protection of creditors –
 - (a) The successor shall be deemed to have accepted the disclaimed interest; and
 - (b) The disclaimer shall be deemed to be a transfer of the disclaimed interest by the successor to the person or persons who become entitled to it in consequence of the disclaimer.
- (2) Where any such successor has disclaimed any such interest in any property and there is no possibility of the disclaimer being void or voidable otherwise than by reason of its being deemed to be a transfer of the disclaimed interest, the deceased person's administrator may distribute the disclaimed interest or any part of it as if

there were no possibility of the disclaimer being or becoming void or voidable by reason of its being deemed to be a transfer of the disclaimed interest if, at the date of the distribution –

- (a) The successor is not bankrupt; and
- (b) The administrator has no reason to believe that the successor is about to become bankrupt; and
- (c) The administrator has no reason to believe that the disclaimer is void or voidable or is about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest.

(3) No action shall lie against any such administrator by reason of his distributing any disclaimed interest as aforesaid or by reason of his having failed to make any inquiry as to whether the successor was about to become bankrupt or as to whether the disclaimer was void or voidable or about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest; but nothing in this subsection or in subsection (2) shall affect any right which any person may have to follow and recover any property to which the disclaimer relates.

SCHEDULE

Section 168

Certificate of Administration

In the High Court of Niue

In the estate of , of

Under section 168 of the Family Law Code, I hereby certify that, on the
day of 20 , probate of the will [or
letters of administration in the estate]* of the above-named deceased who died on or
about [date] was [were] granted to

, of
Dated at this day of 20 .
[Seal]

Registrar.

*In the case of a limited or special grant the exact nature of the grant should be shown.

COMPARATIVE REFERENCE FOR THE SOURCE OF THE
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2	Marriages to take place before Marriage Officer	Niue Act 1966 s516
3	Offence *	Niue Act 1966 s519
4	Notice of marriage	Niue Act 1966 s520
5	Mode of solemnisation	Niue Act 1966 s521
6	Record of marriage	Niue Act 1966 s522
7	Signature of record	Niue Act 1966 s523
8	Transmission of record	Niue Act 1966 s524
9	Minimum age of marriage	Niue Act 1966 s525
10	Marriage of minors	Niue Act 1966 s526
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12	Signature of false record by party or witness	Niue Act 1966 s528
13	Misrepresentation as to facts to procure marriage	Niue Act 1966 s529
14	Sanction of Court to be obtained	Property Law Act 1952 s133
15	Legal status of married women	Niue Act 1966 s707
16	Nullity of marriage	Niue Act 1966 s531
17	Domicile of a married woman	Niue Act 1966 s533
18	Grounds of divorce and jurisdiction of High Court	Niue Act 1966 s534
19	Grounds of refusal of divorce	Niue Act 1966 s535
20	Discretion to refuse decree in certain cases	Niue Act 1966 s536

21	Co-respondent as a party	Niue Act 1966 s537
22	Agreement no bar to divorce	Niue Act 1966 s539
23	No appeal to Court of Appeal	Niue Act 1966 s540
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25	Order as to custody of children	Niue Act 1966 s544
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27	Births and deaths	Niue Act 1966 s727A
28	Legitimacy	Niue Act 1966 s708
29	Interpretation	Niue Amendment (No2) Act 1968 s91
30	Adoption by Niuean custom invalid	Niue Amendment (No2) Act 1968 s92
31	Land Court may make adoption orders	Niue Amendment (No2) Act 1968 s95
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33	Restrictions on making adoption orders	Niue Amendment (No2) Act 1968 s97
34	Consents to adoptions	Niue Amendment (No2) Act 1968 s98
35	Effect of adoption order	Adoption Act 1955 s16
36	Adoption order may be varied or discharged	Niue Amendment (No2) Act 1968 s100
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38	Objective of Part	Guardianship Act 1968 s1
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40	Definition of custody and guardianship	Guardianship Act 1968 s3
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42	Guardianship of children	Guardianship Act 1968 s6
43	Declaration as to guardianship of father	Guardianship Act 1968 s6A
44	Testamentary guardians	Guardianship Act 1968 s7
45	Court-appointed guardians	Guardianship Act 1968 s8
46	Wards of Court	Guardianship Act 1968 s9
47	Removal of guardian	Guardianship Act 1968 s10
48	Custody orders	Guardianship Act 1968 s11
49	Orders in other proceedings	Guardianship Act 1968 s12
50	Disputes between guardians	Guardianship Act 1968 s13
51	Review of guardian's decision or refusal to give consent	Guardianship Act 1968 s14
52	Access rights	Guardianship Act 1968 s15
53	Access of other relatives on death of parent	Guardianship Act 1968 s16
54	Variation or discharge of orders	Guardianship Act 1968 s17
55	Effect of custody agreements	Guardianship Act 1968 s18
56	Enforcement of custody and access rights	Guardianship Act 1968 s19
57	Preventing removal of child from Niue	Guardianship Act 1968 s20
58	Termination of guardianship	Guardianship Act 1968 s21
59	Domicile of married minor	Guardianship Act 1968 s22
60	Welfare of child paramount	Guardianship Act 1968 s23
61	Custody of children over 16	Guardianship Act 1968 s24
62	Consents to operations	Guardianship Act 1968 s25
63	Procedure and costs	Guardianship Act 1968 s27

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66	Appeals	Guardianship Act 1968 s31
67	Regulations	Guardianship Act 1968 s32
68	Part to be code	Guardianship Act 1968 s33
69	Custody of minors	Niue Act 1966 s69
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73	Qualifying child	Child Allowance Act 1995 s5
74	Disabled/disadvantaged persons	Child Allowance Act 1995 s6
75	Residence qualifications	Child Allowance Act 1995 s7
76	Exemptions	Child Allowance Act 1995 s8
77	Period allowance is payable	Child Allowance Act 1995 s9
78	Person allowance is payable to	Child Allowance Act 1995 s10
79	Application of child allowance	Child Allowance Act 1995 s11
80	Applying for allowance	Child Allowance Act 1995 s12
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98	Maintenance money a debt	Niue Act 1966 s560
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101	Orders <i>in absentia</i>	Niue Act 1966 s563
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104	Cancellation, variation, and suspension of orders	Niue Act 1966 s566
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120	Wills of customary freeholds	Wills Act 1837 s5
121	Estates pur autre vie	Wills Act 1837 s6
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123	Will of a married woman	Wills Act 1837 s8
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135	Revocation of will	Wills Act 1837 s20
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137	Revival of will	Wills Act 1837 s22
138	A devise not to be rendered inoperative by any subsequent conveyance or act	Wills Act 1837 s23
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140	A residuary devise	Wills Act 1837 s25
141	A general devise	Wills Act 1837 s26
142	A general gift	Wills Act 1837 s27
143	A devise without any words of limitation	Wills Act 1837 s28
144	The words "die without issue," or "die without leaving issue" shall be construed to mean die without issue living at the death	Wills Act 1837 s29
145	No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest	Wills Act 1837 s30
146	Trustees under an unlimited devise	Wills Act 1837 s31

