Civil Jurisdiction and Judgments Act 1982

1982 CHAPTER 27

PART V

SUPPLEMENTARY AND GENERAL PROVISIONS

Domicile

41 Domicile of individuals

(1) Subject to Article 52 (which contains provisions for determining whether a party is domiciled in a Contracting State), the following provisions of this section determine, for the purposes of the 1968 Convention and this Act, whether an individual is domiciled in the United Kingdom or in a particular part of, or place in, the United Kingdom or in a state other than a Contracting State.

(2) An individual is domiciled in the United Kingdom if and only if—

(a) he is resident in the United Kingdom ; and

(b) the nature and circumstances of his residence indicate that he has a substantial connection with the United Kingdom.

(3) Subject to subsection (5), an individual is domiciled in a particular part of the United Kingdom if and only if—

(a) he is resident in that part; and

(b) the nature and circumstances of his residence indicate that he has a substantial connection with that part.

(4) An individual is domiciled in a particular place in the United Kingdom if and only if he—

(a) is domiciled in the part of the United Kingdom in which that place is situated ; and

(b) is resident in that place.

(5) An individual who is domiciled in the United Kingdom but in whose case the requirements of subsection (3)(b) are not satisfied in relation to any particular part of

the United Kingdom shall be treated as domiciled in the part of the United Kingdom in which he is resident.

(6) In the case of an individual who—

(a) is resident in the United Kingdom, or in a particular part of the United Kingdom ; and

(b) has been so resident for the last three months or more,

the requirements of subsection (2) (b) or, as the case may be, subsection (3)(b) shall be presumed to be fulfilled unless the contrary is proved.

(7) An individual is domiciled in a state other than a Contracting State if and only if—

(a) he is resident in that state ; and

(b) the nature and circumstances of his residence indicate that he has a substantial connection with that state.

42 Domicile and seat of corporation or association

(1) For the purposes of this Act the seat of a corporation or association (as determined by this section) shall be treated as its domicile.

(2) The following provisions of this section determine where a corporation or association has its seat—

(a) for the purpose of Article 53 (which for the purposes of the 1968 Convention equates the domicile of such a body with its seat); and

(b) for the purposes of this Act other than the provisions mentioned in section 43(1)(b) and (c).

(3) A corporation or association has its seat in the United Kingdom if and only if—

(a) it was incorporated or formed under the law of a part of the United Kingdom and has its registered office or some other official address in the United Kingdom ; or

(b) its central management and control is exercised in the United Kingdom.

(4) A corporation or association has its seat in a particular part of the United Kingdom if and only if it has its seat in the United Kingdom and—

(a) it has its registered office or some other official address in that part; or

(b) its central management and control is exercised in that part; or

(c) it has a place of business in that part.

(5) A corporation or association has its seat in a particular place in the United Kingdom if and only if it has its seat in the part of the United Kingdom in which that place is situated and—

(a) it has its registered office or some other official address in that place ; or

(b) its central management and control is exercised in that place; or

(c) it has a place of business in that place.

(6) Subject to subsection (7), a corporation or association has its seat in a state other than the United Kingdom if and only if—

(a) it was incorporated or formed under the law of that state and has its registered office or some other official address there; or

(b) its central management and control is exercised in that state.

(7) A corporation or association shall not be regarded as having its seat in a Contracting State other than the United Kingdom if it is shown that the courts of that state would not regard it as having its seat there.

(8) In this section—

" business " includes any activity carried on by a corporation or association, and " place of business " shall be construed accordingly;

" official address ", in relation to a corporation or association, means an address which it is required by law to register, notify or maintain for the purpose of receiving notices or other communications.

43 Seat of corporation or association for purposes of Article 16(2) and related provisions

(1) The following provisions of this section determine where a corporation or association has its seat for the purposes of—

(a) Article 16(2) (which confers exclusive jurisdiction over proceedings relating to the formation or dissolution of such bodies, or to the decisions of their organs);

(b) Articles 5A and 16(2) in Schedule 4 ; and

(c) Rules 2(12) and 4(1)(b) in Schedule 8.

