

*Status: Point in time view as at 21/05/2014.*

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

## SCHEDULES

### [<sup>F1</sup>SCHEDULE A1

#### JURISDICTION IN RELATION TO MARRIAGE OF SAME SEX COUPLES

##### Textual Amendments

- F1** Sch. A1 inserted (31.10.2013 for specified purposes, 13.3.2014 in so far as not already in force) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 4 para. 8](#); S.I. 2013/2789, art. 2(b); S.I. 2014/93, art. 3(j)(i)

##### Introduction

- 1 This Schedule shall have effect, subject to section 6(3) and (4), with respect to the jurisdiction of the court to entertain any of the following proceedings in relation to a marriage of a same sex couple—
- (a) proceedings for divorce, judicial separation or nullity of marriage;
  - (b) proceedings for an order which ends a marriage on the ground that one of the couple is dead; and
  - (c) proceedings for a declaration of validity.

##### Modifications etc. (not altering text)

- C1** [Sch. A1 para. 1\(b\)](#) modified (temp.) (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 4 para. 10\(3\)](#); S.I. 2014/93, art. 3(j)(i)

##### Divorce, judicial separation or annulment

- 2 (1) The court has jurisdiction to entertain proceedings for divorce or judicial separation if (and only if)—
- (a) the court has jurisdiction under regulations under paragraph 5,
  - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5 and either of the married same sex couple is domiciled in England and Wales on the date when the proceedings are begun, or
  - (c) the following conditions are met—
    - (i) the two people concerned married each other under the law of England and Wales,
    - (ii) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5, and
    - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (2) The court has jurisdiction to entertain proceedings for nullity of marriage if (and only if)—

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- (a) the court has jurisdiction under regulations under paragraph 5,
  - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5 and either of the married same sex couple—
    - (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 1 year ending with the date of death, or
  - (c) the following conditions are met—
    - (i) the two people concerned married each other under the law of England and Wales,
    - (ii) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5, and
    - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (3) At any time when proceedings are pending in respect of which the court has jurisdiction by virtue of sub-paragraph (1) or (2) (or this sub-paragraph), the court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, even though that jurisdiction would not be exercisable under subsection (1) or (2).

#### *Presumption of death order*

- 3 The court has jurisdiction to entertain proceedings for an order which ends a marriage on the ground that one of the couple is dead on an application made by the other of the couple (“the applicant”) if (and only if)—
- (a) at the time the application is made, the High Court does not have jurisdiction to entertain an application by the applicant under section 1 of the Presumption of Death Act 2013 for a declaration that the applicant's spouse is presumed to be dead, and
  - (b) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

#### **Modifications etc. (not altering text)**

**C2** Sch. A1 para. 3 modified (temp.) (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\), s. 21\(3\)](#), [Sch. 4 para. 10\(4\)](#); S.I. 2014/93, art. 3(j)(i)

#### *Declaration of validity*

- 4 The court has jurisdiction to entertain an application for a declaration of validity if (and only if)—
- (a) either of the parties to the marriage to which the application relates—
    - (i) is domiciled in England and Wales on the date of the application,
    - (ii) has been habitually resident in England and Wales throughout the period of 1 year ending with that date, or

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- (iii) 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 1 year ending with the date of death, or
- (b) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

*Power to make provision corresponding to EC Regulation 2201/2003*

- 5 (1) The Lord Chancellor may by regulations make provision—
- (a) as to the jurisdiction of courts in England and Wales in proceedings for the divorce of, or annulment of the marriage of, a same sex couple or for judicial separation of a married same sex couple where one of the couple—
    - (i) is or has been habitually resident in a member State,
    - (ii) is a national of a member State, or
    - (iii) is domiciled in a part of the United Kingdom or the Republic of Ireland, and
  - (b) as to the recognition in England and Wales of any judgment of a court of another member State which orders the divorce of, or annulment of a marriage of, a same sex couple or the judicial separation of a married same sex couple.
- (2) The regulations may in particular make provision corresponding to that made by Council Regulation (EC) No 2201/2003 of 27th November 2003 in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial matters.
- (3) The regulations may provide that for the purposes of the regulations “member State” means—
- (a) all member States with the exception of such member States as are specified in the regulations, or
  - (b) such member States as are specified in the regulations.
- (4) The regulations may make provision under sub-paragraph (1)(b) which applies even if the date of the divorce, annulment or judicial separation is earlier than the date on which this paragraph comes into force.
- (5) Regulations under this paragraph are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this paragraph may not be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by resolution of, each House of Parliament.

