

**Changes to legislation:** There are currently no known outstanding effects for the Domicile and Matrimonial Proceedings Act 1973, SCHEDULE 3. (See end of Document for details)

## SCHEDULES

### SCHEDULE 3 **S**

#### SISTING OF CONSISTORIAL ACTIONS (SCOTLAND)

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

- C1** 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.
- 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.

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### *Mandatory sists*

- 8 Where before the beginning of the proof in any action for divorce which is continuing in the Court of Session [<sup>F1</sup>or in the Sheriff Court] it appears to the Court [<sup>F2</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**

- F1** 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)**
- F2** 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.
- (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>F3</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

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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

- F3** 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>F4</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 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

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payments for a spouse of the marriage in question, periodical payments for a child, the <sup>F5</sup>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**

- F4** 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.**
- F5** 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.**

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