



Domicile and Matrimonial Proceedings Act 1973

1973 CHAPTER 45

PART III

JURISDICTION IN CONSISTORIAL CAUSES (SCOTLAND)

7 Jurisdiction of Court of Session.

(1) Subsections [F¹(2A) to (10)] 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 [F²or], declarator of marriage, F³... ; and

[F⁴(aa) an action for declarator of recognition, or non-recognition, of a relevant foreign decree.]

(b) F⁵

F⁶(2)

[F⁷(2A) The Court shall have jurisdiction to entertain an action for divorce or separation if (and only if) [F⁸either of the parties to the marriage]—

[F⁹(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 F¹⁰... 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

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(ii) had been habitually resident in Scotland throughout the period of one year ending with the date of death.

[^{F11}(3A) The Court shall have jurisdiction to entertain an action for declarator of nullity of marriage [^{F12}or for declarator of recognition, or non-recognition, of a relevant foreign decree] if (and only if) [^{F13}either of the parties to the marriage] –

^{F14}(a)

^{F14}(b)

- [^{F15}(a) is domiciled in Scotland on the date when the action is begun,
- (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.]

^{F16}(3B)

^{F5}(4)

(5) The Court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection 2 [^{F17}, (2A), (3) or (3A) 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 [^{F18}or], declarator of nullity of marriage ^{F19}..., notwithstanding that jurisdiction would not be exercisable [^{F20}under any of those subsections].

^{F21}(5A)

(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 [^{F22}this section] 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.

[^{F23}(9) In this section, “relevant foreign decree” means a decree of divorce, nullity or separation granted outwith [^{F24}the United Kingdom, the Channel Islands and the Isle of Man].

(10) References in subsection (3A) to a marriage shall, in the case of an action for declarator of recognition, or non-recognition, of a relevant foreign decree, be construed as references to the marriage to which the relevant foreign decree relates.]

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Textual Amendments

- F1** Words in s. 7(1) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 37(2)(a)(i)**, 46(2); S.S.I. 2006/212, **art. 2** (with art. 4)
- F2** Word in s. 7(1)(a) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 1(a)(i)**; S.S.I. 2006/212, **art. 2** (with art. 4)
- F3** Words in s. 7(1)(a) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 1(a)(ii)**; S.S.I. 2006/212, **art. 2** (with art. 4)
- F4** S. 7(1)(aa) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 37(2)(a)(ii)**, 46(2); S.S.I. 2006/212, **art. 2** (with art. 4)
- F5** S. 7(1)(b), (4) repealed by Presumption of Death (Scotland) Act 1977 (c. 27, SIF 116:2), s. 19, **Sch. 2**
- F6** S. 7(2) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 1(b)**; S.S.I. 2006/212, **art. 2** (with art. 4)
- F7** S. 7(2A) inserted (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(b)** (with reg. 6)
- F8** Words in s. 7(2A) inserted (31.12.2020) by The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), **reg. 1, sch. 1 para. 1(2)(a)(i)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, **Sch. 5 para. 1(1)**
- F9** S. 7(2A)(a)(b) substituted (31.12.2020) by The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), **reg. 1, sch. 1 para. 1(2)(a)(ii)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, **Sch. 5 para. 1(1)**
- F10** Words in s. 7(3) repealed (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(c)** (with reg. 6)
- F11** S. 7(3A)(3B) inserted (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(d)** (with reg. 6)
- F12** Words in s. 7(3A) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 37(2)(b)**, 46(2); S.S.I. 2006/212, **art. 2** (with art. 4)
- F13** Words in s. 7(3A) inserted (31.12.2020) by The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), **reg. 1, sch. 1 para. 1(2)(b)(i)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, **Sch. 5 para. 1(1)**
- F14** Words in s. 7(3A) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), **reg. 1, sch. 1 para. 1(2)(b)(ii)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, **Sch. 5 para. 1(1)**
- F15** Words in s. 7(3A) substituted (31.12.2020) by The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), **reg. 1, sch. 1 para. 1(2)(b)(iii)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, **Sch. 5 para. 1(1)**
- F16** S. 7(3B) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), **reg. 1, sch. 1 para. 1(2)(c)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, **Sch. 5 para. 1(1)**
- F17** Words in s. 7(5) substituted (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(e)(i)** (with reg. 6)
- F18** Word in s. 7(5) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 1(c)(i)**; S.S.I. 2006/212, **art. 2** (with art. 4)
- F19** Words in s. 7(5) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 1(c)(ii)**; S.S.I. 2006/212, **art. 2** (with art. 4)
- F20** Words in s. 7(5) substituted (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(e)(ii)** (with reg. 6)
- F21** S. 7(5A) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), **reg. 1, sch. 1 para. 1(2)(d)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, **Sch. 5 para. 1(1)**

