SCHEDULE 1 Regulation 4

Amendment of primary legislation

Amendment of the Domicile and Matrimonial Proceedings Act 1973

1.—(1) The Domicile and Matrimonial Proceedings Act 1973 [M1] is amended as follows.

(2) In section 7 [M2] (jurisdiction of Court of Session)—

(a) in subsection (2A)—

(i) after "if (and only if)", insert " either of the parties to the marriage ", and

(ii) for paragraphs (a) and (b) substitute—

"(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.",

(b) in subsection (3A)—

(i) after "if (and only if)" insert " either of the parties to the marriage ",

(ii) omit the first paragraphs (a) and (b),

(iii) for the second paragraphs (a) and (b) substitute—

"(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.",

(c) omit subsection (3B),

(d) omit subsection (5A), and

(e) in subsection (9) for "a member state of the European Union" substitute " the United Kingdom, the Channel Islands and the Isle of Man ".

(3) In section 8 [M3] (jurisdiction of sheriff court in respect of actions for separation)—

(a) in subsection (2)—

(i) omit "or for declarator of recognition, or non-recognition, of a relevant foreign decree",

(ii) for paragraph (a) substitute—

"(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) in subsection (2A)—

(i) after "marriage" where it first occurs insert " or for declarator of recognition, or non-recognition, of a relevant foreign decree ",

(ii) for paragraph (b) substitute—

"(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.”,

(c) omit subsections (2B), (2C) and (2D),

(d) omit subsection (3A), and

(e) in subsection (4) omit “, provided that entertaining the action would not contravene Article 6 of the Council Regulation”.

(4) In section 10 [M4] (ancillary and collateral orders) omit subsections (1B) [M5] and (1BA) [M6].

(5) In section 11 [M7] (sisting of certain actions) omit subsection (2).

(6) In section 12 [M8] (supplementary), in subsection (5) omit paragraphs (b) to (d).

(7) In schedule 1B (jurisdiction in relation to same sex marriages (Scotland)) [M9]—

(a) in paragraph 1(3), in the definition of “relevant foreign decree” for “a member State” substitute “ the United Kingdom, the Channel Islands and the Isle of Man ”,

(b) omit paragraph 2 (power to make provision corresponding to EC Regulation 2201/2003),

(c) in paragraph 3 (divorce or separation)—

(i) in sub-paragraph (1), after “if (and only if)” insert “ either of the parties to the marriage ”,

(ii) for sub-paragraph (1)(a) and (b), substitute—

“(a) is domiciled in Scotland on the date when the proceedings are begun, or

(b) was habitually resident in Scotland throughout the period of one year ending with that date.”, and

(iii) in sub-paragraph (3)(b), omit “under regulations under paragraph 2”,

(d) in paragraph 5 (nullity of marriage)—

(i) in sub-paragraph (1)—

(aa) omit from beginning of head (a) to “those regulations and”,

(bb) in sub-head (i), after “proceedings are begun”, insert “ , or was habitually resident in Scotland throughout the period of one year ending with that date ”,

(ii) in sub-paragraph (2), in head (a), omit “paragraph (a) or (b) of”,

(iii) in sub-paragraph (3), in head (b), omit “under regulations under paragraph 2”,

(e) in paragraph 6 (recognition, or non-recognition, of foreign decrees)—

(i) in sub-paragraph (1)—

(aa) omit from beginning of head (a) to “those regulations and”,

(bb) in sub-head (i), after “proceedings are begun”, insert “ , or was habitually resident in Scotland throughout the period of one year ending with that date ”,

(ii) in sub-paragraph (2), in head (a), omit “paragraph (a) or (b) of”, and

(f) in paragraph 7 (supplementary provision), in sub-paragraph (2), omit “, if entertaining the proceedings would not contravene regulations under paragraph 2”.

Commencement Information

I1 Sch. 1 para. 1 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations

M1 1973 c.45.

M2 Section 7 was amended by the Presumption of Death (Scotland) Act 1977, (c.27), section 19 and schedule 2, the Family Law (Scotland) Act 2006, (asp 2), section 37(2) and schedule 2, paragraph 1, S.S.I. 2001/36 and S.S.I. 2005/42.

M3 Section 8 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), **sections 6(1)**, 7(4) and schedule 1, paragraph 18, the Family Law (Scotland) Act 2006, (asp 2), section 37(3), the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011, (asp 15), section 15, the Marriage and Civil Partnership (Scotland) Act 2014, (asp 5), section 23, S.S.I. 2001/36 and S.S.I. 2005/42.

M4 Section 10 was amended by the Children (Scotland) Act 1995, (c.36), schedule 4, paragraph 20(2), S.I. 2011/1484 and is amended by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/ .