(2) A corporation or association has its seat in the United Kingdom if and only if—

(a) it was incorporated or formed under the law of a part of the United Kingdom ; or

(b) its central management and control is exercised in the United Kingdom.

(3) A corporation or association has its seat in a particular part of the United Kingdom if and only if it has its seat in the United Kingdom and—

(a) subject to subsection (5), it was incorporated or formed under the law of that part; or

(b) being incorporated or formed under the law of a state other than the United Kingdom, its central management and control is exercised in that part.

(4) A corporation or association has its seat in a particular place in Scotland if and only if it has its seat in Scotland and—

(a) it has its registered office or some other official address in that place ; or

(b) it has no registered office or other official address in Scotland, but its central management and control is exercised in that place.

(5) A corporation or association incorporated or formed under—

(a) an enactment forming part of the law of more than one part of the United Kingdom ; or

(b) an instrument having effect in the domestic law of more than one part of the United Kingdom,

shall, if it has a registered office, be taken to have its seat in the part of the United Kingdom in which that office is situated, and not in any other part of the United Kingdom.

(6) Subject to subsection (7), a corporation or association has its seat in a Contracting State other than the United Kingdom if and only if—

(a) it was incorporated or formed under the law of that state; or
(b) its central management and control is exercised in that state.

(7) A corporation or association shall not be regarded as having its seat in a Contracting State other than the United Kingdom if—
(a) it has its seat in the United Kingdom by virtue of subsection (2) (a); or
(b) it is shown that the courts of that other state would not regard it for the purposes of Article 16(2) as having its seat there.

(8) In this section " official address " has the same meaning as in section 42.

44 Persons deemed to be domiciled in the United Kingdom for certain purposes

(1) This section applies to—
(a) proceedings within Section 3 of Title II of the 1968 Convention (insurance contracts), and
(b) proceedings within Section 4 of that Title (consumer contracts).

(2) A person who, for the purposes of proceedings to which this section applies arising out of the operations of a branch, agency or other establishment in the United Kingdom, is deemed for the purposes of the 1968 Convention to be domiciled in the United Kingdom by virtue of—
(a) Article 8, second paragraph (insurers); or
(b) Article 13, second paragraph (suppliers of goods, services or credit to consumers),

shall, for the purposes of those proceedings, be treated for the purposes of this Act as so domiciled and as domiciled in the part of the United Kingdom in which the branch, agency or establishment in question is situated.

45 Domicile of trusts

(1) The following provisions of this section determine, for the purposes of the 1968 Convention and this Act, where a trust is domiciled.

(2) A trust is domiciled in the United Kingdom if and only if it is by virtue of subsection (3) domiciled in a part of the United Kingdom.

(3) A trust is domiciled in a part of the United Kingdom if and only if the system of law of that part is the system of law with which the trust has its closest and most real connection.

46 Domicile and seat of the Crown

(1) For the purposes of this Act the seat of the Crown (as determined by this section) shall be treated as its domicile.

(2) The following provisions of this section determine where the Crown has its seat—
(a) for the purposes of the 1968 Convention (in which Article 53 equates the domicile of a legal person with its seat); and
(b) for the purposes of this Act.

(3) Subject to the provisions of any Order in Council for the time being in force under subsection (4)—

(a) the Crown in right of Her Majesty's government in the United Kingdom has its seat in every part of, and every place in, the United Kingdom ; and

(b) the Crown in right of Her Majesty's government in Northern Ireland has its seat in, and in every place in, Northern Ireland.

(4) Her Majesty may by Order in Council provide that, in the case of proceedings of any specified description against the Crown in right of Her Majesty's government in the United Kingdom, the Crown shall be treated for the purposes of the 1968 Convention and this Act as having its seat in, and in every place in, a specified part of the United Kingdom and not in any other part of the United Kingdom.

(5) An Order in Council under subsection (4) may frame a description of proceedings in any way, and in particular may do so by reference to the government department or officer of the Crown against which or against whom they fall to be instituted.

