



# Domicile and Matrimonial Proceedings Act 1973

1973 CHAPTER 45

## PART I

### DOMICILE

#### *Husband and wife*

#### **1 Abolition of wife's dependent domicile**

- (1) Subject to subsection (2) below, the domicile of a married woman as at any time after the coming into force of this section shall, instead of being the same as her husband's by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.
- (2) Where immediately before this section came into force a woman was married and then had her husband's domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless and until it is changed by acquisition or revival of another domicile either on or after the coming into force of this section.
- (3) This section extends to England and Wales, Scotland and Northern Ireland.

#### **2 Amendments of Recognition Act consequent on s. 1**

- (1) The Recognition of Divorces and Legal Separations Act 1971 shall be amended in accordance with this section.
- (2) For section 6 of the Act (saving for common law rules, and previous enactments, as to recognition) there shall be substituted—

---

*Status: This is the original version (as it was originally enacted).*

---

**“6 Existing common law and statutory rules.**

- (1) In this section " the common law rules " means the rules of law relating to the recognition of divorces or legal separations obtained in the country of the spouses' domicile or obtained elsewhere and recognised as valid in that country.
  - (2) In any circumstances in which the validity of a divorce or legal separation obtained in a country outside the British Isles would be recognised by virtue only of the common law rules if either—
    - (a) the spouses had at the material time both been domiciled in that country; or
    - (b) the divorce or separation were recognised as valid under the law of the spouses' domicile,
 its validity shall also be recognised if subsection (3) below is satisfied in relation to it.
  - (3) This subsection is satisfied in relation to a divorce or legal separation obtained in a country outside the British Isles if either—
    - (a) one of the spouses was at the material time domiciled in that country and the divorce or separation was recognised as valid under the law of the domicile of the other spouse ; or
    - (b) neither of the spouses having been domiciled in that country at the material time, the divorce or separation was recognised as valid under the law of the domicile of each of the spouses respectively.
  - (4) For any purpose of subsection (2) or (3) above " the material time ", in relation to a divorce or legal separation, means the time of the institution of proceedings in the country in which it was obtained.
  - (5) Sections 2 to 5 of this Act are without prejudice to the recognition of the validity of divorces and legal separations obtained outside the British Isles by virtue of the common law rules (as extended by this section), or of any enactment other than this Act; but, subject to this section, no divorce or legal separation so obtained shall be recognised as valid in the United Kingdom except as provided by those sections.”
- (3) In section 7 of the Act (non-recognition of divorce by third country no bar to re-marriage)—
    - (a) for " the foregoing provisions " there shall be substituted " sections 1 to 5 or section 6(2) "; and
    - (b) for " section 6 " there shall be substituted " section 6(5) ".
  - (4) In section 8(2) of the Act (particular circumstances in which recognition may be refused)—
    - (a) after " by virtue of " there shall be inserted " sections 2 to 5 or section 6(2) of "; and
    - (b) for " section 6 " there shall be substituted " section 6(5) ".
  - (5) This section extends to England and Wales, Scotland and Northern Ireland.

### *Minors and pupils*

#### **3 Age at which independent domicile can be acquired**

- (1) The time at which a person first becomes capable of having an independent domicile shall be when he attains the age of sixteen or marries under that age; and in the case of a person who immediately before 1st January 1974 was incapable of having an independent domicile, but had then attained the age of sixteen or been married, it shall be that date.
- (2) This section extends to England and Wales and Northern Ireland (but not to Scotland).

#### **4 Dependent domicile of child not living with his father**

- (1) Subsection (2) of this section shall have effect with respect to the dependent domicile of a child as at any time after the coming into force of this section when his father and mother are alive but living apart.
- (2) The child's domicile as at that time shall be that of his mother if—
  - (a) he then has his home with her and has no home with his father; or
  - (b) he has at any time had her domicile by virtue of paragraph (a) above and has not since had a home with his father.
- (3) As at any time after the coming into force of this section, the domicile of a child whose mother is dead shall be that which she last had before she died if at her death he had her domicile by virtue of subsection (2) above and he has not since had a home with his father.
- (4) Nothing in this section prejudices any existing rule of law as to the cases in which a child's domicile is regarded as being, by dependence, that of his mother.
- (5) In this section, "child" means a person incapable of having an independent domicile; and in its application to a child who has been adopted, references to his father and his mother shall be construed as references to his adoptive father and mother.
- (6) This section extends to England and Wales, Scotland and Northern Ireland.