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PART II
SUBSIDIARY LEGISLATION

MARRIAGE REGULATIONS 1970

1970 – 1 April 1971

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SCHEDULES

1 Title
These are the Marriage Regulations 1970.

2 Interpretation
(1) In these Regulations –
“Code” means the Family Law Code;
“marriage officer” means a marriage officer as defined in section 2 of the Family Law Code;
“Register” means the Marriage Register kept under regulation 6;
“Registrar” means the Registrar of the High Court, and includes the Deputy Registrar.
(2) Other expressions defined in Part 1 of the Code have the meanings so defined.
(3) A reference to a numbered form is a reference to a form so numbered in Schedule 1.

3 Solemnisation of marriage
(1) All marriages must be solemnised between the hours of 8am and 5pm.
(2) At the time of solemnisation of a marriage, the doors of the building (if any) shall be kept open to allow of the admission of the public.
(3) The 2 witnesses to a marriage shall be of or over the age of 21 years.

4 Notice of marriage
The notice of marriage required under section 4 of the Code shall be in form 1.

5 Consent to marriage of minors
The consent required under section 10 of the Code shall be in form 2.

6 Marriage Registers

Every marriage officer shall keep for the purpose of recording marriages a Marriage Register in form 3 supplied for the purpose by the Registrar.

7 Record of marriage

(1) Every marriage officer by whom a marriage is solemnised shall forthwith record on the original and copies of the Register the several particulars relating to the marriage required by form 3.

(2) If a marriage officer is called upon to solemnise a marriage and at the time no Register is available, he shall enter the particulars of the marriage on a blank form instead of in the Register, and shall, as soon as practicable, affix the form in the Register and that form shall be deemed part of the Register.

(3) No marriage shall be invalidated by any error or defect in form 3 or in the particulars so required to be recorded.

8 Transmission of record to Registrar

The duplicate copy of the Register shall be transmitted to the Registrar under section 8 of the Code.

9 Marriage certificate

Every marriage officer by whom any marriage is solemnised shall, without fee, deliver to one of the parties to the marriage a marriage certificate in form 3.

10 Custody of Registers

(1) The Registers shall be safely kept by the marriage officers in whose custody they are placed, and shall be deemed to be the property of the Crown.

(2) Upon the death, dismissal, transfer, or resignation of any marriage officer, the custody of those Registers shall pass to his successor in office.

11 Registers open to public

The Registers to be kept under these Regulations shall at all reasonable times be open to the public on payment of the prescribed fee.

12 Registrar may issue certified copies or certificates of any entry

(1) The Registrar shall, on the application of any person, and on payment of the appropriate fee prescribed in Schedule 2, issue in form 4 certified copies or certificates of any entry made in the Registers.

(2) Notwithstanding this regulation, the Registrar may dispense with the payment of any fee payable under these Regulations in cases of genuine hardship.

13 Issue of certified copies of entries for official purposes

Notwithstanding regulation 12, where a certified copy of any entry in a Register kept under these Regulations or a certificate as to any such entry is required for any official purpose, the Registrar shall issue the certified copy or special certificate in the prescribed form, free of any charge.

14 Certified copy of any entry in Registers to be received in Court

A certified copy of any entry in a Register, made or given and purporting to be signed by the Registrar and stamped with his seal, or made or purporting to be signed by any Deputy Registrar and stamped with the seal of the Registrar, shall be received in any court as prima facie evidence of the marriage to which it relates.

15 Correction of errors

(1) Any clerical error or any error of fact or substance or any omission of any material fact in any Register may be corrected by the Registrar.

(2) For the purpose of this regulation, the Registrar may require to be produced a statutory declaration and such other evidence as to the facts as he considers necessary.

(3) Any person having custody of a Register shall, upon the direction of the Registrar, make corrections of any errors or omissions in the Register.

(4) Except as provided in this regulation, no alteration shall be made in any entry in any Register after the entry has been completed.

16 Discretion of Registrar

Where for any sufficient cause shown to the satisfaction of the Registrar any act, matter, or thing required by these Regulations cannot be done within the time limited by or in strict compliance with the conditions imposed by these Regulations, it shall be sufficient if that act, matter, or thing is done within a reasonable time thereafter, or if the conditions imposed are complied with so far as is reasonably possible.

17 Endorsement of marriage entry where marriage dissolved

(1) Upon the making of a decree of divorce, or a decree of presumption of death and of dissolution of marriage, or a decree of nullity of marriage, or a decree of dissolution of a voidable marriage in respect of any marriage solemnised in Niue, the Registrar shall cause a memorandum to be entered on the record of the marriage entry.

(2) The Registrar shall forward a notice of the memorandum referred to in paragraph (1) to the marriage officer (if any) having lawful custody of the Marriage Register in which the marriage is registered, and the marriage officer shall enter the particulars disclosed in the notice on the entry in the Marriage Register.

(3) Every certified copy of an entry in a Marriage Register issued after any memorandum has been entered as provided by this regulation shall contain the particulars disclosed in the memorandum.

18 Fees

(1) There shall be paid to the Registrar for various matters specified in Schedule 2 the respective fees specified in that Schedule.

(2) Every marriage officer is hereby empowered to receive and take on behalf of the Registrar the several fees specified in Schedule 2.

SCHEDULES

SCHEDULE 1

FORM 1

Niue

NOTICE OF INTENDED MARRIAGE

Reg. 4

To _____, a marriage officer of Niue.

