

Status: Point in time view as at 08/12/2008. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Domicile and Matrimonial Proceedings Act 1973, SCHEDULE 1. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Section 5(6).

STAYING OF MATRIMONIAL PROCEEDINGS (ENGLAND AND WALES)

Interpretation

- 1 The following five paragraphs have effect for the interpretation of this Schedule.
- 2 “Matrimonial proceedings” means any proceedings so far as they are one or more of the five following kinds, namely, proceedings for—
- 3 (1) “Another jurisdiction” means any country outside England and Wales.
- (2) “Related jurisdiction” means any of the following countries, namely, Scotland, Northern Ireland, Jersey, Guernsey and the Isle of Man (the reference to Guernsey being treated as including Alderney and Sark).
- 4 (1) References to the trial or first trial in any proceedings do not include references to the separate trial of an issue as to jurisdiction only.
- (2) For purposes of this Schedule, proceedings in the court are continuing if they are pending and not stayed.

PROSPECTIVE

^{F1} 4A (1) “Statement of marital breakdown” has the same meaning as in the Family Law Act 1996.

- (2) “Relevant statement” in relation to any marital proceedings, means—
- (a) the statement of marital breakdown with which the proceedings commenced; or
- (b) if the proceedings are for the conversion of a separation order into a divorce order under section 4 of the Family Law Act 1996, the statement of marital breakdown by reference to which the separation order was made.]

Textual Amendments

F1 S. 4A inserted (*prosp.*) by 1996 c. 27, ss. 19(5), 67(3), Sch. 3 para. 4 (with **Sch. 9 para. 5**)

- 5 Any reference in this Schedule to proceedings in another jurisdiction is to proceedings in a court of that jurisdiction, and to any other proceedings in that jurisdiction, which are of a description prescribed for the purposes of this paragraph; and provision may be made by rules of court as to when proceedings of any description in another jurisdiction are continuing for the purposes of this Schedule.
- 6 “Prescribed” means prescribed by rules of court.

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Duty to furnish particulars of concurrent proceedings in another jurisdiction

- 7 While matrimonial proceedings are pending in the court in respect of a marriage and the trial or first trial in those proceedings has not begun, it shall be the duty of any person who is a petitioner in the proceedings, or is a respondent and has in his answer included a prayer for relief, to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be prescribed of any proceedings which—
- (a) he knows to be continuing in another jurisdiction; and
 - (b) are in respect of that marriage or capable of affecting its validity or subsistence.

Obligatory stays

- 8 (1) Where before the beginning of the trial or first trial in any proceedings for divorce which are continuing in the court it appears to the court on the application of a party to the marriage—
- (a) that in respect of the same marriage proceedings for divorce or nullity of marriage are continuing in a related jurisdiction; and
 - (b) that the parties to the marriage have resided together after its celebration; and
 - (c) that the place where they resided together when the proceedings in the court were begun or, if they did not then reside together, where they last resided together before those proceedings were begun, is in that jurisdiction; and
 - (d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which the proceedings in the court were begun,
- it shall be the duty of the court, subject to paragraph 10(2) below, to order that the proceedings in the court be stayed.
- (2) References in sub-paragraph (1) above to the proceedings in the court are, in the case of proceedings which are not only proceedings for divorce, to the proceedings so far as they are proceedings for divorce.

Discretionary stays

- 9 (1) Where before the beginning of the trial or first trial in any matrimonial proceedings [F², other than proceedings governed by the Council Regulation,] which are continuing in the court it appears to the court—
- (a) that any proceedings in respect of the marriage in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and
 - (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings in the court or in those proceedings so far as they consist of a particular kind of matrimonial proceedings,
- the court may then, if it thinks fit, order that the proceedings in the court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.
- (2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1)(b) above, the court shall have regard to all factors appearing to be

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relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed.

