



# Domicile and Matrimonial Proceedings Act 1973

## 1973 CHAPTER 45

An Act to amend the law relating to the domicile of married women and persons not of full age, to matters connected with domicile and to jurisdiction in matrimonial proceedings including actions for reduction of consistorial decrees; to make further provision about the recognition of divorces and legal separations; and for purposes connected therewith. [25th July 1973]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### 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 Amendments of Recognition Act consequent on s. 1

(1) The Recognition of Divorces and Legal Separations Act 1971 shall be amended in accordance with this section.

(2) For section 6 of the Act (saving for common law rules, and previous enactments, as to recognition) there shall be substituted—

### “6 Existing common law and statutory rules.

(1) In this section " the common law rules " means the rules of law relating to the recognition of divorces or legal separations obtained in the country of the spouses' domicile or obtained elsewhere and recognised as valid in that country.

(2) In any circumstances in which the validity of a divorce or legal separation obtained in a country outside the British Isles would be recognised by virtue only of the common law rules if either—

(a) the spouses had at the material time both been domiciled in that country; or

(b) the divorce or separation were recognised as valid under the law of the spouses' domicile,

its validity shall also be recognised if subsection (3) below is satisfied in relation to it.

(3) This subsection is satisfied in relation to a divorce or legal separation obtained in a country outside the British Isles if either—

(a) one of the spouses was at the material time domiciled in that country and the divorce or separation was recognised as valid under the law of the domicile of the other spouse ; or

(b) neither of the spouses having been domiciled in that country at the material time, the divorce or separation was recognised as valid under the law of the domicile of each of the spouses respectively.

(4) For any purpose of subsection (2) or (3) above " the material time ", in relation to a divorce or legal separation, means the time of the institution of proceedings in the country in which it was obtained.

(5) Sections 2 to 5 of this Act are without prejudice to the recognition of the validity of divorces and legal separations obtained outside the British Isles by virtue of the common law rules (as extended by this section), or of any enactment other than this Act; but, subject to this section, no divorce or legal separation so obtained shall be recognised as valid in the United Kingdom except as provided by those sections.”

(3) In section 7 of the Act (non-recognition of divorce by third country no bar to re-marriage)—

(a) for " the foregoing provisions " there shall be substituted " sections 1 to 5 or section 6(2) "; and

(b) for " section 6 " there shall be substituted " section 6(5) ".

- (4) In section 8(2) of the Act (particular circumstances in which recognition may be refused)—
- (a) after " by virtue of " there shall be inserted " sections 2 to 5 or section 6(2) of "; and
  - (b) for " section 6" there shall be substituted " section 6(5) ".
- (5) This section extends to England and Wales, Scotland and Northern Ireland.

*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**

- (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; and in its application to a child who has been adopted, references to his father and his mother shall be construed as references to his adoptive father and mother.
- (6) This section extends to England and Wales, Scotland and Northern Ireland.

## PART II

### JURISDICTION IN MATRIMONIAL PROCEEDINGS (ENGLAND AND WALES)

#### 5 **Jurisdiction of High Court and county courts**

- (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—
- (a) proceedings for divorce, judicial separation or nullity of marriage; and
  - (b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 19 of the Matrimonial Causes Act 1973 ;
- and in this Part of this Act " the court" means the High Court and a divorce county court within the meaning of the Matrimonial Causes Act 1967.
- (2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) either of the parties to the marriage—
- (a) is domiciled in England and Wales on the date when the proceedings are begun ; or
  - (b) was habitually resident in England and Wales through out the period of one year ending with that date.
- (3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if) either of the parties to the marriage—
- (a) is domiciled in England and Wales on the date when the proceedings are begun ; or
  - (b) was habitually resident in England and Wales through out the period of one year ending with that date; or
  - (c) died before that date and either—
    - (i) was at death domiciled in England and Wales, or
    - (ii) had been habitually resident in England and Wales throughout the period of one year ending with the date of death.
- (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 through out 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).
- (6) Schedule 1 to this Act shall have effect as to the cases in which matrimonial proceedings in England and Wales 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

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- (b) prejudices any power to stay proceedings which is exercisable by the court apart from the Schedule.