Notice is hereby given that the undermentioned parties intend to marry at

[Church or other place where marriage is to be solemnised] on 20

	Bridegroom	Bride
Name and surname		
Age		
Occupation		
Status (i.e. bachelor, spinster, widower, widow, or divorced)		
Birthplace		
Usual residence		
Father's name and surname		
Father's occupation		
Mother's name and surname		

I solemnly declare that to the best of my knowledge and belief the foregoing particulars

are true in every respect; and that there is not any impediment to the intended marriage

(*and that the consent required under section 10 of the Family Law Code has been obtained).

[Signature of party giving notice]

*Delete if not applicable

Declared before me, the undersigned, this day of 20

Marriage officer.

Reg. 5

Form 2

CONSENT TO MARRIAGE OF MINOR

I, _____

of _____

being the [State: "*Father or Mother*"]

of [*Full name of party to marriage who is under age*]

who was born on the

hereby consent to his (her) marriage with [*Full name of other party to marriage*]

[*Signature of parent*]

Signed before me, the undersigned, at
day of _____ 20 _____

this

Marriage officer.

Reg. 6

FORM 3
MARRIAGE REGISTER

No. _____

	Bridegroom	Bride
Name and surname		
Age		
Occupation		
Status (i.e. bachelor, spinster, widower, widow, or divorced)		
Birthplace		
Usual residence		
Father's name and surname		
Father's occupation		
Mother's name and surname		

Married, after notice duly given to me as required by section 4 of the Family Law Code, this day of 20

[Signature of marriage officer]

This marriage was solemnised between us:

Signatures of parties married

In the presence of us:

Signatures, places of abode, and calling of witnesses

Reg. 12

Form 4

CERTIFIED COPY OF ENTRY IN MARRIAGE REGISTER

Number		
When married		
Where married		
	Bridegroom	Bride
Name and surname		
Age		
Occupation		
Status (i.e. bachelor, spinster, widower, widow, or divorced)		
Birthplace		
Usual residence		
Father's name and surname		
Father's occupation		
Mother's name and surname		

Certified to be a true copy of the above particulars included in an entry in the Marriage Register in my lawful custody.
Dated at this day of 20 .

Registrar.

Reg. 18

SCHEDULE 2

FEES TO BE PAID TO REGISTRAR OF THE HIGH COURT

	\$
For every notice of intended marriage	0.50
For every marriage solemnised	4.00
For every certified copy of any entry in a Marriage Register, including search	1.00
Search or inspection of Marriage Register, in respect of each name or entry	0.20

BIRTHS AND DEATHS REGISTRATION REGULATIONS 1984

1984 – 1 July 1984

1	Title	21	Persons responsible for reporting deaths
2	Interpretation	22	Entry in Register of Deaths
	PART 1	23	Informant may sign Register of Deaths
	REGISTRATION GENERALLY	24	Certificate by medical practitioner
3	Appointment of Registrar official	25	Deaths not attended
4	Place of registration of births and deaths	26	Failure by medical practitioner to give certificate
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	REGISTRATION OF BIRTHS		PART 4
5	Form of Register of Births		GENERAL PROVISIONS
6	Particulars required for registration	28	Registers open to public
7	Persons responsible for reporting births	29	Issue of certified copy for use
8	Notification form	30	Evidence of entries
9	Entry in the Register of Births	31	Failure to supply required particulars
10	Certificate of registration	32	Fees
11	Births not previously registered	33	Custody of Registers
12	Births occurring outside Niue	34	Correction of errors
13	Change of name	35	Regulations to apply to stillborn child
14	Informant may sign Register of Births	36	Failure of Registrar to register information
15	Entry of father's name	37	Discretion of Registrar
16	Notice to attend on Registrar		
17	Legitimated children		
18	Late registration		
	PART 3		SCHEDULES
	REGISTRATION OF DEATHS		
19	Form of Register of Deaths		
20	Particulars of deaths		

-
- 1 Title**
These are the Births and Deaths Registration Regulations 1984.
- 2 Interpretation**
In these Regulations –
“informant” means any person required by these Regulations to furnish to the Registrar particulars of a birth or death, as the case may be;
“register” means the Register of Births or the Register of Deaths, as the case may be;
“Registrar” means the Registrar appointed under these Regulations and includes a Deputy Registrar so appointed.

PART 1
REGISTRATION GENERALLY

3 Appointment of Registrar

There shall be appointed under Part VI of the Constitution such fit and proper persons as may be required to be Registrar and Deputy Registrar.

4 Place of registration of births and deaths

All births and deaths occurring in Niue shall be registered by the Registrar whose office is in Alofi.

PART 2
REGISTRATION OF BIRTHS

5 Form of Register of Births

The Register of Births shall be in form 1 in Schedule 1.

6 Particulars required for registration

(1) For the purpose of these Regulations, the following particulars of a birth occurring in Niue shall be furnished to the Registrar –

- (a) The date and place of birth;
- (b) The christian or first name and sex of the child;
- (c) The names of the father and mother respectively; when and where married, ages, place of birth, place of residence and occupations;
- (d) The description of the father and mother (race to be stated in full) [For example, Europeans, Niuean, half-European, half-Niuean];
- (e) The name, address, occupation and relationship of the informant to the child;
- (f) The date of registration.

(2) The particulars of births specified in paragraph (1) shall be furnished to the Registrar within 14 days after the birth of the child.

7 Persons responsible for reporting births

(1) The following persons shall be responsible for furnishing to the Registrar particulars of births specified in regulation 6, namely –

- (a) In the case of a birth occurring in the public hospital, the midwife, nursing sister or nurse-in-charge at the time of birth;
- (b) In the case of a birth occurring outside of hospital, the father or mother of the child;
- (c) Every occupier of the house or building in which the child was born;
- (d) Any person present at the birth of the child.

(2) If any of the persons specified in paragraph (1) duly furnishes the required information, the others of those persons shall thereupon be freed from the obligation of doing so.

8 Notification form

The notification form shall be in form 2 in Schedule 1.

9 Entry in Register of Births

(1) Upon receipt of the particulars of birth of any child born in Niue the Registrar shall enter those particulars in the Register of Births.

(2) The Registrar may, notwithstanding that the full particulars required by these Regulations have not been furnished, upon being satisfied with the particulars furnished to him, register the birth of any child in the Register of Births.

10 Certificate of registration

The certificate of registration shall be in form 3 in Schedule 1.

