



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 ^{F1}

Textual Amendments

F1 S. 2 repealed by Family Law Act 1986 (c. 55, SIF 49:3), s. 68(2), **Sch. 2**

Status: Point in time view as at 22/04/2014.

Changes to legislation: There are currently no known outstanding effects for the Domicile and Matrimonial Proceedings Act 1973. (See end of Document for details)

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.

- [^{F2}(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; . . . ^{F3}
 - (6) This section extends to England and Wales, Scotland and Northern Ireland.]

Textual Amendments

F2 S. 4 repealed (S.) (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), s. 46(2), [Sch. 3](#); S.S.I. 2006/212, art. 2

F3 Words repealed by SI 1987/2203, art. 72(3), Sch. 5 Pt. I

PART II

JURISDICTION IN MATRIMONIAL PROCEEDINGS (ENGLAND AND WALES)

5 Jurisdiction of High Court and [^{F4}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 [^{F5}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; and

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- (b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 19 of the ^{M1} Matrimonial Causes Act 1973

F6 . . .

[^{F7}(1A) In this Part of this Act—

[^{F8} “the Council Regulation” means Council Regulation (EC) No 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;]

“Contracting State” means—

- (a) [^{F9}a party to the Council Regulation, that is to say, Belgium, Cyprus, Czech Republic, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Finland, Sweden and the United Kingdom, and]

- (b) a party which has subsequently adopted the Council Regulation; and “the court” means the High Court [^{F10}and the family court].]

[^{F11}(2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if)—

- (a) the court has jurisdiction under the Council Regulation; or
- (b) no court of a Contracting State has jurisdiction under the Council Regulation and either of the parties to the marriage is domiciled in England and Wales on the date when the proceedings are begun.]

[^{F12}(3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if)—

- (a) the court has jurisdiction under the Council Regulation; or
- (b) no court of a Contracting State has jurisdiction under the Council Regulation and either of the parties to the marriage—
 - (i) is domiciled in England and Wales on the date when the proceedings are begun; or
 - (ii) died before that date 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.]

^{F13}(3A)

(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 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).

[^{F14}(5A) Schedule A1 (jurisdiction in relation to marriage of same sex couples) has effect.]

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(6) Schedule 1 to this Act shall have effect as to the cases in which matrimonial proceedings in England and Wales [^{F15}(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.

[^{F16}(6A) Subsection (6) and Schedule 1, and any power as mentioned in subsection (6)(b), are subject to Article 19 of the Council Regulation.]

Textual Amendments

- F4** 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)
- F5** 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)
- F6** Words in s. 5(1) repealed (1.3.2001) by S.I. 2001/310, [reg. 3\(1\)\(2\)](#) (with reg. 11)
- F7** S. 5(1A) inserted (1.3.2001) by S.I. 2001/310, [reg. 3\(1\)\(3\)](#) (with reg. 11)
- F8** Words in s. 5(1A) substituted (1.3.2005 with application in accordance with reg. 21) by [European Communities \(Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters\) Regulations 2005 \(S.I. 2005/265\)](#), regs. 1, [3\(2\)](#) (with reg. 20)
- F9** S. 5(1A)(a) substituted (1.3.2005 with application in accordance with reg. 21) by [European Communities \(Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters\) Regulations 2005 \(S.I. 2005/265\)](#), regs. 1, [3\(3\)](#) (with reg. 20)
- F10** 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)
- F11** S. 5(2) substituted (1.3.2001) by S.I. 2001/310, [reg. 3\(1\)\(4\)](#) (with reg. 11)
- F12** S. 5(3) substituted (1.3.2001) by S.I. 2001/310, [reg. 3\(1\)\(5\)](#) (with reg. 11)
- F13** 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)
- 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) inserted (1.3.2005 with application in accordance with reg. 21) by [European Communities \(Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters\) Regulations 2005 \(S.I. 2005/265\)](#), regs. 1, [3\(5\)](#) (with reg. 20)

Marginal Citations

- M1** 1973 c. 18

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6 Miscellaneous amendments, transitional provision and savings.

