



Domicile and Matrimonial Proceedings Act 1973

1973 CHAPTER 45

PART III

JURISDICTION IN CONSISTORIAL CAUSES (SCOTLAND)

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

- (1) Subsections (2) to [F¹(6)] below shall have effect, subject to section 12(6) of this Act, with respect to the jurisdiction of the sheriff court to entertain—
- [F²(za) an action for declarator of marriage;]
 - [F³(a) an action for separation [F⁴ or divorce]; F⁵[F⁶ ...
 - (b) an action for declarator of recognition, or non-recognition, of a relevant foreign decree][F⁷; and
 - (c) an action for declarator of nullity of marriage.]
- (2) The court shall have jurisdiction to entertain an action for separation [F⁸ or divorce]F⁹ ... if (and only if)—
- [F¹⁰(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.
- [F¹¹(2ZA) The court has jurisdiction to entertain an action for declarator of marriage if (and only if)—

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- (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.]

[^{F12}(2A) The court shall have jurisdiction to entertain an action for declarator of nullity of marriage [^{F13}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

- [^{F14}(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.]

^{F15}(2B)

^{F16}(2C)

^{F17}(2D)]

(3) In respect of any marriage, the court shall have jurisdiction to entertain an action for separation [^{F18}or divorce][^{F19} or declarator of [^{F20}marriage or of] nullity of marriage] (notwithstanding that jurisdiction would not be exercisable under subsection (2)[^{F21}, (2ZA)][^{F22}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)[^{F21}, (2ZA)], [^{F23}(2A) or] this subsection.

^{F24}(3A)

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- (4) The foregoing provisions of this section are without prejudice to any jurisdiction of a sheriff court to entertain an action of separation [^{F25}or divorce][^{F26}or declarator of [^{F27}marriage or of] nullity of marriage] remitted to it in pursuance of any enactment or rule of court ^{F28}.....
- [^{F29}(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

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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**
- F5** 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
- F6** 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)
- F7** 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
- F8** 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)**
- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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
- F13** 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)
- F14** 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)
- F15** 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)

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- F16** 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)
- F17** 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)
- F18** 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)**
- F19** 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
- F20** 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)
- F21** 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)
- F22** 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
- F23** 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
- F24** 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)
- F25** 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)**
- F26** 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
- F27** 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)
- F28** 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)
- F29** 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)

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