11 Births not previously registered

Notwithstanding anything in these Regulations, the Registrar may register the birth of any person born in Niue, whether before or after the commencing of these Regulations, whose birth has not been previously registered.

12 Births occurring outside Niue

(1) Where a child born out of Niue arrives and before attaining the age of 24 months, and the parents or other persons having lawful charge of the child are ordinarily resident in or about to take up their abode in Niue, a Registrar, on application being made at any time within six months from the date of the child's arrival by one of the parents, or by a person having lawful charge, shall register the birth of the child in the manner provided by these Regulations for the registration of births taken place in Niue.

(2) Documentary evidence as to the date of birth of the child must be submitted together with the application for the registration of such a birth.

(3) The Registrar shall not refuse the application of any person for registration of the birth of the child born out of Niue on the ground of the nonproduction of documentary evidence alone.

13 Change of name

(1) Any person whose birth is registered in Niue, and who has attained the age of 21 years or is married or has at any time been married, may change his or her name, whether as to his/her surname or as to any first name or Christian name.

(2) (a) The parents of any child who has not attained the age of 21 years and has never been married may change the name of the child, whether as to his/her surname or as to any first or christian name.

(b) Where the child has attained the age of 18 years his/her consent shall be required to the change of name.

(c) For the purposes of this paragraph the term "parents" –

(i) Where one of the parents has deserted the child or is dead or unknown or missing or of unsound mind, means the other parent;

(ii) Where the child has been adopted, according to the law in force for the time being, means the adoptive parents or one of them;

(iii) Where the child has a legal guardian, means or includes that guardian.

(3) (a) For the purpose of this Regulation, any change of name shall be effected by Deed Poll in form 4.

(b) Any application at any time for the change of name shall be restricted in all respects to not more than 2 applications except in special circumstances and subject to the discretion of the Registrar whose decision shall be final.

(4) Any change of name shall be registered at the Registrar's Office and the original registration amended accordingly subject always to the payment of the prescribed fee set out in Schedule 2 except where fees are being waived by the Registrar in case of hardship or other valid reasons.

(5) Every certificate of the date of birth issue under this clause shall show the name as changed and no other name and reference to the original name or names for identification purposes.

14 Informant may sign Register of Births

Upon completing all the entries in the Register of Births, the Registrar shall request the informant, if then present, to sign the entries but this condition is obligatory rather than compulsory.

15 Entry of father's name

Unless the informant states that the child is born in lawful wedlock or is the posthumous child of lawfully married persons or unless the father together with the mother attends personally at the Registrar's Office and make admission that he is the father of the child and the mother agrees to the father's name being entered in the Register of Births, or unless an affiliation order has been made under Part 7 of the Family Law Code in respect of the child, the Registrar shall not enter in the Register of Births the name of any person as the father of the child.

16 Notice to attend on Registrar

Notwithstanding that the birth of any child has not been registered within the period specified in regulation 5(2), the Registrar may after one month and not later than 6 months after the birth of the child, by notice in writing (form 5) requires the parent or parents or some person present at the birth of the child to attend personally at his office within the time specified in the notice and give information of the particulars required to be registered, and the Registrar shall thereupon register the birth according to the information given.

17 Legitimated children

- (1) (a) Upon the intermarriage of parents of an illegitimate child born in Niue and upon application being made to the Registrar in whose office the birth of the child is registered, the Registrar may register the particulars of the father.
- (b) Satisfactory evidence by statutory declaration or other such evidence he may deem necessary of the paternity of that child shall have been first given to the Registrar.

(2) Notwithstanding anything in paragraph (1) every case where it is not practical for the natural parents to attend personally at the office of the Registrar in whose office the birth was registered the application be made in writing with support documentary evidence to the Registrar who may authorise the registration of the particulars relating to the father.

18 Late registration

Notwithstanding the time restriction imposed by regulation 12 the Registrar may authorise the registration of any birth which occurred out of Niue provided that satisfactory evidence by statutory declaration or other evidence may be deemed necessary as to the birth of the child irrespective as to whether or not the birth of the child has been registered at the country where it originally occurred or took place.

**PART 3
REGISTRATION OF DEATHS**

19 Form of Register of Deaths

The Register of Deaths shall be in form 6.

20 Particulars of deaths

(1) For the purpose of these Regulations, the following particulars of deaths occurring in Niue shall be furnished to the Registrar –

- (a) The date and place of death;
- (b) The name and residence of the deceased;
- (c) The sex of the deceased;
- (d) The age of the deceased;
- (e) If married, the name of the deceased's husband or wife;
- (f) The number and sex of children living (if any);
- (g) The cause of death certified by a medical officer who attended the deceased during last illness;
- (h) The duration of illness of the deceased (if known);
- (i) The name of medical practitioner giving the certificate and brief description of qualifications;
- (j) The date when medical practitioner last saw the deceased;
- (k) The names and descriptions of the father and mother of the deceased (race to be stated in detail). For example, European, Niuean, half European, and half Niuean and their place of residence;
- (l) The name, description, place or residence, occupation and degree of relationship of informant (if any) to the deceased;
- (m) The date of registration.

(2) The particulars of deaths specified in paragraph (1) shall be furnished to the Registrar within 24 hours after death occurred.

21 Persons responsible for reporting deaths

(1) The following persons or officer shall be responsible for furnishing the particulars of deaths specified in regulation 20, namely –

- (a) The medical practitioner by issuing a death certificate duly executed under his hand;
- (b) Every occupier of the house or building in which the death took place;
- (c) Any person present at the death.

(2) If any of the persons or medical officer specified herein duly furnishes the required information, the others of those persons or officers shall thereupon be freed from the obligation of doing so.

22 Entry in Register of Deaths

(1) Upon the receipt of the particulars of death of any person dying in Niue, the Registrar shall enter those particulars in the Register of Deaths.

(2) Notwithstanding that the full particulars required by these Regulations have not been furnished, the Registrar, upon being satisfied with the particulars furnished to him, may register the death of any person in the Register of Deaths.

23 Informant may sign Register of Deaths

Upon completing the entries in the Register of Deaths, the Registrar shall request the informant, if then present, to sign the entries, but the informant shall not be obliged to sign the entries.

