



Domicile and Matrimonial Proceedings Act 1973

1973 CHAPTER 45

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.

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- (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

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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.