*Interpretation*

- 6 In this Schedule “declaration of validity” means—
- (a) a declaration as to the validity of a marriage,
  - (b) a declaration as to the subsistence of a marriage, or
  - (c) a declaration as to the validity of a divorce, annulment or judicial separation obtained outside England and Wales in respect of a marriage.]

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## 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 [<sup>F2</sup>(whether relating to a marriage of a man and a woman or a marriage of a same sex couple)], namely, proceedings for—
- divorce,
  - judicial separation,
  - nullity of marriage,
  - a declaration as to the validity of a marriage of the petitioner, and
  - a declaration as to the subsistence of such a marriage.

#### **Textual Amendments**

- F2** Words in Sch. 1 para. 2 inserted (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\), s. 21\(3\), Sch. 4 para. 9; S.I. 2014/93, art. 3\(j\)\(i\)](#)

- 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.
- 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.

#### *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.

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*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 [<sup>F3</sup>, 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 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”

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were omitted; but no action shall lie in respect of the failure of a person to perform such a duty.

#### Textual Amendments

**F3** 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—

**F4**  
 . . .  
**F4**  
 . . .

“lump sum order” means such an order as is mentioned in paragraph (f) of section 23(1) of the <sup>M1</sup>Matrimonial Causes Act 1973 (lump sum payment for children), being an order made under section 23(1) or (2)(a) [<sup>F5</sup>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 <sup>M2</sup> 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) [<sup>F6</sup>or an order made in equivalent circumstances 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) [<sup>F7</sup>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 [<sup>F8</sup>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—

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- (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 <sup>F9</sup> . . . following matters, namely, periodical payments for a spouse of the marriage in question, periodical payments for a child, [<sup>F10</sup> 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.
- [<sup>F11</sup>(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 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.
- [<sup>F12</sup>(4A) Sub-paragraph (4B) applies where—
- (a) proceedings are stayed as described in sub-paragraph (1) or (4), and

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- (b) at the time when the stay is imposed, a [<sup>F13</sup>child arrangements] 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 [<sup>F14</sup>child arrangements] order, or
- (b) as regards an enforcement order already made in relation to the [<sup>F14</sup>child arrangements] order, exercise its powers under paragraph 9(2) of Schedule A1 to the Children Act 1989 in relation to the enforcement order.]
- (5) [<sup>F15</sup>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

- F4** 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)**.
- F5** 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)**.
- F6** 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)**.
- F7** 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)**.
- F8** 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)**.
- F9** 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)**.
- F10** 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)**.
- F11** Sch. 1 para. 11(3A) inserted by Matrimonial Homes and Property Act 1981 (c. 24, SIF 49:5), **s. 8(3)**
- F12** 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)**
- F13** Words in Sch. 1 para. 11(4A)(b) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 45(2)**; S.I. 2014/889, **art. 4(f)** (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F14** Words in Sch. 1 para. 11(4B) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 45(3)**; S.I. 2014/889, **art. 4(f)** (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F15** 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)**

#### Marginal Citations

- M1** 1973 c. 18.  
**M2** 1971 c. 53.



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## SCHEDULE 2

Section 10.

### ANCILLARY AND COLLATERAL ORDERS (SCOTLAND)

#### PART I

*Enactments and rules of law referred to in section 10(1) and in Schedule 3 paragraph 11(1)*

1, 2. . . . . <sup>F16</sup>

#### Textual Amendments

**F16** Sch. 2 paras. 1, 2 repealed by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), s. 28(2)

[<sup>F17</sup>2A Any enactment or rule of law empowering a court to make an order for payment of aliment (including interim aliment).]

#### Textual Amendments

**F17** Sch. para. 2A inserted by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(1), 29(4), [Sch. 1 para. 9\(a\)](#)

3 Paragraph (2) of section 5 of the <sup>M3</sup>Sheriff Courts (Scotland) Act 1907 so far as relating to orders for aliment [<sup>F18</sup>and paragraph (2C) of the said section 5.]

