



# Domicile and Matrimonial Proceedings Act 1973

## 1973 CHAPTER 45

### PART II

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

##### 5 Jurisdiction of High Court and [<sup>F1</sup>family court].

(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 [<sup>F2</sup>any of the following proceedings in relation to a marriage of a man and a woman]—

(a) proceedings for divorce, judicial separation or nullity of marriage; <sup>F3</sup>...

<sup>F3</sup>(b) .....

<sup>F4</sup> .....

[<sup>F5</sup>(1A) In this Part of this Act—

<sup>F6</sup> ...

<sup>F7</sup> ...

“the court” means the High Court [<sup>F8</sup>and the family court].]

(2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only [<sup>F9</sup>if] on the date of the application—

(a) both parties to the marriage are habitually resident in England and Wales;

(b) both parties to the marriage were last habitually resident in England and Wales and one of them continues to reside there;

(c) the respondent is habitually resident in England and Wales;

[<sup>F10</sup>(ca) in a joint application only, either of the parties to the marriage is habitually resident in England and Wales;]

(d) the applicant is habitually resident in England and Wales and has resided there for at least one year immediately before the application was made;

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- (e) the applicant is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately before the application was made;
  - (f) both parties to the marriage are domiciled in England and Wales; or
  - (g) either of the parties to the marriage is domiciled in England and Wales.]
- (3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only [<sup>F11</sup>if) on the date of the application—
- (a) both parties to the marriage are habitually resident in England and Wales;
  - (b) both parties to the marriage were last habitually resident in England and Wales and one of them continues to reside there;
  - (c) the respondent is habitually resident in England and Wales;
  - (d) the applicant is habitually resident in England and Wales and has resided there for at least one year immediately before the application was made;
  - (e) the applicant is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately before the application was made;
  - (f) both parties to the marriage are domiciled in England and Wales; or
  - (g) either of the parties to the marriage—
    - (i) is domiciled in England and Wales; or
    - (ii) died before the application was made and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of one year ending with the date of death.]

<sup>F12</sup>(3A) .....

<sup>F13</sup>(4) .....

(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).

[<sup>F14</sup>(5A) Schedule A1 (jurisdiction in relation to marriage of same sex couples) has effect.]

- (6) Schedule 1 to this Act shall have effect as to the cases in which matrimonial proceedings in England and Wales [<sup>F15</sup>(whether the proceedings are in respect of the marriage of a man and a woman or the marriage of a same sex couple)] 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.

<sup>F16</sup>(6A) .....

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### Textual Amendments

- F1** Words in s. 5 heading substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 66\(3\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F2** Words in s. 5(1) inserted (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 4 para. 6\(2\)](#); [S.I. 2014/93](#), art. 3(j)(i)
- F3** S. 5(1)(b) and preceding word omitted (1.10.2014) by virtue of [Presumption of Death Act 2013 \(c. 13\)](#), s. 22(2), [Sch. 2 para. 2\(a\)](#) (with s. 21); [S.I. 2014/1810](#), art. 2
- F4** Words in s. 5(1) repealed (1.3.2001) by [S.I. 2001/310](#), [reg. 3\(1\)\(2\)](#) (with reg. 11)
- F5** S. 5(1A) inserted (1.3.2001) by [S.I. 2001/310](#), [reg. 3\(1\)\(3\)](#) (with reg. 11)
- F6** Words in s. 5(1A) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), [Sch. para. 7\(2\)\(a\)\(i\)](#) (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in s. 5(1A) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), [Sch. para. 7\(2\)\(a\)\(ii\)](#) (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in s. 5(1A) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 66\(2\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F9** Words in s. 5(2) substituted (31.12.2020) by [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), [Sch. para. 7\(2\)\(b\)](#) (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F10** S. 5(2)(ca) inserted (6.4.2022) by [The Divorce, Dissolution and Separation Act 2020 \(Consequential Amendments\) Regulations 2022 \(S.I. 2022/237\)](#), reg. 1(2), [Sch. para. 1\(2\)](#); [S.I. 2022/283](#), [reg. 2](#)
- F11** Words in s. 5(3) substituted (31.12.2020) by [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), [Sch. para. 7\(2\)\(c\)](#) (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F12** S. 5(3A) omitted (1.3.2005 with application in accordance with reg. 21) by virtue of [European Communities \(Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters\) Regulations 2005 \(S.I. 2005/265\)](#), regs. 1, [3\(4\)](#) (with reg. 20)
- F13** S. 5(4) omitted (1.10.2014) by virtue of [Presumption of Death Act 2013 \(c. 13\)](#), s. 22(2), [Sch. 2 para. 2\(b\)](#) (with s. 21); [S.I. 2014/1810](#), art. 2
- F14** S. 5(5A) inserted (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 4 para. 6\(3\)](#); [S.I. 2014/93](#), art. 3(j)(i)
- F15** Words in s. 5(6) inserted (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 4 para. 6\(4\)](#); [S.I. 2014/93](#), art. 3(j)(i)
- F16** S. 5(6A) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), [Sch. para. 7\(2\)\(d\)](#) (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Domicile and Matrimonial Proceedings Act 1973, Section 5.