## **6 Miscellaneous amendments, transitional provision and savings**

- (1) In section 27(2) of the 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 through out 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 1 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 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) shall be construed to remove any limitation imposed on the jurisdiction of a county court by section 1 of the Matrimonial Causes Act 1967 ;
  - (b) affects the court's jurisdiction to entertain any proceedings begun before the commencement of this Act.

## **PART III**

### **JURISDICTION IN CONSISTORIAL CAUSES (SCOTLAND)**

## **7 Jurisdiction of Court of Session**

- (1) Subsections (2) to (8) 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, declarator of marriage, declarator of freedom and putting to silence ; and
  - (b) proceedings for presumption of death and dissolution of marriage under section 5 of the Divorce (Scotland) Act 1938.
- (2) The Court shall have jurisdiction to entertain an action for divorce, separation or declarator of freedom and putting to silence if (and only if) either of the parties to the marriage in question—

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- (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.
- (3) The Court shall have jurisdiction to entertain an action for declarator of marriage or declarator of nullity of marriage 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.
- (4) The Court shall have jurisdiction to entertain proceedings for decree of presumption of death and dissolution of marriage if (and only if)—
- (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) or (3) 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, declarator of nullity of marriage or declarator of freedom and putting to silence, notwithstanding that jurisdiction would not be exercisable under subsection (2) or (3).
- (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 subsection (2) or (5) above 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.

## **8 Jurisdiction of sheriff court in respect of actions for separation**

- (1) Subsections (2) to (4) below shall have effect, subject to section 12(6) of this Act, with respect to the jurisdiction of the sheriff court to entertain an action for separation.
- (2) The court shall have jurisdiction to entertain an action for separation if (and only if)—
- (a) either party to the marriage in question—

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- (i) is domiciled in Scotland at the date when the action is begun, or
    - (ii) was habitually resident there throughout the period of one year ending with that date; and
  - (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.
- (3) In respect of any marriage, the court shall have jurisdiction to entertain an action for separation (notwithstanding that jurisdiction would not be exercisable under subsection (2) 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), or of this subsection.
- (4) The foregoing provisions of this section are without prejudice to any jurisdiction of a sheriff court to entertain an action of separation remitted to it in pursuance of any enactment or rule of court.

## **9 Jurisdiction in respect of actions for reduction of consistorial decrees**

Subject to section 12(6) of this Act, the Court of Session shall have jurisdiction to entertain an action for reduction of a decree granted (whether before or after the commencement of this Act) by a Scottish court in any consistorial proceedings whether or not the Court would have jurisdiction to do so apart from this section.

## **10 Ancillary and collateral orders**

- (1) Where after the commencement of this Act—
  - (a) an application is made to the Court of Session or to a sheriff court for—
    - (i) the making as respects any person or property of an order under any of the enactments or rules of law specified in Part I or Part II of Schedule 2 to this Act, or
    - (ii) the variation or recall as respects any person or property of an order made (whether before or after the commencement of this Act) under any of those enactments or rules of law ; and
  - (b) the application is competently made in connection with 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 jurisdiction to entertain the action, it shall have jurisdiction to entertain the application as respects the person or property in question whether or not it would have jurisdiction to do so apart from this subsection.
- (2) It is hereby declared that where—

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- (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 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.

## **11 Sisting of certain actions**

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.

## **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 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).
- (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.

## **PART IV**

### **JURISDICTION IN MATRIMONIAL PROCEEDINGS (NORTHERN IRELAND)**

#### **13 Jurisdiction of High Court in Northern Ireland**

- (1) Subsections (2) to (5) below shall have effect, subject to section 14 of this Act, with respect to the jurisdiction of the court to entertain—
- (a) proceedings for divorce, judicial separation or nullity of marriage; and
  - (b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 12 of the Matrimonial Causes Act (Northern Ireland) 1939 ;
- and in this Part of this Act " the court " means the High Court in Northern Ireland.
- (2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) either of the parties to the marriage—
- (a) is domiciled in Northern Ireland on the date when the proceedings are begun ;
  - or
  - (b) was habitually resident in Northern Ireland throughout the period of one year ending with that date.
- (3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if) either of the parties to the marriage—
- (a) is domiciled in Northern Ireland on the date when the proceedings are begun ;
  - or
  - (b) was habitually resident in Northern Ireland throughout the period of one year ending with that date; or
  - (c) died before that date and either—
    - (i) was at death domiciled in Northern Ireland, or
    - (ii) had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death.
- (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 Northern Ireland on the date when the proceedings are begun ;
  - or
  - (b) was habitually resident in Northern Ireland 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).