- (1) In section 27(2) of the ^{M2} 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 throughout the period of one year ending with that date; or
 - (c) the respondent is resident there on that date.”
- (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 I 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 [^{F17}, or by virtue of Schedule A1 to 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) ^{F18}
 - (b) affects the court's jurisdiction to entertain any proceedings begun before the commencement of this Act.

Textual Amendments

F17 Words in s. 6(3) inserted (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\), s. 21\(3\), Sch. 4 para. 7; S.I. 2014/93, art. 3\(j\)\(i\)](#)

F18 S. 6(4)(a) repealed by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\), ss. 46\(3\), 48\(2\), Sch. 3](#)

Modifications etc. (not altering text)

C1 The text of ss. 6(1)(2), Sch. 4 para. 1, Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

M2 1973 c.18

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Changes to legislation: There are currently no known outstanding effects for the Domicile and Matrimonial Proceedings Act 1973. (See end of Document for details)

PART III

JURISDICTION IN CONSISTORIAL CAUSES (SCOTLAND)

7 Jurisdiction of Court of Session.

(1) Subsections [F19(2A) to (10)] 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 [F20] or, declarator of marriage, F21 ... ; and

[F22(aa) an action for declarator of recognition, or non-recognition, of a relevant foreign decree.]

(b) F23

F24(2)

[F25(2A) The Court shall have jurisdiction to entertain an action for divorce or separation if (and only if)–

- (a) the Scottish courts have jurisdiction under the Council Regulation; or
- (b) the action is an excluded action and either of the parties to the marriage in question is domiciled in Scotland on the date when the action is begun.]

(3) The Court shall have jurisdiction to entertain an action for declarator of marriage F26 . . . 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.

[F27(3A) The Court shall have jurisdiction to entertain an action for declarator of nullity of marriage [F28] or for declarator of recognition, or non-recognition, of a relevant foreign decree] if (and only if)–

- (a) the Scottish courts have jurisdiction under the Council Regulation; or
- (b) the action is one to which subsection (3B) below applies and either of the parties to the marriage–
 - (a) is domiciled in Scotland on the date when the action is begun; or
 - (b) 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.

(3B) This subsection applies to an action–

- (a) which is an excluded action; or
- (b) where one of the parties to the marriage died before the date when the action is begun.]

(4) F23

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- (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)^{F29}, (2A), (3) or (3A) 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 ^{F30}or], declarator of nullity of marriage ^{F31}... , notwithstanding that jurisdiction would not be exercisable ^{F32}under any of those subsections].
- ^{F33}(5A) Subsection (5) does not give the Court jurisdiction to entertain proceedings in contravention of ^{F34}Article 6] of the Council Regulation.]
- (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 ^{F35}this section] 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.
- ^{F36}(9) In this section, “relevant foreign decree” means a decree of divorce, nullity or separation granted outwith a member state of the European Union.
- (10) References in subsection (3A) to a marriage shall, in the case of an action for declarator of recognition, or non-recognition, of a relevant foreign decree, be construed as references to the marriage to which the relevant foreign decree relates.]

Textual Amendments

- F19** Words in s. 7(1) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 37(2)(a)(i), 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F20** Word in s. 7(1)(a) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), Sch. 2 para. 1(a)(i); S.S.I. 2006/212, art. 2 (with art. 4)
- F21** Words in s. 7(1)(a) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), Sch. 2 para. 1(a)(ii); S.S.I. 2006/212, art. 2 (with art. 4)
- F22** S. 7(1)(aa) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 37(2)(a)(ii), 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F23** S. 7(1)(b), (4) repealed by Presumption of Death (Scotland) Act 1977 (c. 27, SIF 116:2), s. 19, Sch. 2
- F24** S. 7(2) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), Sch. 2 para. 1(b); S.S.I. 2006/212, art. 2 (with art. 4)
- F25** S. 7(2A) inserted (1.3.2001) by S.S.I. 2001/36, reg. 2(2)(b) (with reg. 6)
- F26** Words in s. 7(3) repealed (1.3.2001) by S.S.I. 2001/36, reg. 2(2)(c) (with reg. 6)