24 Certificate by medical practitioner

(1) On the death of any person who has been attended during his/her last illness by a medical practitioner, that medical practitioner shall sign and deliver or cause to be delivered to the Registrar a certificate in form 7 in Schedule 1 stating to the best of his knowledge and belief the causes of death (both primary and secondary) and the duration of the last illness of the deceased.

(2) The particulars set forth in the said certificate shall be entered, together with the name of the certifying medical practitioner in the Register of Deaths.

25 Deaths not attended

(1) On the death of any person in Niue where there is for the time being a Director of Health and that person has not been attended by a medical practitioner as aforesaid, the Director of Health or his deputy, as the case may be, or other medical practitioner authorised by him in that behalf, shall sign and deliver, or cause to be delivered, to the Registrar a certificate in form 8 in Schedule 1, stating to the best of his knowledge and belief the cause of death (both primary and secondary) of the deceased.

(2) (a) For the purpose of enabling him to issue such a certificate, the Director of Health, and in his absence the Deputy Director of Health, shall have the right to make such examination or who without reasonable cause obstructs or interferes with the Director of Health or his deputy, in conducting such an examination, is liable to a fine not exceeding 1 penalty unit.

(b) If any relative of the deceased objects to such an examination being made, the Director of Health or the deputy acting on his behalf, may appeal to Cabinet whose decision shall be final.

(3) (a) On the receipt by the Registrar of a medical certificate under the provision of this regulation, the Registrar shall issue to such person as he deems entitled thereto an authority for the burial of the deceased.

(b) Every such authority under his hand shall be in form 9 in Schedule 1.

(4) Where in any case to which paragraph (3) applies any person, without an authority in form 9 being first obtained, bury or causes to be buried any person who has died in Niue, he is liable to a fine not exceeding 1 penalty unit.

26 Failure by medical practitioner to give certificate

Every medical practitioner required under regulations 24 and 25 to issue a certificate in form 7 or form 8 in Schedule 1 concerning any death refuses or neglects to give that certificate, and any person to whom any such certificate is given who fails to deliver the certificate to the Registrar is liable to a fine not exceeding 0.5 penalty units.

27 Notice by Minister of religion

Every Minister of religion or other person who performs any religious or funeral service for or at the burial of any dead body, or the person who conducts the burial of any dead body shall give or forward within 7 days written notice of the burial in form 10 in Schedule 1 to the Registrar.

**PART 4
GENERAL PROVISIONS**

28 Registers open to public

(1) The Registers to be kept under these Regulations shall at all reasonable times be open to the public for search on payment of the appropriate fee prescribed in Schedule 2.

(2) The Registrar shall, on the application of any person and on payment of the appropriate fee prescribed in Schedule 2, issue certificates of any entry made in the said Registers.

(3) Notwithstanding this regulation, the Registrar may dispense with the payment of any fee payable under these Regulations in cases of genuine hardship.

29 Issue of certified copies for official use

(1) Notwithstanding regulation 32, where a certified copy of any entry in a Register kept under these Regulations or a certificate as to any entry is required for the purposes of any Government Department, the Registrar shall issue the certified copy or special certificate in the prescribed form, free of charge.

(2) Every certified copy or certificate issued under paragraph (1) shall indicate the purpose for which it was issued and shall not be available for any other purpose, and shall be retained by the Department for whose purposes it was required.

30 Evidence of entries

A certified copy of or a certificate relating to any entry in a Register, made or given and purporting to be issued and signed by the Registrar and sealed and stamped with his seal, shall be received in any court as prima facie evidence of the birth or death to which it relates.

31 Failure to supply required particulars

(1) Every person required by these Regulations to furnish particulars in respect of any matter who, without sufficient cause, fails to furnish those particulars is liable for a first offence to a fine not exceeding 0.5 penalty units and for a second or any subsequent offence to a fine not exceeding 0.5 penalty units and any person who wilfully furnishes false particulars is liable to a fine not exceeding 1 penalty unit.

(2) Where any person who is convicted under these Regulations for failure to furnish the particulars required for the registration of any birth or death, the court shall direct the Registrar forthwith to register the birth or death, and if the birth or death has not been previously registered the Registrar shall register the birth or death accordingly.

32 Fees

For the purposes of these Regulations, the fees specified in Schedule 2 shall be payable to the Registrar as the case may require.

33 Custody of Registers

(1) The Registers shall be safely kept by the Registrar in whose custody they are placed, and shall be deemed to be the property of the Crown.

(2) Upon the death, dismissal, transfer or resignation of the Registrar, the custody of those Registers shall pass to his successor in office.

34 Correction of errors

(1) Any clerical error or any error of fact or substance or any omission of any material fact in any Register may be corrected by the Registrar as the case may require.

- (2) (a) Instead of making any correction as aforesaid, the Registrar may, if he thinks fit, direct a new entry to be made in the Register.
(b) Any such entry shall contain a reference to the original entry, and the original entry shall contain a reference to the new entry together with the date of the correction.
(c) Any such new entry shall be signed by a person who is required under these Regulations to give the particulars of birth or death, as the case may be, or by such other persons as may be authorised by the Registrar.

(3) For the purpose of this regulation, the Registrar may require to be produced a statutory declaration and such other evidence as to the facts as he considers necessary.

(4) Except as otherwise provided in these Regulations, no alteration in any Register shall be made.

35 Regulations to apply to stillborn child

- (1) (a) The provisions of these Regulations relating to the registration of births shall apply in the case of a stillborn child, but a Registrar may dispense with the registration of the death of any such child.
(b) A stillborn child shall be a child that has issued from its mother after the expiration of the 28 weeks of pregnancy and was not alive at the time of such issue.

(2) Particulars required for registration of a stillborn child shall be entered on a separate Register kept specially for that purpose.

36 Failure of Registrar to register information

Where –

- (a) The Registrar refuses or without reasonable cause omits to register any birth or any death of which he had due notice and information; or

(b) Any person having the custody of any Register or certified copy thereof, or any part thereof, negligently loses or injures the same, or negligently allows the same to be injured while in his keeping – he is liable to a fine not exceeding 1 penalty unit.

37 Discretion of Registrar

Where for any sufficient cause shown to the satisfaction of the Registrar any act, matter, or thing required by these Regulations cannot be done within the time limited by or in strict compliance with the conditions imposed by these Regulations, it shall be sufficient if that act, matter, or thing is done within a reasonable time thereafter, or if the conditions imposed are complied with so far as is reasonably possible.