- (6) Schedule 5 to this Act shall have effect for applying in Northern Ireland, in relation to the High Court in Northern Ireland, Schedule 1 to this Act with the necessary modifications.

#### **14 Transitional provision and saving**

- (1) No proceedings for divorce shall be entertained by the court by virtue of section 13(2) or (5) of 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 England and Wales, Scotland, the Channel Islands or the Isle of Man; and provision may be made by rules under section 7 of the Northern Ireland Act 1962 as to when for the purposes of this subsection proceedings are to be treated as begun or pending in any of those places.
- (2) In section 4(1) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 (which confers on the court jurisdiction to entertain an application for maintenance by a wife where it would have jurisdiction to entertain proceedings for judicial separation) for the words from " if it would " to " separation " the following shall be substituted—
- “if—
- (a) the wife or the husband is domiciled in Northern Ireland; or
- (b) the wife has been habitually resident there through out the period of one year ending with that date or;
- (c) the husband is resident there on that date.”.
- (3) Nothing in this Part of this Act affects the court's jurisdiction to entertain any proceedings begun before the commencement of this Act.

### **PART V**

#### MISCELLANEOUS AND GENERAL

#### **15 Extension of Recognition Act to Northern Ireland**

- (1) The Recognition of Divorces and Legal Separations Act 1971 (as amended by this Act) shall extend to Northern Ireland.
- (2) In section 1 of that Act (recognition of divorces etc. as between territories forming part of the British Isles) the following shall be substituted for paragraphs (a) and (b)—
- “if it was granted under the law of any part of the British Isles, be recognised throughout the United Kingdom ; and in each of sections 2, 7 and 8 of that Act for " Great Britain " there shall be substituted " the United Kingdom ””
- (3) In so far as section 1 of that Act operates as part of the law of Northern Ireland, it shall do so only in relation to a decree of divorce or judicial separation granted after the coming into force of this section; and as respects the recognition in Northern Ireland of any such divorce or separation as is referred to in section 10(4) of the Act (transitional provisions) that subsection shall have effect as if any reference in it to the date of the commencement of the provisions of the Act there referred to were a reference to the date of the coming into force of this section.

- (4) This section shall be deemed for the purposes of section 6 of the Government of Ireland Act 1920 to have been passed before the day referred to in that section as the appointed day.

## **16 Non-judicial divorces**

- (1) No proceeding in the United Kingdom, the Channel Islands or the Isle of Man shall be regarded as validly dissolving a marriage unless instituted in the courts of law of one of those countries.
- (2) Notwithstanding anything in section 6 of the Recognition of Divorces and Legal Separations Act 1971 (as substituted by section 2 of this Act), a divorce which—
- (a) has been obtained elsewhere than in the United Kingdom, the Channel Islands and the Isle of Man; and
  - (b) has been so obtained by means of a proceeding other than a proceeding instituted in a court of law; and
  - (c) is not required by any of the provisions of sections 2 to 5 of that Act to be recognised as valid,
- shall not be regarded as validly dissolving a marriage if both parties to the marriage have throughout the period of one year immediately preceding the institution of the proceeding been habitually resident in the United Kingdom.
- (3) This section does not affect the validity of any divorce obtained before its coming into force and recognised as valid under rules of law formerly applicable.

## **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) So long as section 2 of the Southern Rhodesia Act 1965 remains in force, this Act shall have effect subject to such provision as may (before or after this Act comes into force) be made by Order in Council under and for the purposes of that section.
- (4) Part II of this Act extends to England and Wales only; Part III extends to Scotland only; Part IV extends to Northern Ireland only; and this Part extends to the whole of the United Kingdom.
- (5) This Act shall come into force on 1st January 1974.

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## 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—
- 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.
- 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 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 tire 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.

