



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.

Status: This is the original version (as it was originally enacted).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