(6) Any Order in Council made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) Nothing in this section applies to the Crown otherwise than in right of Her Majesty's government in the United Kingdom or Her Majesty's government in Northern Ireland.

Other supplementary provisions

47 Modifications occasioned by decisions of European Court as to meaning or effect of Conventions

(1) Her Majesty may by Order in Council—

(a) make such provision as Her Majesty considers appropriate for the purpose of bringing the law of any part of the United Kingdom into accord with the Conventions as affected by any principle laid down by the European Court in connection with the Conventions or by any decision of that court as to the meaning or effect of any provision of the Conventions ; or

(b) make such modifications of Schedule 4 or Schedule 8,or of any other statutory provision affected by any provision of either of those Schedules, as Her Majesty considers appropriate in view of any principle laid down by the European Court in connection with Title II of the 1968 Convention or of any decision of that court as to the meaning or effect of any provision of that Title.

(2) The provision which may be made by virtue of paragraph (a) of subsection (1) includes such modifications of this Act or any other statutory provision, whenever passed or made, as Her Majesty considers appropriate for the purpose mentioned in that paragraph.

(3) The modifications which may be made by virtue of paragraph (b) of subsection (1) include modifications designed to produce divergence between any provision of Schedule 4 or Schedule 8 and a corresponding provision of Title II of the 1968 Convention as affected by any such principle or decision as is mentioned in that paragraph.

(4) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

48 Matters for which rules of court may provide

(1) Rules of court may make provision for regulating the procedure to be followed in any court in connection with any provision of this Act or the Conventions.

(2) Rules of court may make provision as to the manner in which and the conditions subject to which a certificate or judgment registered in any court under any provision of this Act may be enforced, including provision for enabling the court or, in Northern Ireland the Enforcement of Judgments Office, subject to any conditions specified in the rules, to give directions about such matters.

(3) Without prejudice to the generality of subsections (1) and (2), the power to make rules of court for magistrates' courts, and in Northern Ireland the power to make Judgment Enforcement Rules, shall include power to make such provision as the rulemaking authority considers necessary or expedient for the purposes of the provisions of the Conventions and this Act relating to maintenance proceedings and the recognition and enforcement of maintenance orders, and shall in particular include power to make provision as to any of the following matters—

(a) authorising the service in another Contracting State of process issued by or for the purposes of a magistrates' court and the service and execution in England and Wales or Northern Ireland of process issued in another Contracting State;

(b) requesting courts in other parts of the United Kingdom or in other Contracting States to take evidence there for the purposes of proceedings in England and Wales or Northern Ireland ;

(c) the taking of evidence in England and Wales or Northern Ireland in response to similar requests received from such courts;

(d) the circumstances in which and the conditions subject to which any powers conferred under paragraphs (a) to (c) are to be exercised ;

(e) the admission in evidence, subject to such conditions as may be prescribed in the rules, of statements contained in documents purporting to be made or authenticated by a court in another part of the United Kingdom or in another Contracting State, or by a judge or official of such a court, which purport—

(i) to set out or summarise evidence given in proceedings in that court or to be documents received in evidence in such proceedings or copies of such documents; or

(ii) to set out or summarise evidence taken for the purposes of proceedings in England and Wales or Northern Ireland, whether or not in response to any such request as is mentioned in paragraph (b); or

(iii) to record information relating to the payments made under an order of that court;

(f) the circumstances and manner in which a magistrates' court may or must vary or revoke a maintenance order registered in that court, cancel the registration of, or refrain from enforcing, such an order or transmit such an order for enforcement in another part of the United Kingdom;

(g) the cases and manner in which courts in other parts of the United Kingdom or in other Contracting States are to be informed of orders made, or other things done, by or for the purposes of a magistrates' court;

(h) the circumstances and manner in which a magistrates court may communicate for other purposes with such courts;

(i) the giving of notice of such matters as may be prescribed in the rules to such persons as may be so prescribed and the manner in which such notice is to be given.