*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—
- " custody " includes access to the child in question ;
  - " education " includes training ;
  - " lump sum order " means such an order as is mentioned in paragraph (f) of section 23(1) of the Matrimonial Causes Act 1973 (lump sum payment for children), being an order made under section 23(1) or (2)(a);
  - " 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 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),
    - (c) an order under section 42(1)(a) of that Act (orders for the custody and education of children), 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 the custody, care or control 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

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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 four following matters, namely, periodical payments for a spouse of the marriage in question, periodical payments for a child, the custody of a child and the education of a child 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.
- (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, sub-paragraphs (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.
- (5) 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.

## 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 Any rule of law empowering a court to make an order for payment of interim aliment pendente lite by one party to the marriage in question for the benefit of the

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- other, including any such rule as extended by section 4 of the Married Women's Property (Scotland) Act 1920.
- 2 Any rule of law empowering the Court of Session to make an order for payment of aliment (other than interim aliment pendente lite) by one party to the marriage in question for the benefit of the other, in connection with an action for separation, including any such rule as extended by section 4 of the Married Women's Property (Scotland) Act 1920.
- 3 Paragraph (2) of section 5 of the Sheriff Courts (Scotland) Act 1907 so far as relating to orders for aliment or for regulating the custody of a child.
- 4 Section 9 (orders with respect to children) of the Conjugal Rights (Scotland) Amendment Act 1861 as extended by section 1 of the Custody of Children (Scotland) Act 1939 and by sections 7 and 14 of the Matrimonial Proceedings (Children) Act 1958.
- 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.
- 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 Section 7 (guardianship in case of divorce or judicial separation) of the Guardianship of Infants Act 1886.
- 9 Section 2 (effect of divorce on property rights) of the Divorce (Scotland) Act 1938, both as originally enacted and as substituted by section 7 of the Divorce (Scotland) Act 1964.
- 10 Section 10 of the Matrimonial Proceedings (Children) Act 1958, so far as relating to orders committing the care of a child to a local authority.
- 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 Succession (Scotland) Act 1964.
- 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

Section 11.

#### SISTING OF CONSISTORIAL ACTIONS (SCOTLAND)

##### *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—
- divorce,
  - separation
  - declarator of marriage,
  - declarator of nullity of marriage.
- 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.
- 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 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 the marriage was contracted ; and

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- (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.

*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.
- (2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1) 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 on the Court of Session 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.

*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

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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 made by virtue of any of the enactments or rules of law specified in Part I of Schedule 2 to this Act; 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 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 custody of a child, and the education of a child, 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.

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## SCHEDULE 4

Section 12.

### CONSEQUENTIAL AMENDMENTS OF SCOTTISH ENACTMENTS

- 1 In section 6 of the 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 ".
- 2 In section 5 of the Divorce (Scotland) Act 1938, in subsection (1), after the words " death of the other party, and " there shall be inserted the words " subject to subsection (3) of this section "; and at the end of the said section 5 there shall be inserted the following subsection:
- “(3) In proceedings on any such petition the court shall have jurisdiction to entertain the petition if, and only if.—
- (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”.

## SCHEDULE 5

Section 13.

### STAYING OF MATRIMONIAL PROCEEDINGS (NORTHERN IRELAND)

- 1 Schedule 1 to this Act shall extend to Northern Ireland with the modifications specified below.
- 2 For paragraph 3, substitute the following—
- “3 (1) " Another jurisdiction " means any country outside Northern Ireland.
- (2) " Related jurisdiction " means any of the following countries, namely, England and Wales, Scotland, Jersey, Guernsey and the Isle of Man (the reference to Guernsey being treated as including Alderney and Sark).”
- 3 In paragraph 6, for " rules of court" substitute " rules made under section 7 of the Northern Ireland Act 1962 ".
- 4 (1) In paragraph 11(1), omit the definition of " lump sum order " , and—
- (a) for sub-paragraphs (a) to (c) of the definition of "relevant order " substitute—
    - “(a) any order under section 19 or 22 of the Matrimonial Causes Act (Northern Ireland) 1939”; and
  - (b) in paragraph (d) of that definition, for " England and Wales " substitute " Northern Ireland ".
- (2) In paragraph 11(2)(a) and (c), omit " or a lump sum order " ; and omit paragraph 11(3)(c).

## SCHEDULE 6

Section 17.

## 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. 43.	The Matrimonial Causes (War Marriages) Act 1944.	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.	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.