- (3) In the case of any proceedings so far as they are proceedings for divorce, the court shall not exercise the power conferred on it by sub-paragraph (1) above while an application under paragraph 8 above in respect of the proceedings is pending.
- (4) If, at any time after the beginning of the trial or first trial in any matrimonial proceedings which are pending in the court, the court declares by order that it is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by paragraph 7 above, sub-paragraph (1) above shall have effect in relation to those proceedings and, to the other proceedings by reference to which the declaration is made, as if the words “before the beginning of the trial or first trial” were omitted; but no action shall lie in respect of the failure of a person to perform such a duty.

Textual Amendments

F2 Words in Sch. 1 para. 9(1) inserted (1.3.2001) by S.I. 2001/310, reg. 4 (with reg. 11)

Supplementary

- 10 (1) Where an order staying any proceedings is in force in pursuance of paragraph 8 or 9 above, the court may, if it thinks fit, on the application of a party to the proceedings, discharge the order if it appears to the court that the other proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them.
- (2) If the court discharges an order staying any proceedings and made in pursuance of paragraph 8 above, the court shall not again stay those proceedings in pursuance of that paragraph.
- 11 (1) The provisions of sub-paragraphs (2) and (3) below shall apply (subject to sub-paragraph (4)) where proceedings for divorce, judicial separation or nullity of marriage are stayed by reference to proceedings in a related jurisdiction for divorce, judicial separation or nullity of marriage; and in this paragraph—
 - F3**
 - F3**“lump sum order” means such an order as is mentioned in paragraph (f) of section 23(1) of the ^{M1}Matrimonial Causes Act 1973 (lump sum payment for children), being an order made under section 23(1) or (2)(a) [^{F4}or an order made in equivalent circumstances under Schedule 1 to the Children Act 1989 and of a kind mentioned in paragraph 1(2)(c) of that Schedule];
“the other proceedings”, in relation to any stayed proceedings, means the proceedings in another jurisdiction by reference to which the stay was imposed;
“relevant order” means—
 - (a) an order under section 22 of the ^{M2} Matrimonial Causes Act 1973 (maintenance for spouse pending suit),
 - (b) such an order as is mentioned in paragraph (d) or (e) of section 23(1) of that Act (periodical payments for children) being an order made under section 23(1) or (2)(a) [^{F5}or an order made in equivalent circumstances

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- under Schedule 1 to the Children Act 1989 and of a kind mentioned in paragraph 1(2)(a) or (b) of that Schedule],
- (c) an order under section 42(1)(a) of that Act (orders for the custody and education of children) [^{F6}or a section 8 order under Children Act 1989], and
- (d) except for the purposes of sub-paragraph (3) below, any order restraining a person from removing a child out of England and Wales or out of [^{F7}care]of another person; and
- “stayed” means stayed in pursuance of this Schedule.
- (2) Where any proceedings are stayed, then, without prejudice to the effect of the stay apart from this paragraph—
- (a) the court shall not have power to make a relevant order or a lump sum order in connection with the stayed proceedings except in pursuance of paragraph (c) below; and
- (b) subject to paragraph (c) below, any relevant order made in connection with the stayed proceedings shall, unless the stay is previously removed or the order previously discharged, cease to have effect on the expiration of the period of three months beginning with the date on which the stay was imposed; but
- (c) if the court considers that, for the purpose of dealing with circumstances needing to be dealt with urgently, it is necessary during or after that period to make a relevant order or a lump sum order in connection with the stayed proceedings or to extend or further extend the duration of a relevant order made in connection with the stayed proceedings, the court may do so and the order shall not cease to have effect by virtue of paragraph (b) above.
- (3) Where any proceedings are stayed and at the time when the stay is imposed an order is in force, or at a subsequent time an order comes into force, which was made in connection with the other proceedings and provides for any of the ^{F8} . . . following matters, namely, periodical payments for a spouse of the marriage in question, periodical payments for a child, [^{F9}or any provision which could be made by a section 8 order under the Children Act 1989]then, on the imposition of the stay in a case where the order is in force when the stay is imposed and on the coming into force of the order in any other case—
- (a) any relevant order made in connection with the stayed proceedings shall cease to have effect in so far as it makes for a spouse or child any provision for any of those matters as respects which the same or different provision for that spouse or child is made by the other order;
- (b) the court shall not have power in connection with the stayed proceedings to make a relevant order containing for a spouse or child provision for any of those matters as respects which any provision for that spouse or child is made by the other order; and
- (c) if the other order contains provision for periodical payments for a child, the court shall not have power in connection with the stayed proceedings to make a lump sum order for that child.
- [^{F10}(3A) Where any such order as is mentioned in paragraph (e) of section 23(1) of the Matrimonial Causes Act 1973, being an order made under section 23(1) of the Matrimonial Causes Act 1973, being an order made under section 23(1) or (2)(a) of that Act, ceases to have effect by virtue of sub-paragraph (2) or (3) above, any order made under section 24A(1) of that Act which requires the proceeds of sale of