## **PART II**

### **JURISDICTION IN MATRIMONIAL PROCEEDINGS (ENGLAND AND WALES)**

#### **5 Jurisdiction of High Court and county courts**

- (1) Subsections (2) to (5) below shall have effect, subject to section 6(3) and (4) of this Act, with respect to the jurisdiction of the court to entertain—
  - (a) proceedings for divorce, judicial separation or nullity of marriage; and
  - (b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 19 of the Matrimonial Causes Act 1973 ;and in this Part of this Act "the court" means the High Court and a divorce county court within the meaning of the Matrimonial Causes Act 1967.
- (2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) either of the parties to the marriage—

---

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

---

- (a) is domiciled in England and Wales on the date when the proceedings are begun ; or
  - (b) was habitually resident in England and Wales through out the period of one year ending with that date.
- (3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if) either of the parties to the marriage—
- (a) is domiciled in England and Wales on the date when the proceedings are begun ; or
  - (b) was habitually resident in England and Wales through out the period of one year ending with that date; or
  - (c) died before that date and either—
    - (i) was at death domiciled in England and Wales, or
    - (ii) had been habitually resident in England and Wales throughout the period of one year ending with the date of death.
- (4) The court shall have jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved if (and only if) the petitioner—
- (a) is domiciled in England and Wales on the date when the proceedings are begun ; or
  - (b) was habitually resident in England and Wales through out the period of one year ending with that date.
- (5) The court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection (2) or (3) above (or of this subsection), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under subsection (2) or (3).
- (6) Schedule 1 to this Act shall have effect as to the cases in which matrimonial proceedings in England and Wales are to be, or may be, stayed by the court where there are concurrent proceedings elsewhere in respect of the same marriage, and as to the other matters dealt with in that Schedule; but nothing in the Schedule—
- (a) requires or authorises a stay of proceedings which are pending when this section comes into force; or
  - (b) prejudices any power to stay proceedings which is exercisable by the court apart from the Schedule.

## **6 Miscellaneous amendments, transitional provision and savings**

- (1) In section 27(2) of the Matrimonial Causes Act 1973 (which excludes the court's jurisdiction on a maintenance application unless it would have jurisdiction to decree judicial separation), for the words from " unless" onwards there shall be substituted the words "unless—
- (a) the applicant or the respondent is domiciled in England and Wales on the date of the application ; or
  - (b) the applicant has been habitually resident there through out the period of one year ending with that date; or
  - (c) the respondent is resident there on that date."

---

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

---

- (2) In subsection (1) of section 50 of the Matrimonial Causes Act 1973 (scope of the Matrimonial Causes Rules), the word " or " at the end of paragraph (c) shall be omitted and after paragraph (d) there shall be inserted the following words "or
- (e) any enactment contained in Part II of or Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 which does not fall within paragraph (d) above".
- (3) No proceedings for divorce shall be entertained by the court by virtue of section 5(2) or (5) of this Act while proceedings for divorce or nullity of marriage, begun before the commencement of this Act, are pending (in respect of the same marriage) in Scotland, Northern Ireland, the Channel Islands or the Isle of Man ; and provision may be made by rules of court as to when for the purposes of this subsection proceedings are to be treated as begun or pending in any of those places.
- (4) Nothing in this Part of this Act—
- (a) shall be construed to remove any limitation imposed on the jurisdiction of a county court by section 1 of the Matrimonial Causes Act 1967 ;
- (b) affects the court's jurisdiction to entertain any proceedings begun before the commencement of this Act.