#### Textual Amendments

**F18** Words substituted by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), ss. 10(1), 11(4), [Sch. 1 para. 13](#)

#### Marginal Citations

**M3** 1907 c. 51.

4 Section 9 (orders with respect to children) of the <sup>M4</sup>Conjugal Rights (Scotland) Amendment Act 1861 . . . <sup>F19</sup>.

#### Textual Amendments

**F19** Words repealed by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), ss. 10(2), 11(4), [Sch. 2](#)

#### Marginal Citations

**M4** 1861 c. 86.

5 Section 10 of the Matrimonial Proceedings (Children) Act 1958 so far as relating to orders committing the care of a child to an individual.

6 Section 13 (power to prohibit in certain cases removal of child furth of Scotland or out of control of person having custody of him) of the Matrimonial Proceedings (Children) Act 1958.

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- 7 Any enactment or rule of law empowering a court to vary or recall an order the power to make which is conferred by any enactment mentioned in this Part of this Schedule or by any rule of law so mentioned.

## PART II

*Further enactments and rules of law referred to in section 10(1)*

- 8 ..... <sup>F20</sup>

### Textual Amendments

**F20** Sch. 2 para. 8 repealed by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), ss. 10(2), 11(4), [Sch. 2](#)

- 9 Section 2 (effect of divorce on property rights) of the <sup>M5</sup>Divorce (Scotland) Act 1938, both as originally enacted and as substituted by section 7 of the <sup>M6</sup>Divorce (Scotland) Act 1964.

### Marginal Citations

**M5** 1938 c. 50.  
**M6** 1964 c. 91.

- 10 Section 10 of the <sup>M7</sup>Matrimonial Proceedings (Children) Act 1958, so far as relating to orders committing the care of a child to a local authority.

### Marginal Citations

**M7** 1958 c. 40.

- 11 Section 12 (power of court to provide for supervision of child) of the Matrimonial Proceedings (Children) Act 1958.

- 12 Section 26 (orders for financial provision on divorce) and section 27 (orders relating to settlements and other dealings) of the <sup>M8</sup>Succession (Scotland) Act 1964.

### Marginal Citations

**M8** 1964 c. 41.

- [<sup>F21</sup>12A Section 5 (orders for financial provision) and section 6 (orders relating to settlements and other dealings) of the Divorce (Scotland) Act 1976.]

### Textual Amendments

**F21** Sch. 2 para. 12A added after paragraph 12 by [Divorce \(Scotland\) Act 1976 \(c. 39, SIF 49:3\)](#), s. 12(1), [Sch. 1 para. 5](#)

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[<sup>F22</sup>12B Section 8 (orders for financial provision on divorce), section 17(1) (financial provision on declarator of nullity of marriage) and section 18 (orders relating to avoidance transactions) of the Family Law (Scotland) Act 1985.]

#### Textual Amendments

**F22** Sch. 2 para. 12B inserted after para. 12A, by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(1), 29(4), [Sch. 1 para. 9\(b\)](#)

- 13 Any rule of law empowering a court, in connection with an action for declarator of nullity of marriage, to make an order for restitution of property as between the parties to the marriage or for the payment of damages by either of those parties.
- 14 Any rule of law empowering a court to make an order for the payment of expenses of the action in question by either party to the marriage.
- 15 Any enactment or rule of law empowering a court to vary or recall an order the power to make which is conferred by any enactment mentioned in this Part of this Schedule or by any rule of law so mentioned.

### SCHEDULE 3

#### SISTING OF CONSISTORIAL ACTIONS (SCOTLAND)

#### Modifications etc. (not altering text)

**C3** Sch. 3 applied (with modifications) by Rules of the Court of Session 1994 (SI 1994/1443), Sch. 2, rule 49.18A (as inserted (8.12.2005) by [S.S.I. 2005/632](#), [arts. 1\(1\), 2\(12\)](#))

#### *Interpretation*

- 1 The following six paragraphs have effect for the interpretation of this Schedule.
- 2 “Consistorial action” means any action so far as it is one or more of the following, namely, actions for—
- 3 (1) “Another jurisdiction” means any country outside Scotland.
- (2) “Related jurisdiction” means any of the following countries, namely, England and Wales, Northern Ireland, Jersey, Guernsey and the Isle of Man (the reference to Guernsey being treated as including Alderney and Sark).
- 4 For the purposes of this Schedule—
- (a) in any action in the Court of Session or a sheriff court neither the taking of evidence on commission nor a separate proof relating to any preliminary plea shall be regarded as part of the proof in the action; and
- (b) any such action is continuing if it is pending and not sisted.
- 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.