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- F27** S. 7(3A)(3B) inserted (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(d)** (with reg. 6)
- F28** Words in s. 7(3A) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 37(2)(b)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F29** Words in s. 7(5) substituted (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(e)(i)** (with reg. 6)
- F30** Word in s. 7(5) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 1(c)(i)**; S.S.I. 2006/212, art. 2 (with art. 4)
- F31** Words in s. 7(5) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 1(c)(ii)**; S.S.I. 2006/212, art. 2 (with art. 4)
- F32** Words in s. 7(5) substituted (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(e)(ii)** (with reg. 6)
- F33** S. 7(5A) inserted (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(f)** (with reg. 6)
- F34** Words in s. 7(5A) substituted (1.3.2005) by European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005 (S.S.I. 2005/42), regs. 1(1), **2(2)** (with reg. 7)
- F35** Words in s. 7(8) substituted (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(g)** (with reg. 6)
- F36** S. 7(9)(10) added (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 37(2)(c)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)

8 Jurisdiction of sheriff court in respect of actions for separation.

- (1) Subsections (2) to ^{F37}(6) below shall have effect, subject to section 12(6) of this Act, with respect to the jurisdiction of the sheriff court to entertain—
- ^{F38}(a) an action for separation ^{F39}[or divorce]; ^{F40}^{F41} ...
- (b) an action for declarator of recognition, or non-recognition, of a relevant foreign decree^{F42}; and
- (c) an action for declarator of nullity of marriage.]
- (2) The court shall have jurisdiction to entertain an action for separation ^{F43}[or divorce]^{F44} or for declarator of recognition, or non-recognition, of a relevant foreign decree] if (and only if)—
- ^{F45}(a) either—
- (i) the Scottish courts have jurisdiction under the Council Regulation; or
- (ii) the action is an excluded action ^{F46}[and] either party to the marriage in question is domiciled in Scotland at the date when the action is begun;]
- (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.
- ^{F47}(2A) The court shall have jurisdiction to entertain an action for declarator of nullity of marriage if (and only if)—
- (a) either party to the marriage—
- (i) was resident in the sheriffdom for a period of forty days ending with the date when the action is begun; or
- (ii) had been resident in the sheriffdom for a period of not less than forty days ending not more than forty days before that date and has no known residence in Scotland at that date; and
- (b) either—

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- (i) the Scottish courts have jurisdiction under the Council Regulation; or
 - (ii) the action is one to which subsection (2B) below applies and a condition mentioned in either subsection (2C) or (2D) is satisfied.
- (2B) This subsection applies to an action—
- (a) which is an excluded action; or
 - (b) where one of the parties to the marriage in question died before the date when the action is begun.
- (2C) The condition is that either party to the marriage in question is domiciled in Scotland on the date when the action is begun.
- (2D) The condition is that either party to the marriage in question died before the date when the action is begun and either—
- (a) was at death domiciled in Scotland; or
 - (b) had been habitually resident in Scotland throughout the period of one year ending with the date of death.]
- (3) In respect of any marriage, the court shall have jurisdiction to entertain an action for separation [^{F48}or divorce][^{F49}or declarator of nullity of marriage] (notwithstanding that jurisdiction would not be exercisable under subsection (2) [^{F50}or (2A)] 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), [^{F51}(2A) or] this subsection.
- [^{F52}(3A) Subsection (3) does not give the court jurisdiction to entertain an action in contravention of [^{F53}Article 6] of the Council Regulation.]
- (4) The foregoing provisions of this section are without prejudice to any jurisdiction of a sheriff court to entertain an action of separation [^{F54}or divorce][^{F55}or declarator of nullity of marriage] remitted to it in pursuance of any enactment or rule of court [^{F56}, provided that entertaining the action would not contravene [^{F57}Article 6] of the Council Regulation].
- [^{F58}(5) In this section, “relevant foreign decree” has the meaning given by section 7(9).
- (6) References in subsection (2) to a marriage shall, in the case of an action for declarator of recognition, or non-recognition, of a relevant foreign decree, be construed as references to the marriage to which the relevant foreign decree relates.]