## **PART III**

### **JURISDICTION IN CONSISTORIAL CAUSES (SCOTLAND)**

#### **7 Jurisdiction of Court of Session**

- (1) Subsections (2) to (8) below shall have effect, subject to section 12(6) of this Act, with respect to the jurisdiction of the Court of Session to entertain—
- (a) an action for divorce, separation, declarator of nullity of marriage, declarator of marriage, declarator of freedom and putting to silence ; and
- (b) proceedings for presumption of death and dissolution of marriage under section 5 of the Divorce (Scotland) Act 1938.
- (2) The Court shall have jurisdiction to entertain an action for divorce, separation or declarator of freedom and putting to silence if (and only if) either of the parties to the marriage in question—
- (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.
- (3) The Court shall have jurisdiction to entertain an action for declarator of marriage or declarator of nullity of marriage if (and only if) either of the parties to the marriage—
- (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 ; 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.

---

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

---

- (4) The Court shall have jurisdiction to entertain proceedings for decree of presumption of death and dissolution of marriage if (and only if)—
- (a) the petitioner is domiciled in Scotland on the date when the proceedings are begun or was habitually resident there throughout the period of one year ending with that date; or
  - (b) the person whose death is sought to be presumed was domiciled in Scotland on the date on which he was last known to be alive, or had been habitually resident there throughout the period of one year ending with that date.
- (5) The Court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection (2) or (3) above (or of this subsection), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, separation or declarator of marriage, declarator of nullity of marriage or declarator of freedom and putting to silence, notwithstanding that jurisdiction would not be exercisable under subsection (2) or (3).
- (6) Nothing in this section affects the rules governing the jurisdiction of the Court of Session to entertain, in an action for divorce, an application for payment by a co-defender of damages or expenses.
- (7) The foregoing provisions of this section are without prejudice to any rule of law whereby the Court of Session has jurisdiction in certain circumstances to entertain actions for separation as a matter of necessity and urgency.
- (8) No action for divorce in respect of a marriage shall be entertained by the Court of Session by virtue of subsection (2) or (5) above while proceedings for divorce or nullity of marriage, begun before the commencement of this Act, are pending (in respect of the same marriage) in England and Wales, Northern Ireland, the Channel Islands or the Isle of Man; and provision may be made by rules of court as to when, for the purposes of this subsection, proceedings are to be treated as begun or pending in any of those places.

## **8 Jurisdiction of sheriff court in respect of actions for separation**

- (1) Subsections (2) to (4) below shall have effect, subject to section 12(6) of this Act, with respect to the jurisdiction of the sheriff court to entertain an action for separation.
- (2) The court shall have jurisdiction to entertain an action for separation if (and only if)—
- (a) either party to the marriage in question—
    - (i) is domiciled in Scotland at the date when the action is begun, or
    - (ii) was habitually resident there throughout the period of one year ending with that date; and
  - (b) either party to the marriage—
    - (i) was resident in the sheriffdom for a period of forty days ending with that date, or
    - (ii) had been resident in the sheriffdom for a period of not less than forty days ending not more than forty days before the said date, and has no known residence in Scotland at that date.
- (3) In respect of any marriage, the court shall have jurisdiction to entertain an action for separation (notwithstanding that jurisdiction would not be exercisable under subsection (2) above) if it is begun at a time when an original action is pending in respect of the marriage; and for this purpose " original action " means an action

in respect of which the court has jurisdiction by virtue of subsection (2), or of this subsection.

- (4) The foregoing provisions of this section are without prejudice to any jurisdiction of a sheriff court to entertain an action of separation remitted to it in pursuance of any enactment or rule of court.

## **9 Jurisdiction in respect of actions for reduction of consistorial decrees**

Subject to section 12(6) of this Act, the Court of Session shall have jurisdiction to entertain an action for reduction of a decree granted (whether before or after the commencement of this Act) by a Scottish court in any consistorial proceedings whether or not the Court would have jurisdiction to do so apart from this section.

## **10 Ancillary and collateral orders**

- (1) Where after the commencement of this Act—

- (a) an application is made to the Court of Session or to a sheriff court for—
- (i) the making as respects any person or property of an order under any of the enactments or rules of law specified in Part I or Part II of Schedule 2 to this Act, or
  - (ii) the variation or recall as respects any person or property of an order made (whether before or after the commencement of this Act) under any of those enactments or rules of law ; and
- (b) the application is competently made in connection with an action for any of the following remedies, namely, divorce, separation, declarator of marriage and declarator of nullity of marriage (whether the application is made in the same proceedings or in other proceedings and whether it is made before or after the pronouncement of a final decree in the action),

then, if the court has or, as the case may be, had by virtue of this Act or of any enactment or rule of law in force before the commencement of this Act jurisdiction to entertain the action, it shall have jurisdiction to entertain the application as respects the person or property in question whether or not it would have jurisdiction to do so apart from this subsection.