*Status: Point in time view as at 21/05/2014.*

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

6 “Prescribed” means prescribed by rules of court.

*Duty to furnish particulars of concurrent proceedings in another jurisdiction*

7 While any consistorial action is pending in the Court of Session or a sheriff court and proof in that action has not begun, it shall be the duty of the pursuer, and of any other person who has entered appearance in the action, to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be so 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.

*Mandatory sists*

8 Where before the beginning of the proof in any action for divorce which is continuing in the Court of Session [<sup>F23</sup>or in the Sheriff Court] it appears to the Court [<sup>F24</sup>concerned] 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 the marriage was contracted; and
- (c) that the place where they resided together when the action in the Court was begun or, if they did not then reside together, where they last resided together before the date on which that action was 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 that action was begun;

it shall be the duty of the Court, subject to paragraph 10(2) below, to sist the action before it.

**Textual Amendments**

**F23** 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. 19(a)**

**F24** Word inserted by [Divorce Jurisdiction, Court Fees and Legal Aid \(Scotland\) Act 1983 \(c. 12, SIF 47\)](#), ss. 6(1), 7(4), **Sch. 1 para. 19(b)**

*Discretionary sists*

9 (1) Where before the beginning of the proof in any consistorial action which is continuing in the Court of Session or in a sheriff court, it appears to the court concerned—

- (a) that any other proceedings in respect of the marriage in question or capable of affecting its validity 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 those other proceedings to be disposed of before further steps are taken in the action in the said court,

the court may then if it thinks fit sist that action.

*Status: Point in time view as at 21/05/2014.*

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

- (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 relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being sisted, or not being sisted.
- (3) Sub-paragraph (1) above is without prejudice to the duty imposed . . . <sup>F25</sup>by paragraph 8 above.
- (4) If, at any time after the beginning of the proof in any consistorial action which is pending in the Court of Session or a sheriff court, the court concerned is satisfied that a person has failed to perform the duty imposed on him in respect of the action and any such other proceedings as aforesaid by paragraph 7 above, sub-paragraph (1) of this paragraph shall have effect in relation to that action and to the other proceedings as if the words “before the beginning of the proof” were omitted; but no action in respect of the failure of a person to perform such a duty shall be competent.

#### Textual Amendments

- F25** Words repealed by [Divorce Jurisdiction, Court Fees and Legal Aid \(Scotland\) Act 1983 \(c. 12, SIF 47\)](#), ss. 6(1), 7(4), Sch. 1 para. 20, Sch. 2

#### Supplementary

- 10 (1) Where an action is sisted in pursuance of paragraph 8 or 9 above, the court may if it thinks fit, on the application of a party to the action, recall the sist if it appears to the court that the other proceedings by reference to which the action was sisted are sisted or concluded or that a party to those other proceedings has delayed unreasonably in prosecuting those other proceedings.
- (2) Where an action has been sisted in pursuance of paragraph 8 above by reference to some other proceedings, and the court recalls the sist in pursuance of the preceding sub-paragraph, the court shall not again sist the action in pursuance of the said paragraph 8.
- 11 (1) The provisions of sub-paragraphs (2) and (3) below shall apply where an action for any of the following remedies, namely, divorce, separation and declarator of nullity of marriage, is sisted by reference to proceedings in a related jurisdiction for any of those remedies; and in this paragraph—
  - “custody” includes access to the child in question;
  - “the other proceedings”, in relation to any sisted action, means the proceedings in another jurisdiction by reference to which the action was sisted;
  - “relevant order” means an interim order [<sup>F26</sup>relating to aliment or children]; and
  - “sisted” means sisted in pursuance of this Schedule.
- (2) Where an action such as is mentioned in sub-paragraph (1) above is sisted, then, without prejudice to the effect of the sist apart from this paragraph—
  - (a) the court shall not have power to make a relevant order in connection with the sisted action except in pursuance of paragraph (c) below; and
  - (b) subject to the said paragraph (c), any relevant order made in connection with the sisted action shall (unless the sist or the relevant order has been