SCHEDULES

SCHEDULE 1

Form 1

Reg 5
No.

NIUE
REGISTRATION OF BIRTH

Child	Particulars
1 Date of Birth:	
2 Place of Birth:	
3 Christian and Surname:	
4 Sex:	
Parents	
5 When Married:	
6 Where Married:	
Father	
7 Name and Surname:	
8 Age and Race:	
9 Place of Birth and Residence:	
10 Occupation:	
Mother	
11 Name and Surname:	
12 Age and Race:	
13 Place of Birth and Residence:	
14 Occupation	
Informant	
15 Signature:	
16 Residence:	
17 Occupation:	
18 Relationship to Child:	
19 Date of Registration:	
20 Signature of Registrar:	

I certify that the above particulars are a true record of the birth of
recorded this day of 20

Caution – Any person who (1) falsifies any of the particulars on this certificate; or (2)
uses it as true knowing it to be false, is liable to prosecution under the Births and
Deaths Registration Regulations 1984.

Form 2

Issue No. 001

BIRTHS REGISTRATION REGULATIONS 1984

(Reg 8)

NOTIFICATION FORM

(To be delivered or posted to the Registrar of Births within 14 days after the birth)

The Registration of Births

Alofi, Niue

A TAKE NOTICE that a female/male child was born at Lord Liverpool Hospital

on ____/____/20__

Full name of mother:

Village of residence:

Signature of Nurse/Midwife/Nursing Sister in attendance and date:

____/____/20__

IF CHILD STILLBORN complete the following and delete where not applicable.

(a) Stillborn – born to

____ of ____
on ____/____/20__

(b) Report pending/Report not required

Signature of Medical Practitioner

C FOR OFFICE USE ONLY

(a) Registered by: _____

(b) Notice to parents sent on ____/____/20__

(c) All actions completed on ____/____/20__

(d) Registration No.: _____

Signature of officer responsible
for the final actions

Form 3

Issue

No. _____

CERTIFICATE OF REGISTRATION

(Reg 10)

THIS IS TO CERTIFY that the birth of a male/female child born on
____/____/20__ has been registered in this office.

Name of Child: _____

Registration No: _____

Name of mother: _____

Name of father: _____

Village of residence: _____

Date of registration: ____/____/20__

Deputy Registrar

Note: This is not a birth certificate but it can be used locally for school enrolment purposes, etc.

BIRTHS AND DEATHS REGULATIONS 1984
(Reg 13)
Form 4

CHANGE OF NAME BY DEED POLL

(Full Name) I, _____
(Full Address) of _____ am
(Occupation) _____

desirous of abandoning and renouncing the use of the name of _____
(Old Name) I hereby absolutely abandon and renounce the use of the name _____

and HEREBY DECLARE that at all times here after
(New Name) I shall use and subscribe the name _____
(Old Name) in lieu of the name _____ in all deeds
and documents and in all acts and proceedings and in all _____
transactions and matters and things and upon all occasions, AND
I HEREBY AUTHORISE all persons at all times hereafter to _____
describe and address me by the name of _____

(New Name) _____
(Old Name) IN WITNESS WHEREOF I have here subscribed the name of _____
(New Name) _____ and also my assumed name of _____
_____ this _____ day of _____ 20____
SIGNED by the said _____
hereafter to be known as _____

in the presence of _____
_____ Signature: _____
_____ Old Name _____

New Name _____
Witness: _____
Address: _____
Occupation: _____

Form 5
BIRTHS REGISTRATION REGULATIONS 1984

(Reg 16)

OFFICE OF REGISTRAR OF BIRTHS
ALOFI
NIUE

To: _____

The birth of your child which occurred on the _____
has not yet been registered at my office.

You are therefore reminded that registration should be effected on or before the
_____ day of _____ 20__

Registrar

NOTE: If the birth is not registered within 14 days the persons responsible for
registration render themselves **LIABLE TO PROSECUTION**.

REGISTER OF DEATHS
Form 6 (Reg 19)
Registered at Alofi, in the Island of Niue

Entry NO:

DECEASED
1. Date of death:
2. Place of death:
3. Name
4. Residence:
5. Sex:
6. Age:
7. Name of husband or wife (if any):
8. Number and sex of children living (if any):
9. Causes of death:
10. Duration of last illness:
11. Name of medical practitioner giving certificate and his qualifications (if any):
12. Date when medical practitioner last saw deceased:
PARENTS OF DECEASED
Mother
13. Name:
14. Residence:
15. Description:
Father
16. Name:
17. Residence:
18. Description:
INFORMANT
19. Signature:
20. Residence and occupation:
21. Degree of relationship (if any) to deceased:
REGISTRAR
22. Date of registration:
23. Signature of Registrar:

I solemnly declare that to the best of my knowledge and belief the foregoing particulars are true in every respect.

Signature of Registrar

Form 7
BIRTHS AND DEATHS REGISTRATION REGULATIONS 1984
(Reg 20)
MEDICAL CERTIFICATE OF CAUSES OF DEATH

A Particulars as to deceased:
Name of deceased: _____

Sex: _____ Aged as stated to me: _____

Date of death: _____, day of _____
20 _____

Place of death: _____

Last seen by me: _____, day of _____
20 _____

B Causes of death (State clearly in full and not in abbreviated form)

1 Disease, injury or complication (a) _____

_____ directly leading to death:

_____ due to, or as a consequence of: (b)

_____ due to, or as a consequence of: (c)

2. Other significant factors: _____

3. Appropriate between onset and death: _____

C Additional data (delete box not applicable)

1.	Did you see the body after death:	Yes No
2.	Post mortem (a) not intended to be held	Yes No
	(b) held and results available	Yes No
	(c) being or to be held	Yes No

I, _____ certify that I was in medical attendance during the abovenamed deceased's last illness and the particulars quoted above are true to the best of my knowledge and belief.

