



Matrimonial and Family Proceedings Act 1984

1984 CHAPTER 42

PART IV

FINANCIAL PROVISION IN SCOTLAND AFTER OVERSEAS DIVORCE ETC.

28 Circumstances in which a Scottish court may entertain application for financial provision.

- (1) Where parties to a marriage have been divorced in an overseas country, then, subject to ^[F1]subsection (3A)] below, if the jurisdiction requirements and the conditions set out in subsections (2) and (3) below respectively are satisfied, the court may entertain an application by one of the parties for an order for financial provision.
- (2) The jurisdictional requirements mentioned in subsection (1) above are that—
 - (a) the applicant was domiciled or habitually resident in Scotland on the date when the application was made; and
 - (b) the other party to the marriage—
 - (i) was domiciled or habitually resident in Scotland on the date when the application was made; or
 - (ii) was domiciled or habitually resident in Scotland when the parties last lived together as husband and wife; or
 - (iii) on the date when the application was made, was an owner or tenant of, or had a beneficial interest in, property in Scotland which had at some time been a matrimonial home of the parties; and
 - (c) where the court is the sheriff court, either—
 - (i) one of the parties was, on the date when the application was made, habitually resident in the sheriffdom; or
 - (ii) paragraph (b)(iii) above is satisfied in respect of property wholly or partially within the sheriffdom.
- (3) The conditions mentioned in subsection (1) above are that—

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- (a) the divorce falls to be recognised in Scotland;
- (b) the other party to the marriage initiated the proceedings for divorce;
- (c) the application was made within five years after the date when the divorce took effect;
- (d) a court in Scotland would have had jurisdiction to entertain an action for divorce between the parties if such an action had been brought in Scotland immediately before the foreign divorce took effect;
- (e) the marriage had a substantial connection with Scotland; and
- (f) both parties are living at the time of the application.

[^{F2}(3A) If an application or part of an application relates to a matter [^{F3}in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part of it except where permitted by Article 18.]

^{F4}(4)

[^{F5}(5) “The 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague.]]

Textual Amendments

- F1** Words in s. 28(1) substituted (31.12.2020) by S.I. 2019/519, Sch. para. 13(4)(a) (as substituted by [The Jurisdiction, Judgments and Applicable Law \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1574\)](#), regs. 1, **5(3)(e)(ii)**)
- F2** S. 28(3A) inserted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 1(1), **Sch. 7 para. 10(4)(b)**
- F3** Words in s. 28(3A) substituted (31.12.2020) by S.I. 2019/519, Sch. para. 13(4)(b) (as substituted by [The Jurisdiction, Judgments and Applicable Law \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1574\)](#), regs. 1, **5(3)(e)(ii)**)
- F4** S. 28(4) omitted (31.12.2020) by virtue of [The Civil Jurisdiction and Judgments \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/479\)](#), regs. 1(1), **63(b)** (with regs. 92-95) (as amended by S.I. 2020/1493, regs. 1(1), 5(2)-(5)); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in s. 28(5) substituted (31.12.2020) by S.I. 2019/519, Sch. para. 13(4)(c) (as substituted by [The Jurisdiction, Judgments and Applicable Law \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1574\)](#), regs. 1, **5(3)(e)(ii)**)

29 Disposal of application in Scotland.

- (1) Subject to subsections (2) to (5) below, Scots law shall apply, with any necessary modifications, in relation to an application under section 28 above as it would apply if the application were being made in an action for divorce in Scotland.
- (2) In disposing of an application entertained by it under the said section 28, the court shall exercise its powers so as to place the parties, in so far as it is reasonable and practicable to do so, in the financial position in which they would have been if the application had been disposed of, in an action for divorce in Scotland, on the date on which the foreign divorce took effect.
- (3) In determining what is reasonable and practicable for the purposes of subsection (2) above, the court shall have regard in particular to—

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- (a) the parties' resources, present and foreseeable at the date of disposal of the application;
 - (b) any order made by a foreign court in or in connection with the divorce proceedings for the making of financial provision in whatever form, or the transfer of property, by one of the parties to the other; and
 - (c) subsection (5) below.
- (4) Except where subsection (5) below applies, the court may make an order for an interim award of a periodical allowance where—
- (a) it appears from the applicant's averments that in the disposal of the application an order for financial provision is likely to be made; and
 - (b) the court considers that such an interim award is necessary to avoid hardship to the applicant.
- (5) Where but for section 28(2)(b)(iii) above the court would not have jurisdiction to entertain the application, the court may make an order—
- (a) relating to the former matrimonial home or its furniture and plenishings; or
 - (b) that the other party to the marriage shall pay to the applicant a capital sum not exceeding the value of that other party's interest in the former matrimonial home and its furniture and plenishings,
- but shall not be entitled to make any other order for financial provision.

[^{F6}29A Application of Part IV to annulled marriages.

This Part of this Act shall apply to an annulment, of whatever nature, of a purported marriage, as it applies to a divorce, and references to marriage and divorce shall be construed accordingly.]

Textual Amendments

F6 S. 29A inserted by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(1), 29(4), [Sch. 1 para. 12](#)

30 Interpretation of Part IV.

- (1) In the foregoing provisions of this Part of this Act unless the context otherwise requires—
- “the court” means the Court of Session or the sheriff court;
 - “furniture and plenishings” has the meaning assigned by section 22 of the ^{M1}Matrimonial Homes (Family Protection) (Scotland) Act 1981;
 - “matrimonial home” has the meaning assigned by the said section 22;
 - “order for financial provision” means any one or more of the orders specified in [^{F7}section 8(1) of the Family Law (Scotland) Act 1985] (financial provision) or an order under section 13 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (transfer of tenancy of matrimonial home);
 - “overseas country” means a country or territory outside the British Islands;
 - and
 - “tenant” has the meaning assigned by the said section 22.
- (2) Any reference in the foregoing provisions of this Part of this Act to a party to a marriage shall include a reference to a party to a marriage which has been terminated.

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Textual Amendments

- F7** Words substituted by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(1), 29(4), **Sch. 1 para. 13**

Marginal Citations

- M1** [1981 c. 59](#).

31 Extension of s. 31 of Maintenance Orders (Reciprocal Enforcement) Act 1972.

- (1) Section 31(4) of the ^{M2}Maintenance Orders (Reciprocal Enforcement) Act 1972 (recovery of maintenance in Scotland from former spouse on order made in convention country) shall have effect with the following amendments.
- (2) In paragraph (i), for the words “granted in a convention country” there shall be substituted the words “obtained in a country or territory outside the United Kingdom”.
- (3) For paragraph (ii) there shall be substituted the following paragraphs—
 - “(ii) an order for the payment of maintenance for the benefit of the applicant as a divorced person has, in or by reason of, or subsequent to, the divorce proceedings, been made by a court in a convention country;
 - (ia) in a case where the order mentioned in paragraph (ii) above was made by a court of a different country from that in which the divorce was obtained, either the applicant or the said former spouse was resident in that different country at the time the application for the order so mentioned was made; and”.

Marginal Citations

- M2** [1972 c. 18](#).

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