Textual Amendments

- F37** Word in s. 8(1) substituted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 37(3)(a)(i)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F38** Words in s. 8(1) renumbered as paragraph (a) (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 37(3)(a)(ii)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F39** Words added by [Divorce Jurisdiction, Court Fees and Legal Aid \(Scotland\) Act 1983 \(c. 12, SIF 47\)](#), ss. 6(1), 7(4), **Sch. 1 para. 18**
- F40** Word in s. 8(1)(a) repealed (28.11.2011) by [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011 \(asp 15\)](#), **ss. 15(2)(a)**, 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F41** S. 8(1)(b) and preceding word added (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 37(3)(a)(iii)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F42** S. 8(1)(c) and preceding word inserted (28.11.2011) by [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011 \(asp 15\)](#), **ss. 15(2)(b)**, 19(2) (with s. 18); S.S.I. 2011/352, art. 2

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- F43** Words inserted by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 47), ss. 6(1) 7(4), Sch. 1 para. 18(b)
- F44** Words in s. 8(2) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 37(3)(b), 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F45** S. 8(2)(a) substituted (1.3.2001) by S.S.I. 2001/36, reg. 2(3)(a) (with reg. 6)
- F46** Word in s. 8(2)(a)(ii) substituted (1.3.2005) by European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005 (S.S.I. 2005/42), regs. 1(1), 2(3)(a) (with reg. 7)
- F47** S. 8(2A)-(2D) inserted (28.11.2011) by Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15), ss. 15(3), 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F48** Words inserted by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 47), ss.6(1), 7(4), Sch. 1 para. 18(c)
- F49** Words in s. 8(3) inserted (28.11.2011) by Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15), ss. 15(4)(a), 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F50** Words in s. 8(3) inserted (28.11.2011) by Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15), ss. 15(4)(b), 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F51** Words in s. 8(3) substituted (28.11.2011) by Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15), ss. 15(4)(c), 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F52** S. 8(3A) inserted (1.3.2001) by S.S.I. 2001/36, reg. 2(3)(b) (with reg. 6)
- F53** Words in s. 8(3A) substituted (1.3.2005) by European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005 (S.S.I. 2005/42), regs. 1(1), 2(3)(b) (with reg. 7)
- F54** Words inserted by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 47), ss. 6(1), 7(4), Sch. 1 para. 18(d)
- F55** Words in s. 8(4) inserted (28.11.2011) by Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15), ss. 15(5), 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F56** Words in s. 8(4) added (1.3.2001) by S.S.I. 2001/36, reg. 2(3)(c) (with reg. 6)
- F57** Words in s. 8(4) substituted (1.3.2005) by European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005 (S.S.I. 2005/42), regs. 1(1), 2(3)(b) (with reg. 7)
- F58** S. 8(5)(6) added (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 37(3)(c), 46(2); S.S.I. 2006/212, art. 2 (with art. 4)

9

F59

Textual Amendments

- F59** S. 9 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 28(2), Sch. 3

10 Ancillary and collateral orders.

- (1) [^{F60}Where after the commencement of this Act an application is competently made to the Court of Session or to a sheriff court for the making, or the variation or recall, of an order which is ancillary or collateral to] 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

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jurisdiction to entertain the action, it shall have jurisdiction to entertain the application
^{F61} . . . whether or not it would have jurisdiction to do so apart from this subsection.

^{F62}[(1A) For the purposes of subsection (1) above, references to an application for the making, or the variation or recall, of an order are references to the making, or the variation or recall, of an order relating to children, aliment, financial provision on divorce, judicial separation, nullity of marriage or expenses.]

^{F63}(1B) Subsection (1) above does not give the Court of Session or a sheriff court jurisdiction to entertain an application in proceedings where—

- (a) the court is exercising jurisdiction in the proceedings by virtue of [^{F64}Article 3] of the Council Regulation; and
- (b) the making or variation of an order in consequence of the application would contravene [^{F65}Article 6] of the Council Regulation.]

^{F66}(1C) If the application or part of it relates to a matter where jurisdiction falls to be determined by reference to the jurisdictional requirements of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011, the Court of Session or a sheriff court may not entertain the application or that part of it unless it has jurisdiction to do so by virtue of that Regulation and that Schedule.