(1) _____ (2) _____ (3) _____
Signature of Medical Officer Qualifications Date

Note: Form 8 to be completed if Medical Practitioner did not attend the deceased during his/her last illness AND NOT THIS FORM

Form 8
CERTIFICATE OF DEATH BY MEDICAL OFFICER OF PERSON NOT
ATTENDED BY A MEDICAL OFFICER
(Reg 20)

TO THE REGISTRAR OF BIRTHS AND DEATHS, NIUE

I, the undersigned, hereby certify that I have examined the body of _____ who
is reported to have died at _____ on the _____ day
of _____ 20 _____

To the best of my knowledge and belief the causes of death were:

Primary _____

Secondary _____

Witness by hand this _____ day of _____ 20 _____ at _____

Medical Officer

Form 9
AUTHORITY TO BURY
(Reg. 25(3))

To _____ of _____
I _____, the Registrar of Births and Deaths, Niue
hereby authorise the burial of the body of _____ who
died
at

on the _____ day of _____ 20 _____

Witness by hand this _____ day of _____ 20 _____
at _____

Registrar

Please advise the deceased family that this death must be registered within one week

Form 10
CERTIFICATE AS TO BURIAL
(Reg 27)

I, _____,
of _____,
hereby certify that the body of _____
was duly buried on the _____ day of _____ 20 _____ in my
presence

Minister and Denomination

Reg 30

SCHEDULE 2
FEES TO BE TAKEN BY REGISTRAR

- | | | |
|----|---|---------|
| 1. | Subject to (2) for every certified copy or certificate relating to an entry in any register | \$10.00 |
| 2. | For every "urgent" issue of a certified copy or certificate of birth | \$15.00 |
| 3. | For registration of a name change including the issue of a birth certificate | \$15.00 |

FEES TO BE TAKEN BY NIUE CONSULATE GENERAL
OFFICE IN NEW ZEALAND

- | | | |
|----|---|---------|
| 1. | For every certified copy or certificate relating to an entry in any Register | \$25.00 |
| 2. | For re-typing worn out copies of any certified copy or certificate relating to an entry in any register | \$15.00 |

CHILD ALLOWANCE (FEES) REGULATIONS 2004

2004/3 – 1 July 2004

1 Title

These are the Child Allowance (Fees) Regulations 2004.

2 Interpretation

(1) Expressions in these Regulations have the same meaning as they have in Part 6 of the Family Law Code.

(2) In these Regulations, "Code" means the Family Law Code.

3 Rate of child allowance

(1) The rate of child allowance payable under section 72 of the Code shall be –

(a) \$100 grant for every newborn child to a non-public servant mother;

and

(b) \$340 per annum for every qualifying child.

(2) Child allowance is payable under the Code in respect of each child who on 1 January of that year was a qualifying child or becomes a qualifying child on or before 30 June of that year.

4 Payment of child allowance

(1) Child allowance is payable –

(a) Once for a newborn child to a non-public servant mother shortly after giving birth; and

(b) In advance by equal payments on a quarterly basis or on the day which is one week before the first day of each school term in a year.

(2) Where under regulation 4(1)(b), a child becomes a qualifying child on or before 30 June in a year any unpaid child allowance payable in respect of that child for that year is to be paid on the next day of child allowance.

HIGH COURT RULES 1916

...

Probate and Letters of Administration

72 Probate of any will may be granted by the Court in form 7 in Schedule 2.

73 Letters of administration of the estate of an intestate may be granted by the Court in form 8 in Schedule 2.

74 Letters of administration with the will annexed may be granted by the Court in form 9 in Schedule 2.

75 The security to be given by an administrator may be in form 10 in Schedule 2.

76 In the case of a person residing out of Niue, administration, with or without a will annexed, may be granted to his attorney acting under a power of attorney.

77 (1) Every executor or administrator shall, within 12 months after the grant of probate or letters of administration, or within such further period as the Court on application may direct, lodge with the Registrar a full and distinct account in writing of his administration of the estate.

(2) The account shall be verified by affidavit.

78 If an executor or administrator makes default in filing such an account within the time aforesaid, or if any account so filed is insufficient, the Court may on the application of any person interested, or on the application of the Registrar, order the executor or administrator to file an account or a further account within such time as the Court in such order appoints, and disobedience to such order shall be a contempt of Court.

SCHEDULE 2

Form 7

PROBATE

In the High Court of the Niue

In the matter of the will of, deceased.

Be it known to all men that on thisday of, in the year 20....., the last will and testament of, deceased, a copy of which is hereunto annexed; has been exhibited, read, and proved before this Court and administration of the estate of the deceased has been and is hereby granted to, the executor in the said will and testament named, being first sworn faithfully to execute the same.

Given under the seal of the High Court of Niue at, this day of20

[SEAL]
Registrar.

Form 8

LETTERS OF ADMINISTRATION WITHOUT A WILL

In the High Court of Niue

In the matter of the estate of, deceased intestate.

To....., widow [*or as the case may be*] of deceased.

Whereas the saidlately departed this life intestate: You are therefore by these presents constituted administrator of the estate of the said deceased, you having been first sworn well and faithfully to administer the same.

Given under the seal of the High Court of Niue at, thisday of 20.....

[SEAL]

Form 9

LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED

In the High Court of Niue

In the matter of the will, deceased.

To....., widow [*or as the case may be*] of deceased.

Whereas the saidlately departed this life leaving a will which has been duly proved in this Court and a copy of which is annexed: and whereas no executor is named in that will [or the executors named in that will have not applied for probate]: you are therefore by these presents constituted administrator with the will annexed of the estate of the said deceased, you having been first sworn well and faithfully to administer the same.

Given under the seal of the High Court of Niue at, this day of 20.....

[SEAL]

Form 10

ADMINISTRATION BOND

In the High Court of Niue

In the matter of the estate of, deceased.

Know all men by these presents that weare held and firmly bound unto the Registrar of the High Court at Niue in the sum of, for which payment well and truly to be made to the said Registrar we do and each of us does bind ourselves and each of us, and the executors and administrators of us and of each of us, jointly and severally, firmly by these presents.

Whereas by order of this Court of the day of20....., it is ordered that letters of administration of the estate of, deceased, be granted to the said on his giving security for the due administration thereof: and whereashas sworn that to the best of his knowledge and belief the said estate is under the value of \$.....

Now, the condition of the above-written bond is that if the above-boundenwell and truly administers the said estate according to law and renders to this Court a true and just account of his administration on or before theday of20....., then this bond shall be void and of none effect, but otherwise shall remain in full force.

Signed the day of, 20....., in the presence of –

.....

HIGH COURT RULES AMENDMENT NO.3

...

PROCEEDINGS FOR DIVORCE OR NULLITY OF MARRIAGE

3 In these Rules "respondent" includes all co-respondents so far as the provision in which the term occurs is applicable to them.