- (2) It is hereby declared that where—

- (a) the Court of Session has jurisdiction by virtue of this section to entertain an application for the variation or recall as respects any person of an order made by it, and
- (b) the order is one to which section 8 (variation and recall by the sheriff of certain orders made by the Court of Session) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 applies,

then, for the purposes of any application under the said section 8 for the variation or recall of the order in so far as it relates to that person, the sheriff, as defined in that section, has jurisdiction as respects that person to exercise the power conferred on him by that section.

## **11 Sisting of certain actions**

The provisions of Schedule 3 to this Act shall have effect with respect to the sisting of actions for any of the following remedies, namely, divorce, separation, declarator

---

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

---

of marriage or declarator of nullity of marriage, and with respect to the other matters mentioned in that Schedule; but nothing in that Schedule—

- (a) requires or authorises a sist of an action which is pending when this Act comes into force; or
- (b) prejudices any power to sist an action which is exercisable by any court apart from the Schedule.

## **12 Supplementary**

- (1) In relation to any action for any of the following three remedies, namely, declarator of marriage, declarator of nullity of marriage, and declarator of freedom and putting to silence, references in this Part of this Act to the marriage shall be construed as including references to the alleged, or, as the case may be, the purported, marriage.
- (2) References in this Part of this Act to an action for a particular remedy shall be construed, in relation to a case where the remedy is sought along with other remedies in one action, as references to so much of the proceedings in the action as relates to the particular remedy.
- (3) References in this Part of this Act to the remedy of separation shall be construed, in relation to an action in a sheriff court, as references to the remedy of separation and aliment.
- (4) For the purposes of this Act the period during which an action in the Court of Session or a sheriff court is pending shall be regarded as including any period while the taking of an appeal is competent and the period while any proceedings on appeal are pending; and in this subsection references to an appeal include references to a reclaiming motion.
- (5) In this Part of this Act any reference to an enactment shall, unless the contrary intention appears, be construed as a reference to that enactment as amended or extended, and as including a reference thereto as applied, by or under any other enactment (including this Act).
- (6) Nothing in this Part of this Act affects any court's jurisdiction to entertain any proceedings begun before the commencement of this Act.
- (7) Subject to subsection (6) above, the enactments described in Schedule 4 to this Act shall have effect subject to the amendments therein specified, being amendments consequential on the provisions of this Part of this Act.

## **PART IV**

### JURISDICTION IN MATRIMONIAL PROCEEDINGS (NORTHERN IRELAND)

## **13 Jurisdiction of High Court in Northern Ireland**

- (1) Subsections (2) to (5) below shall have effect, subject to section 14 of this Act, with respect to the jurisdiction of the court to entertain—
  - (a) proceedings for divorce, judicial separation or nullity of marriage; and
  - (b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 12 of the Matrimonial Causes Act (Northern Ireland) 1939 ;



---

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

---

and in this Part of this Act " the court " means the High Court in Northern Ireland.

- (2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) either of the parties to the marriage—
  - (a) is domiciled in Northern Ireland on the date when the proceedings are begun ;  
or
  - (b) was habitually resident in Northern Ireland throughout the period of one year ending with that date.
- (3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if) either of the parties to the marriage—
  - (a) is domiciled in Northern Ireland on the date when the proceedings are begun ;  
or
  - (b) was habitually resident in Northern Ireland throughout the period of one year ending with that date; or
  - (c) died before that date and either—
    - (i) was at death domiciled in Northern Ireland, or
    - (ii) had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death.
- (4) The court shall have jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved if (and only if) the petitioner—
  - (a) is domiciled in Northern Ireland on the date when the proceedings are begun ;  
or
  - (b) was habitually resident in Northern Ireland throughout the period of one year ending with that date.
- (5) The court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection (2) or (3) above (or of this subsection), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under subsection (2) or (3).
- (6) Schedule 5 to this Act shall have effect for applying in Northern Ireland, in relation to the High Court in Northern Ireland, Schedule 1 to this Act with the necessary modifications.

