

## SCHEDULE 1

### Amendment of primary legislation

#### **Amendment of the Domicile and Matrimonial Proceedings Act 1973**

- 1.—(1) The Domicile and Matrimonial Proceedings Act 1973<sup>(1)</sup> is amended as follows.
- (2) In section 7<sup>(2)</sup> (jurisdiction of Court of Session)—
- (a) in subsection (2A)—
    - (i) after “if (and only if)”, insert “either of the parties to the marriage”, and
    - (ii) for paragraphs (a) and (b) substitute—
      - “(a) is domiciled in Scotland on the date when the action is begun, or
      - (b) was habitually resident in Scotland throughout the period of one year ending with that date.”,
  - (b) in subsection (3A)—
    - (i) after “if (and only if)” insert “either of the parties to the marriage”,
    - (ii) omit the first paragraphs (a) and (b),
    - (iii) for the second paragraphs (a) and (b) substitute—
      - “(a) is domiciled in Scotland on the date when the action is begun,
      - (b) was habitually resident in Scotland throughout the period of one year ending with that date, or
      - (c) died before that date and either—
        - (i) was at death domiciled in Scotland, or
        - (ii) had been habitually resident in Scotland throughout the period of one year ending with the date of death.”,
  - (c) omit subsection (3B),
  - (d) omit subsection (5A), and
  - (e) in subsection (9) for “a member state of the European Union” substitute “the United Kingdom, the Channel Islands and the Isle of Man”.
- (3) In section 8<sup>(3)</sup> (jurisdiction of sheriff court in respect of actions for separation)—
- (a) in subsection (2)—
    - (i) omit “or for declarator of recognition, or non-recognition, of a relevant foreign decree”,
    - (ii) for paragraph (a) substitute—
      - “(a) either of the parties to the marriage—
        - (i) is domiciled in Scotland on the date when the action is begun, or
        - (ii) was habitually resident in Scotland throughout the period of one year ending with that date, and”,

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(1) 1973 c.45.

(2) Section 7 was amended by the Presumption of Death (Scotland) Act 1977, (c.27), section 19 and schedule 2, the Family Law (Scotland) Act 2006, (asp 2), section 37(2) and schedule 2, paragraph 1, [S.S.I. 2001/36](#) and [S.S.I. 2005/42](#).

(3) Section 8 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), sections 6(1), 7(4) and schedule 1, paragraph 18, the Family Law (Scotland) Act 2006, (asp 2), section 37(3), the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011, (asp 15), section 15, the Marriage and Civil Partnership (Scotland) Act 2014, (asp 5), section 23, [S.S.I. 2001/36](#) and [S.S.I. 2005/42](#).

*Status: This is the original version (as it was originally made).*

- (b) in subsection (2A)—
  - (i) after “marriage” where it first occurs insert “or for declarator of recognition, or non-recognition, of a relevant foreign decree”,
  - (ii) for paragraph (b) substitute—
    - “(b) either party to the marriage—
      - (i) is domiciled in Scotland on the date when the action is begun,
      - (ii) was habitually resident in Scotland throughout the period of one year ending with that date, or
      - (ii) died before that date and either—
        - (A) was at death domiciled in Scotland, or
        - (B) had been habitually resident in Scotland throughout the period of one year ending with the date of death.”,
- (c) omit subsections (2B), (2C) and (2D),
- (d) omit subsection (3A), and
- (e) in subsection (4) omit “, provided that entertaining the action would not contravene Article 6 of the Council Regulation”.
- (4) In section 10(4) (ancillary and collateral orders) omit subsections (1B)(5) and (1BA)(6).
- (5) In section 11(7) (sisting of certain actions) omit subsection (2).
- (6) In section 12(8) (supplementary), in subsection (5) omit paragraphs (b) to (d).
- (7) In schedule 1B (jurisdiction in relation to same sex marriages (Scotland))(9)—
  - (a) in paragraph 1(3), in the definition of “relevant foreign decree” for “a member State” substitute “the United Kingdom, the Channel Islands and the Isle of Man”,
  - (b) omit paragraph 2 (power to make provision corresponding to EC Regulation 2201/2003),
  - (c) in paragraph 3 (divorce or separation)—
    - (i) in sub-paragraph (1), after “if (and only if)” insert “either of the parties to the marriage”,
    - (ii) for sub-paragraph (1)(a) and (b), substitute—
      - “(a) is domiciled in Scotland on the date when the proceedings are begun,  
or
      - (b) was habitually resident in Scotland throughout the period of one year ending with that date.”, and
    - (iii) in sub-paragraph (3)(b), omit “under regulations under paragraph 2”,
  - (d) in paragraph 5 (nullity of marriage)—
    - (i) in sub-paragraph (1)—
      - (aa) omit from beginning of head (a) to “those regulations and”,

(4) Section 10 was amended by the Children (Scotland) Act 1995, (c.36), schedule 4, paragraph 20(2), [S.I. 2011/1484](#) and is amended by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/ .

(5) Subsection (1B) was added by [S.S.I. 2001/36](#) and amended by [S.S.I. 2005/42](#).

(6) Subsection (1BA) was added by the Marriage and Civil Partnership (Scotland) Act 2014 ([asp 5](#)), schedule 1, paragraph 1(3).

(7) Section 11 was amended by [S.S.I. 2005/42](#).

(8) Section 12 was amended by [S.S.I. 2001/36](#) and [S.S.I. 2005/42](#).

(9) Schedule 1B was inserted by the Marriage and Civil Partnership (Scotland) Act 2014, ([asp 5](#)), schedule 1, paragraph 1(4).

- (bb) in sub-head (i), after “proceedings are begun”, insert “, or was habitually resident in Scotland throughout the period of one year ending with that date”,
- (ii) in sub-paragraph (2), in head (a), omit “paragraph (a) or (b) of”,
- (iii) in sub-paragraph (3), in head (b), omit “under regulations under paragraph 2”,
- (e) in paragraph 6 (recognition, or non-recognition, of foreign decrees)—
  - (i) in sub-paragraph (1)—
    - (aa) omit from beginning of head (a) to “those regulations and”,
    - (bb) in sub-head (i), after “proceedings are begun”, insert “, or was habitually resident in Scotland throughout the period of one year ending with that date”,
    - (ii) in sub-paragraph (2), in head (a), omit “paragraph (a) or (b) of”, and
- (f) in paragraph 7 (supplementary provision), in sub-paragraph (2), omit “, if entertaining the proceedings would not contravene regulations under paragraph 2”.