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property to be used for securing periodical payments under the first mentioned order shall also cease to have effect.]

- (4) If any proceedings are stayed so far as they consist of matrimonial proceedings of a particular kind but are not stayed so far as they consist of matrimonial proceedings of a different kind, subparagraphs (2) and (3) above shall not apply to the proceedings but, without prejudice to the effect of the stay apart from this paragraph, the court shall not have power to make a relevant order or a lump sum order in connection with the proceedings so far as they are stayed; and in this sub-paragraph references to matrimonial proceedings do not include proceedings for a declaration.

[^{F11}(4A) Sub-paragraph (4B) applies where—

- (a) proceedings are stayed as described in sub-paragraph (1) or (4), and
- (b) at the time when the stay is imposed, a contact order (within the meaning of the Children Act 1989) made in connection with the stayed proceedings is in force.

(4B) While the stay applies to the proceedings, the court may not—

- (a) make an enforcement order (within the meaning of the Children Act 1989) in relation to the contact order, or
- (b) as regards an enforcement order already made in relation to the contact order, exercise its powers under paragraph 9(2) of Schedule A1 to the Children Act 1989 in relation to the enforcement order.]

(5) [^{F12}Except as provided in sub-paragraph (4B),] nothing in this paragraph affects any power of the court.

- (a) to vary or discharge a relevant order so far as the order is for the time being in force; or
- (b) to enforce a relevant order as respects any period when it is or was in force; or
- (c) to make a relevant order or a lump sum order in connection with proceedings which were but are no longer stayed.

Textual Amendments

- F3** Definitions in Sch. 1 para. 11(1) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(7), [Sch.15](#) (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); S.I. 1991/828, [art. 3\(2\)](#).
- F4** Words in Sch. 1 para. 11(1) added (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 33\(1\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#).
- F5** Words in Sch. 1 para. 11(1)(b) added (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 33\(1\)\(b\)](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#).
- F6** Words in Sch. 1 para. 11(1)(c) inserted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 33\(1\)\(c\)](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#).
- F7** Word in Sch. 1 para. 11(1)(d) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 33\(1\)\(d\)](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#).
- F8** Word in Sch. 1 para. 11(3) repealed (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5)(7), [Sch. 13 para. 33\(2\)\(a\)](#), [Sch.15](#) (with [Sch. 14 paras. 1\(1\), 27\(4\)](#)); S.I. 1991/828, [art. 3\(2\)](#).
- F9** Words in Sch. 1 para. 11(3) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(5), [Sch. 13 para. 33\(2\)\(b\)](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#).
- F10** Sch. 1 para. 11(3A) inserted by [Matrimonial Homes and Property Act 1981 \(c. 24, SIF 49:5\)](#), s. [8\(3\)](#)
- F11** Sch. 1 para. 11(4A)(4B) inserted (8.12.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), s. 17(2), [Sch. 2 para. 1\(2\)](#); S.I. 2008/2870, [art. 2\(2\)\(e\)](#)
- F12** Words in Sch. 1 para. 11(5) inserted (8.12.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), s. 17(2), [Sch. 2 para. 1\(3\)](#); S.I. 2008/2870, [art. 2\(2\)\(e\)](#)

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Marginal Citations

M1 1973 c. 18.

M2 1971 c. 53.

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