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- F22** Words in s. 7(8) substituted (1.3.2001) by S.S.I. 2001/36, **reg. 2(2)(g)** (with reg. 6)
- F23** S. 7(9)(10) added (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 37(2)(c), 46(2)**; S.S.I. 2006/212, **art. 2** (with art. 4)
- F24** Words in s. 7(9) substituted (31.12.2020) by The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), **reg. 1, sch. 1 para. 1(2)(e)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)

8 Jurisdiction of sheriff court in respect of actions for separation.

- (1) Subsections (2) to ^{F25}(6) below shall have effect, subject to section 12(6) of this Act, with respect to the jurisdiction of the sheriff court to entertain—
- ^{F26}(za) an action for declarator of marriage;]
 - ^{F27}(a) an action for separation ^{F28}[or divorce]; ^{F29}^{F30}...
 - (b) an action for declarator of recognition, or non-recognition, of a relevant foreign decree^{F31}; and
 - (c) an action for declarator of nullity of marriage.]
- (2) The court shall have jurisdiction to entertain an action for separation ^{F32}[or divorce]^{F33}... if (and only if)—
- ^{F34}(a) either of the parties to the marriage—
 - (i) is domiciled in Scotland on the date when the action is begun, or
 - (ii) was habitually resident in Scotland 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.
- ^{F35}(2ZA) The court has jurisdiction to entertain an action for declarator of marriage if (and only if)—
- (a) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the action is begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date, and
 - (b) any of the following requirements is met in relation to either of the parties to the marriage—
 - (i) the party is domiciled in Scotland on the date on which the action is begun,
 - (ii) the party was habitually resident in Scotland throughout the period of one year ending with that date, or
 - (iii) the party died before that date and either—
 - (A) was at death domiciled in Scotland, or
 - (B) had been habitually resident in Scotland throughout the period of one year ending with the date of death.]

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[^{F36}(2A) The court shall have jurisdiction to entertain an action for declarator of nullity of marriage [^{F37} or for declarator of recognition, or non-recognition, of a relevant foreign decree] if (and only if)—

(a) either party to the marriage—

(i) was resident in the sheriffdom for a period of forty days ending with the date when the action is begun; or

(ii) had been resident in the sheriffdom for a period of not less than forty days ending not more than forty days before that date and has no known residence in Scotland at that date; and

[^{F38}(b) either party to the marriage—

(i) is domiciled in Scotland on the date when the action is begun,

(ii) was habitually resident in Scotland throughout the period of one year ending with that date, or

(ii) died before that date and either—

(A) was at death domiciled in Scotland, or

(B) had been habitually resident in Scotland throughout the period of one year ending with the date of death.]

^{F39}(2B)

^{F40}(2C)

^{F41}(2D)]

(3) In respect of any marriage, the court shall have jurisdiction to entertain an action for separation [^{F42} or divorce][^{F43} or declarator of [^{F44} marriage or of] nullity of marriage] (notwithstanding that jurisdiction would not be exercisable under subsection (2)[^{F45}, (2ZA)][^{F46} or (2A)] 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)[^{F45}, (2ZA)], [^{F47}(2A) or] this subsection.

^{F48}(3A)

(4) The foregoing provisions of this section are without prejudice to any jurisdiction of a sheriff court to entertain an action of separation [^{F49} or divorce][^{F50} or declarator of [^{F51} marriage or of] nullity of marriage] remitted to it in pursuance of any enactment or rule of court ^{F52}....

[^{F53}(5) In this section, “relevant foreign decree” has the meaning given by section 7(9).

(6) References in subsection (2) to a marriage shall, in the case of an action for declarator of recognition, or non-recognition, of a relevant foreign decree, be construed as references to the marriage to which the relevant foreign decree relates.]

Textual Amendments

F25 Word in s. 8(1) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 37(3)(a)(i), 46(2); S.S.I. 2006/212, art. 2 (with art. 4)

F26 S. 8(1)(za) inserted (21.5.2014) by Marriage and Civil Partnership (Scotland) Act 2014 (asp 5), ss. 23(2), 36; S.S.I. 2014/121, art. 2(e)

F27 Words in s. 8(1) renumbered as paragraph (a) (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 37(3)(a)(ii), 46(2); S.S.I. 2006/212, art. 2 (with art. 4)