(1D) In subsection (1C) “the Maintenance Regulation” means Council Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark.]

(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 ^{M3}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.

Textual Amendments

F60 Words in s. 10(1) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 20(2)(a)(i)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

F61 Words in s. 10(1) repealed (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 20(2)(a)(ii)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

F62 S. 10(1A) inserted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 20(2)(b)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

F63 S. 10(1B) inserted (1.3.2001) by S.S.I. 2001/36, **reg. 2(4)** (with reg. 6)

F64 Words in s. 10(1B)(a) substituted (1.3.2005) by European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005 (S.S.I. 2005/42), regs. 1(1), **2(4)(a)** (with reg. 7)

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- F65** Words in s. 10(1B)(b) substituted (1.3.2005) by [European Communities \(Matrimonial and Parental Responsibility Jurisdiction and Judgments\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/42\)](#), regs. 1(1), **2(4)(b)** (with reg. 7)
- F66** S. 10(1C)(1D) inserted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 1(1), **Sch. 7 para. 7**

Marginal Citations

- M3** 1966 c. 19.

11 Sisting of certain actions.

[^{F67}(1)] 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 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.

[^{F68}(2) Subsection (1) above and Schedule 3 to this Act and any power mentioned in subsection (1)(b) are subject to Article 19 of the Council Regulation.]

Textual Amendments

- F67** S. 11(1): renumbered (1.3.2005) by [European Communities \(Matrimonial and Parental Responsibility Jurisdiction and Judgments\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/42\)](#), regs. 1(1), **2(5)(a)** (with reg. 7)
- F68** S. 11(2) inserted (1.3.2005) by [European Communities \(Matrimonial and Parental Responsibility Jurisdiction and Judgments\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/42\)](#), regs. 1(1), **2(5)(b)** (with reg. 7)

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

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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).

[^{F69}(a) 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).]

[^{F70}[^{F71}(b) “Contracting State” means Belgium, Cyprus, Czech Republic, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovak Republic, Slovenia, Finland, Sweden and the United Kingdom;]

[^{F72}(c) “the Council Regulation” means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;]

(d) “excluded action” means an action in respect of which no court of a Contracting State has jurisdiction under the Council Regulation and the defender is not a person who is—

(i) a national of a Contracting State (other than the United Kingdom or Ireland); or

(ii) domiciled in Ireland]

(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.

Textual Amendments

F69 S. 12(5)(a) re-numbered (1.3.2001) for words by S.S.I. 2001/36, **reg. 2(5)(a)** (with reg. 6)

F70 S. 12(5)(b)-(d) inserted (1.3.2001) by S.S.I. 2001/36, **reg. 2(5)(b)** (with reg. 6)

F71 S. 12(5)(b) substituted (1.3.2005) by European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005 (S.S.I. 2005/42), regs. 1(1), **2(6)(a)** (with reg. 7)

F72 S. 12(5)(c) substituted (1.3.2005) by European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005 (S.S.I. 2005/42), regs. 1(1), **2(6)(b)** (with reg. 7)

PART IV

Status: Point in time view as at 22/04/2014.

Changes to legislation: There are currently no known outstanding effects for the Domicile and Matrimonial Proceedings Act 1973. (See end of Document for details)

Textual Amendments

F73 Pt. IV (ss. 13, 14) repealed by S.I. 1978/1045, Sch. 5

PART V

MISCELLANEOUS AND GENERAL

15 **F74**

Textual Amendments

F74 S. 15 repealed by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(2), 69, Sch. 2

16 **F75**

Textual Amendments

F75 S. 16 repealed by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(2), 69, Sch. 2

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) **F76**
- (4) Part II of this Act extends to England and Wales only; Part III extends to Scotland only; . . . **F77** and this part extends to the whole of the United Kingdom.
- (5) This Act shall come into force on 1st January 1974.

Textual Amendments

F76 S. 17(3) repealed by Zimbabwe Act 1979 (c. 60, SIF 26:39), s. 6(3), Sch. 3

F77 Words repealed by S.I. 1978/1045, Sch. 5

Status:

Point in time view as at 22/04/2014.

Changes to legislation:

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