



# 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> “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) [<sup>F7</sup>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 [<sup>F8</sup>and the family court].]

[<sup>F9</sup>(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

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- (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.]

[<sup>F10</sup>(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.]

<sup>F11</sup>(3A) .....

<sup>F12</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>F13</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>F14</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>F15</sup>(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

- 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](#))

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- F6** 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)
- F7** 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)
- 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** S. 5(2) substituted (1.3.2001) by S.I. 2001/310, **reg. 3(1)(4)** (with reg. 11)
- F10** S. 5(3) substituted (1.3.2001) by S.I. 2001/310, **reg. 3(1)(5)** (with reg. 11)
- F11** 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)
- F12** 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
- F13** 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)
- F14** 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)
- F15** 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)

## 6 Miscellaneous amendments, transitional provision and savings.

- (1) In section 27(2) of the <sup>M1</sup> 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 [<sup>F16</sup>, 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—

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- (a) ..... **F17**
- (b) affects the court's jurisdiction to entertain any proceedings begun before the commencement of this Act.

**Textual Amendments**

**F16** 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\(j\)\(i\)](#)

**F17** 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**

**M1** [1973 c.18](#)

**Status:**

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**Changes to legislation:**

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