#### **14 Transitional provision and saving**

- (1) No proceedings for divorce shall be entertained by the court by virtue of section 13(2) or (5) of this Act while proceedings for divorce or nullity of marriage begun before the commencement of this Act are pending (in respect of the same marriage) in England and Wales, Scotland, the Channel Islands or the Isle of Man; and provision may be made by rules under section 7 of the Northern Ireland Act 1962 as to when for the purposes of this subsection proceedings are to be treated as begun or pending in any of those places.
- (2) In section 4(1) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 (which confers on the court jurisdiction to entertain an application for maintenance by a wife where it would have jurisdiction to entertain proceedings for judicial separation) for the words from " if it would " to " separation " the following shall be substituted—

“if—

- (a) the wife or the husband is domiciled in Northern Ireland; or
- (b) the wife has been habitually resident there through out the period of one year ending with that date or;
- (c) the husband is resident there on that date.”.

- (3) Nothing in this Part of this Act affects the court's jurisdiction to entertain any proceedings begun before the commencement of this Act.

## PART V

### MISCELLANEOUS AND GENERAL

#### 15 Extension of Recognition Act to Northern Ireland

- (1) The Recognition of Divorces and Legal Separations Act 1971 (as amended by this Act) shall extend to Northern Ireland.
- (2) In section 1 of that Act (recognition of divorces etc. as between territories forming part of the British Isles) the following shall be substituted for paragraphs (a) and (b)—
- “if it was granted under the law of any part of the British Isles, be recognised throughout the United Kingdom ; and in each of sections 2, 7 and 8 of that Act for " Great Britain " there shall be substituted " the United Kingdom ””
- (3) In so far as section 1 of that Act operates as part of the law of Northern Ireland, it shall do so only in relation to a decree of divorce or judicial separation granted after the coming into force of this section; and as respects the recognition in Northern Ireland of any such divorce or separation as is referred to in section 10(4) of the Act (transitional provisions) that subsection shall have effect as if any reference in it to the date of the commencement of the provisions of the Act there referred to were a reference to the date of the coming into force of this section.
- (4) This section shall be deemed for the purposes of section 6 of the Government of Ireland Act 1920 to have been passed before the day referred to in that section as the appointed day.

#### 16 Non-judicial divorces

- (1) No proceeding in the United Kingdom, the Channel Islands or the Isle of Man shall be regarded as validly dissolving a marriage unless instituted in the courts of law of one of those countries.
- (2) Notwithstanding anything in section 6 of the Recognition of Divorces and Legal Separations Act 1971 (as substituted by section 2 of this Act), a divorce which—
- (a) has been obtained elsewhere than in the United Kingdom, the Channel Islands and the Isle of Man; and
  - (b) has been so obtained by means of a proceeding other than a proceeding instituted in a court of law; and
  - (c) is not required by any of the provisions of sections 2 to 5 of that Act to be recognised as valid,

shall not be regarded as validly dissolving a marriage if both parties to the marriage have throughout the period of one year immediately preceding the institution of the proceeding been habitually resident in the United Kingdom.

- (3) This section does not affect the validity of any divorce obtained before its coming into force and recognised as valid under rules of law formerly applicable.

## **17 Citation, etc.**

- (1) This Act may be cited as the Domicile and Matrimonial Proceedings Act 1973.
- (2) Subject to sections 6(4), 12(6) and 14(3) of this Act, the enactments specified in Schedule 6 to this Act (including certain enactments of the Parliament of Northern Ireland) are hereby repealed to the extent specified in the third column of that Schedule.
- (3) So long as section 2 of the Southern Rhodesia Act 1965 remains in force, this Act shall have effect subject to such provision as may (before or after this Act comes into force) be made by Order in Council under and for the purposes of that section.
- (4) Part II of this Act extends to England and Wales only; Part III extends to Scotland only; Part IV extends to Northern Ireland only; and this Part extends to the whole of the United Kingdom.
- (5) This Act shall come into force on 1st January 1974.