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- F28** Words added by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 47), ss. 6(1), 7(4), **Sch. 1 para. 18**
- F29** Word in s. 8(1)(a) repealed (28.11.2011) by Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15), **ss. 15(2)(a)**, 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F30** S. 8(1)(b) and preceding word added (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 37(3)(a)(iii)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)
- F31** S. 8(1)(c) and preceding word inserted (28.11.2011) by Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15), **ss. 15(2)(b)**, 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F32** 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. 18(b)
- F33** Words in s. 8(2) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(3)(a)(i)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F34** S. 8(2)(a) substituted (31.12.2020) by The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(3)(a)(ii)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F35** S. 8(2ZA) inserted (21.5.2014) by Marriage and Civil Partnership (Scotland) Act 2014 (asp 5), **ss. 23(3)**, 36; S.S.I. 2014/121, art. 2(e)
- F36** S. 8(2A)-(2D) inserted (28.11.2011) by Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15), **ss. 15(3)**, 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F37** Words in s. 8(2A) inserted (31.12.2020) by The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(3)(b)(i)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F38** S. 8(2A)(b) substituted (31.12.2020) by The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(3)(b)(ii)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F39** S. 8(2B) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(3)(c)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F40** S. 8(2C) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(3)(c)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F41** S. 8(2D) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(3)(c)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F42** 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. 18(c)**
- F43** Words in s. 8(3) inserted (28.11.2011) by Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15), **ss. 15(4)(a)**, 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F44** Words in s. 8(3) inserted (21.5.2014) by Marriage and Civil Partnership (Scotland) Act 2014 (asp 5), **ss. 23(4)(a)**, 36; S.S.I. 2014/121, art. 2(e)
- F45** Words in s. 8(3) inserted (21.5.2014) by Marriage and Civil Partnership (Scotland) Act 2014 (asp 5), **ss. 23(4)(b)**, 36; S.S.I. 2014/121, art. 2(e)
- F46** Words in s. 8(3) inserted (28.11.2011) by Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (asp 15), **ss. 15(4)(b)**, 19(2) (with s. 18); S.S.I. 2011/352, art. 2

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- F47** Words in s. 8(3) substituted (28.11.2011) by [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011 \(asp 15\)](#), **ss. 15(4)(c)**, 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F48** S. 8(3A) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, **sch. 1 para. 1(3)(d)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F49** 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. 18(d)**
- F50** Words in s. 8(4) inserted (28.11.2011) by [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011 \(asp 15\)](#), **ss. 15(5)**, 19(2) (with s. 18); S.S.I. 2011/352, art. 2
- F51** Words in s. 8(4) inserted (21.5.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), **ss. 23(5)**, 36; S.S.I. 2014/121, art. 2(e)
- F52** Words in s. 8(4) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, **sch. 1 para. 1(3)(e)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F53** S. 8(5)(6) added (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 37(3)(c)**, 46(2); S.S.I. 2006/212, art. 2 (with art. 4)

[^{F54}8A Same sex marriages

- (1) Sections 7 and 8 do not apply in relation to marriages between persons of the same sex.
- (2) Schedule 1B (jurisdiction in relation to same sex marriages (Scotland)) has effect.]

Textual Amendments

- F54** S. 8A inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), s. 36, **Sch. 1 para. 1(2)**; S.S.I. 2014/287, art. 3, Sch.

9 ^{F55}

Textual Amendments

- F55** S. 9 repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55\)](#), s. 28(2), **Sch. 3**

10 Ancillary and collateral orders.

- (1) [^{F56}Where after the commencement of this Act an application is competently made to the Court of Session or to a sheriff court for the making, or the variation or recall, of an order which is ancillary or collateral to] 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 ^{F57} . . . whether or not it would have jurisdiction to do so apart from this subsection.

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[^{F58}(1A) For the purposes of subsection (1) above, references to an application for the making, or the variation or recall, of an order are references to the making, or the variation or recall, of an order relating to children, aliment, financial provision on divorce, judicial separation, nullity of marriage or expenses.]

^{F59}(1B)

^{F60}(1BA)

^{F61}(1C)

^{F62}(1D)

(2) It is hereby declared that where—

- (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 ^{M1}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.

Textual Amendments

- F56** Words in s. 10(1) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 20(2)(a)(i)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F57** Words in s. 10(1) repealed (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 20(2)(a)(ii)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F58** S. 10(1A) inserted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 20(2)(b)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F59** S. 10(1B) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(4)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F60** S. 10(1BA) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(4)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F61** S. 10(1C) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 7(3)(a)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F62** S. 10(1D) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), **Sch. para. 7(3)(b)** (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M1 1966 c. 19.

Status: Point in time view as at 31/12/2020.

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

11 Sisting of certain actions.

[^{F63}(1)] 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.

^{F64}(2)

Textual Amendments

- F63** S. 11(1): renumbered (1.3.2005) by [European Communities \(Matrimonial and Parental Responsibility Jurisdiction and Judgments\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/42\)](#), regs. 1(1), **2(5)(a)** (with reg. 7)
- F64** S. 11(2) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, **sch. 1 para. 1(5)** (with reg. 6) (as amended by [S.S.I. 2020/441](#), regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)

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).
 - [^{F65}(a) 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).]

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

- F66(b)
- F66(c)
- F66(d)

- (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.

Textual Amendments

- F65** S. 12(5)(a) re-numbered (1.3.2001) for words by S.S.I. 2001/36, **reg. 2(5)(a)** (with reg. 6)
- F66** S. 12(5)(b)-(d) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(6)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)

Status:

Point in time view as at 31/12/2020.

Changes to legislation:

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