4 (1) Every proceeding for a decree of divorce or nullity of marriage shall be commenced by filing a petition in the Court.

(2) The petition shall be in accordance with form 1 in Schedule 1 and shall set out the grounds for divorce or nullity of marriage.

5 Every person seeking a decree of divorce or of nullity of marriage shall append to the petition an affidavit in form 2 in Schedule 1, verifying the same so far as the deponent is able to do so.

6 (1) There shall be annexed to every petition and every copy thereof a summons to the respondent in accordance with form 3 in Schedule 1 and the original shall be filed in the Court.

(2) (a) The summons shall specify, *inter alia*, the sitting of the Court fixed by the Registrar for the hearing of the petition.

(b) In making that fixture the Registrar shall take into account the distance of the place of residence of the respondent from the place where the petition is to be heard and all other relevant circumstances, and the sitting so fixed shall not without leave of the Court be on a date less than 21 days from the date of filing of the petition.

7 (1) Service of a petition shall be effected by personally delivering to each respondent a copy of the petition under seal of the Court with a copy, signed by the Registrar, of the summons to the respondent required by these Rules to be annexed to the petition.

(2) Personal service shall in no case be effected by the petitioner, but the petitioner may be present when such service is effected.

(3) A petition for a decree of divorce or nullity of marriage may be served out of Niue by leave of the Court.

8 (1) Each respondent who resides within Niue may, within 14 days after service of the petition on him or her, file an answer thereto. Where a respondent resides beyond Niue, the time after service within which he or she may file an answer to the petition shall, on application by the petitioner, be fixed by the Court.

(2) An answer shall be in accordance with form 4 in Schedule 1.

9 A respondent who fails to file an answer within the time hereinbefore prescribed, or within any extended time allowed for that purpose, shall not be entitled to be heard on the petition, without leave of the Court, granted on such terms as the Court thinks fit, except on questions of costs, custody of children, or maintenance.

10 (1) Where a respondent intends to apply for relief, the answer of that respondent shall conclude with a prayer for the relief to which he or she claims to be entitled.

(2) An answer may be amended by leave of the Court, by adding such a prayer at or before the trial.

11 The Court may at any time order further particulars to be given of any matters pleaded.

12 (1) (a) Every application for custody of children or for maintenance shall be to the Court by notice under form 5 in Schedule 1.

(b) Any such application may be made by a respondent, whether or not he or she has filed or intends to file an answer to the original petition.

(2) An order for custody of children may be made upon the hearing of any petition in which a prayer for such custody is contained, without the necessity of complying with the requirements of subclause (1).

(3) Where the parties are agreed upon the terms of any order granting custody of children or maintenance, the order may, by consent of the parties, be included in the decree, without the necessity of complying with the requirements of subclause (1).

13 Any application to the Court, or to a Judge, whether in Court or Chambers, not required to be made by petition or by notice of application for custody of children or for maintenance, may be made by motion.

14 In matters for which no specific provision is made in this Part in respect of matrimonial causes, the general provisions of the principal Rules providing for the conduct of actions before the High Court, as far as they are applicable and with the necessary modifications shall apply.

SCHEDULE

FORMS IN PROCEEDINGS FOR DIVORCE OR NULLITY OF MARRIAGE

Rule 4

Form 1

In the High Court of Niue

(In Divorce)

Between A.B., of[Occupation], Petitioner,
and C.D., of[Occupation], Respondent

PETITION

The petitioner prays for a divorce from the respondent on the following grounds:

[Here state the grounds for divorce.]

Dated thisday of20.....

.....
Signature of Petitioner

Rule 5

Form 2

In the High Court of Niue

(In Divorce)

Between A.B., of[*Occupation*], Petitioner,
and C.D., of[*Occupation*], Respondent.

I, A.B., of[*Occupation*], make oath and say –

- 1 I am applying for a divorce from my wife (husband) named: [*Full name*].
- 2 We were married at by of the
.....Church, on theday of
.....19.....
- 3 There arechildren of the marriage, namely: [*Full names*].
- 4 The grounds upon which I am applying for the divorce are: [*Set out grounds*],
and the following are the facts concerning the same: [*Set out proof fully*].
- 5 I am a native ofand the saidis a native of
.....

Sworn atby the above-named A.B. thisday of
.....20.....

A Solicitor of the High Court
(or A Registrar of the High Court.)
(or A Postmaster.)
(or A collector of customs.)
(or A medical officer)

Rule 6 (1)

Form 3

In the High Court of Niue

(In Divorce)

Between A.B., of [*Occupation*], Petitioner,
and C.D., of[*Occupation*], Respondent.

SUMMONS

You are hereby summoned, if you wish to defend these proceedings, to appear at the trial thereof before the High Court atat the first sitting of this Court for the trial of civil proceedings after the expiration of days from but exclusive of the date of service upon you of the petition in these proceedings.

A copy of the petition and of the supporting affidavit in these proceedings is annexed. hereto.

Dated this..... day of20.....

(SEAL)

.....
Registrar.

To the above-named Respondent.

Rule 8 (2)

Form 4

In the High Court of Niue

(In Divorce)

Between A.B., of[*Occupation*], Petitioner,
and C.D., of[*Occupation*], Respondent

Answer

I, C.D.,of[*Occupation*], the above-named
respondent, make oath and say –

1 I was this day served with a petition for divorce and affidavit in support
thereof.

2 I admit (or deny) the charges made against me in the petition and affidavit.
[*Or set out which are admitted or denied.*]

3 I (do not) object to a divorce being granted.

4 I wish the children to remain the custody of

Sworn at by the above-named A.B. this day of
.....20.....

A Solicitor of the High Court
(or A Registrar of the High
Court).
(or A Postmaster.)
(or A collector of customs.)
(or A medical officer.)

Form 5

In the High Court of Niue

(In Divorce)

Between A.B., of[*Occupation*], Petitioner,
and C.D., of[*Occupation*], Respondent.

Application for Custody of Children (or Maintenance)

Take notice that the Petitioner (Respondent) intends to apply to the Court for an order
for the custody of the children of the marriage (or for a maintenance order against the
Respondent (Petitioner)).

Dated thisday of20.....

.....
Petitioner (Respondent).

To the above-named Respondent (Petitioner).