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- previously recalled) cease to have effect on the expiration of the period of three months beginning with the date on which the sist comes into operation; but
- (c) if the court considers that as a matter of necessity and urgency it is necessary during or after that period to make a relevant order in connection with the sisted action or to extend or further extend the duration of a relevant order made in connection with the sisted action, the court may do so, and the order shall not cease to have effect by virtue of paragraph (b) above.
- (3) Where any action such as is mentioned in sub-paragraph (1) above is sisted and at the time when the sist comes into operation, an order is in force, or at a subsequent time an order comes into force, being an order made in connection with the other proceedings and providing for any of the following four matters, namely periodical payments for a spouse of the marriage in question, periodical payments for a child, the [F27]arrangements to be made as to with whom a child is to live, contact with a child, and any other matter relating to parental responsibilities within the meaning of section 1(3) of the Children (Scotland) Act 1995 or parental rights within the meaning of section 2(4) of that Act], then, as from the time when the sist comes into operation (in a case where the order is in force at that time) or (in any other case) on the coming into force of the order,—
- (a) any relevant order made in connection with the sisted action shall cease to have effect in so far as it makes for a spouse or child any provision for any of the said matters as respects which the same or different provision for that spouse or child is made by the other order; and
- (b) the court shall not have power in connection with the sisted action to make a relevant order containing for a spouse or child provision for any of the matters aforesaid as respects which any provision for that spouse or child is made by the other order.
- (4) Nothing in this paragraph affects any power of a court—
- (a) to vary or recall a relevant order in 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 in connection with an action which was, but is no longer, sisted.

#### Textual Amendments

- F26** Words in definition of “relevant order” in Sch. 3 para. 11(1) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 20(3)(a)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F27** Words in Sch. 3 para. 11(3) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 20(3)(b)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

## SCHEDULE 4

Section 12.

### CONSEQUENTIAL AMENDMENTS OF SCOTTISH ENACTMENTS

- 1 In section 6 of the <sup>M9</sup>Sheriff Courts (Scotland) Act 1907, at the beginning, there shall be inserted the words “Subject to section 8 of the Domicile and Matrimonial Proceedings Act 1973”.

*Status: Point in time view as at 21/05/2014.*

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

**Modifications etc. (not altering text)**

**C4** 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**

**M9** [1907 c.51](#)

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F28

**Textual Amendments**

**F28** Sch. 4 para. 2 repealed by [Presumption of Death \(Scotland\) Act 1977 \(c. 27, SIF 116:2\)](#), s. 19, [Sch. 2](#)

SCHEDULE 5

Section 13.

F29

**Textual Amendments**

**F29** Sch. 5 repealed by [S.I. 1978/1045](#), [Sch. 5](#)

SCHEDULE 6

Section 17.

REPEALS

**Modifications etc. (not altering text)**

**C5** 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.

*Status: Point in time view as at 21/05/2014.*

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

Section 17.

## SCHEDULE 6

## REPEALS

Chapter	Short Title	Extent of Repeal
2 & 3 Geo. 6. c. 13. (N.I.)	The Matrimonial Causes Act (Northern Ireland) 1939.	Section 26.
7 & 8 Geo. 6. c. 45.	The Matrimonial Causes (War Marriages) Act 1946.	Section 3.
1946 c. 16. (N.I.)	The Marriage and Matrimonial Causes Act (Northern Ireland) 1946.	Section 3.
12, 13 & 14 Geo. 6. c. 100.	The Law Reform (Miscellaneous Provisions) Act 1949.	In section 2, subsections (1), (2) and (3).
14 Geo. 6. c. 37. (N.I.)	The Maintenance Orders Act 1950.	In section 6(2), the words "an action of separation and aliment".
1951 c. 7. (N.I.)	The Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951.	Section 1.
10 & 11 Eliz. 2. c. 21.	The Commonwealth Immigrants Act 1962.	Section 20.
1973 c. 18.	The Matrimonial Causes Act 1973.	In section 19, in subsection (1) the words "subject to subsection (2) below", subsections (2) and (5). Section 46.



**Status:**

Point in time view as at 21/05/2014.

**Changes to legislation:**

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