



# 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—

**“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.