(4) Nothing in this section shall be taken as derogating from the generality of any power to make rules of court conferred by any other enactment.

49 Saving for powers to stay, sist, strike out or dismiss proceedings

Nothing in this Act shall prevent any court in the United Kingdom from staying, sisting, striking out or dismissing any proceedings before it, on the ground of forum non conveniens or otherwise, where to do so is not inconsistent with the 1968 Convention.

General

50 Interpretation: general

In this Act, unless the context otherwise requires—

" the Accession Convention " has the meaning given by section 1(1);

" Article" and references to sub-divisions of numbered Articles are to be construed in accordance with section 1(2)(b);

" association " means an unincorporated body of persons ;

" Contracting State" has the meaning given by section 1(3);

" the 1968 Convention " has the meaning given by section 1(1), and references to that Convention and to provisions of it are to be construed in accordance with section 1(2) (a);

" the Conventions " has the meaning given by section 1(1);

" corporation" means a body corporate, and includes a partnership subsisting under the law of Scotland ;

" court", without more, includes a tribunal;

" court of law ", in relation to the United Kingdom, means any of the following courts, namely—

(a) the House of Lords,

(b) in England and Wales or Northern Ireland, the Court of Appeal, the High Court, the Crown Court, a county court and a magistrates' court,

(c) in Scotland, the Court of Session and a sheriff court;

" the Crown " is to be construed in accordance with section 51(2);

" enactment" includes an enactment comprised in Northern Ireland legislation;

"judgment", subject to sections 15(1) and 18(2) and to paragraph 1 of Schedules 6 and 7, means any judgment or order (by whatever name called) given or made by a court in any civil proceedings ;

" magistrates' court", in relation to Northern Ireland, means a court of summary jurisdiction ;

" modifications " includes additions, omissions and alterations ;

" overseas country " means any country or territory outside the United Kingdom;

" part of the United Kingdom " means England and Wales, Scotland or Northern Ireland;

" the 1971 Protocol " has the meaning given by section 1(1), and references to that Protocol and to provisions of it are to be construed in accordance with section 1(2) (a);

"rules of court", in relation to any court, means rules, orders or regulations made by the authority having power to make rules, orders or regulations regulating the procedure of that court, and includes—

(a) in Scotland, Acts of Sederunt;

(b) in Northern Ireland, Judgment Enforcement Rules;

" statutory provision " means any provision contained in an Act, or in any Northern Ireland legislation, or in—

(a) subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978); or

(b) any instrument of a legislative character made under any Northern Ireland legislation;

" tribunal "—

(a) means a tribunal of any description other than a court of law ;

(b) in relation to an overseas country, includes, as regards matters relating to maintenance within the meaning of the 1968 Convention, any authority having power to give, enforce, vary or revoke a maintenance order.

51 Application to Crown

(1) This Act binds the Crown.

(2) In this section and elsewhere in this Act references to the Crown do not include references to Her Majesty in Her private capacity or to Her Majesty in right of Her Duchy of Lancaster or to the Duke of Cornwall.

52 Extent

(1) This Act extends to Northern Ireland.

(2) Without prejudice to the power conferred by section 39, Her Majesty may by Order in Council direct that all or any of the provisions of this Act apart from that section shall extend, subject to such modifications as may be specified in the Order, to any of the following territories, that is to say—

(a) the Isle of Man ;

(b) any of the Channel Islands ;

(c) Gibraltar;

(d) the Sovereign Base Areas of Akrotiri and Dhekelia (that is to say the areas mentioned in section 2(1) of the Cyprus Act 1960).

53 Commencement, transitional provisions and savings

(1) This Act shall come into force in accordance with the provisions of Part I of Schedule 13.

(2) The transitional provisions and savings contained in Part II of that Schedule shall have effect in relation to the commencement of the provisions of this Act mentioned in that Part.

54 Repeals

The enactments mentioned in Schedule 14 are hereby repealed to the extent specified in the third column of that Schedule.

55 Short title

This Act may be cited as the Civil Jurisdiction and Judgments Act 1982.