M5 Subsection (1B) was added by S.S.I. 2001/36 and amended by S.S.I. 2005/42.

M6 Subsection (1BA) was added by the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5), **schedule 1**, paragraph 1(3).

M7 Section 11 was amended by S.S.I. 2005/42.

M8 Section 12 was amended by S.S.I. 2001/36 and S.S.I. 2005/42.

M9 Schedule 1B was inserted by the Marriage and Civil Partnership (Scotland) Act 2014, (asp 5), schedule 1, paragraph 1(4).

Amendment of the Family Law Act 1986

2.—(1) The Family Law Act 1986 [M10] is amended as follows.

(2) In section 14 [M11] (power of court to refuse application or sist proceedings) in subsection (2)—

(a) at the end of paragraph (b) insert “ or ”,

(b) omit paragraph (c), and

(c) in the words following paragraph (d), omit “Article 15 of the Council Regulation or” and “of the Council Regulation”.

(3) In section 15 [M12] (duration, variation and recall of orders) in subsection (1)(b) omit “or by virtue of the Council Regulation”.

(4) In section 17A [M13], omit “Sections 2 and 3 of Chapter II of the Council Regulation and are subject to”.

(5) In section 26 [M14] (recognition: special Scottish rule), omit subsection (2).

(6) In section 42 [M15] (general interpretation of Part 1), in subsection (1), omit the definition of “the Council Regulation”.

(7) In section 45 [M16] (recognition in the United Kingdom of overseas divorces, annulments and legal separations)—

(a) in subsection (1) omit “subsection (2) of this section and to”, and

(b) omit subsection (2).

(8) In section 54 [M17] (interpretation of Part 2), in subsection (1), omit the definition of "the Council Regulation".

Commencement Information

I2 Sch. 1 para. 2 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations

M10 1986 c.55.

M11 Section 14 was amended by the Children Act 1989 (c.41), **schedule 13**, paragraph 62(2)(a), S.S.I. 2005/42 and S.S.I. 2010/213.

M12 Section 15 was amended by the Children Act 1989 (c.41), **schedule 13**, paragraph 62(2)(a), the Children (Scotland) Act 1995 (c.36), **schedule 4**, paragraph 41(4) and schedule 5, paragraph 1 and S.S.I. 2001/36.

M13 Section 17A was inserted by S.S.I. 2005/42 and amended by S.S.I. 2010/213.

M14 Section 26(2) was inserted by S.S.I. 2001/36 and amended by S.S.I. 2005/42.

M15 Section 42 was amended by S.S.I. 2005/623 and S.S.I. 2010/213.

M16 Section 45 was amended by S.I. 2001/310 and S.I. 2005/265.

M17 The definition in section 54(1) was inserted by S.S.I. 2005/42.

Amendment of the Children (Scotland) Act 1995

3. In section 14 of the Children (Scotland) Act 1995 [M18] (jurisdiction and choice of law in relation to certain matters), omit subsection (5).

Commencement Information

I3 Sch. 1 para. 3 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations

M18 1995 c.36, **section 14(5)** was added by S.S.I. 2005/42.

Amendment of the Civil Partnership Act 2004

4.—(1) The Civil Partnership Act 2004 [M19] is amended as follows.

(2) Omit section 219 (power to make provision corresponding to EC Regulation 2201/2003).

(3) In section 225 (jurisdiction of Scottish courts)—

(a) in subsection (1)—

(i) after "if (and only if)" insert " either civil partner ",

(ii) for paragraphs (a) and (b), substitute—

"(a) is domiciled in Scotland on the date when proceedings are begun, or

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

(iii) in paragraph (c)(ii) omit "under section 219 regulations",

(b) in subsection (3)—

(i) for paragraphs (a) and (b) substitute—

"(a) either of the ostensible civil partners—

(i) is domiciled in Scotland on the date when the proceedings are begun or was habitually resident in Scotland throughout the period of one year ending with that date, or

(ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death, or",

(ii) in paragraph (c)(ii) omit "under section 219 regulations".

(4) In section 227 [M20] (Scottish ancillary and collateral orders)—

(a) in subsection (3), for "Subject to subsection (3A) if", substitute " If ",

(b) omit subsection (3A).

(5) In section 234 (recognition in the UK of overseas dissolution, annulment or separation)—

(a) in subsection (1)—

(i) for "Subject to subsection (2), the", substitute " The ", and

(ii) for "the United Kingdom" substitute " Scotland ",

(b) omit subsection (2), and

(c) in subsection (3), for "subsections (1) and (2)", substitute " subsection (1) ".

Commencement Information

I4 Sch. 1 para. 4 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations

M19 2004 c.33.

M20 Section 227 was amended by S.I. 2011/1484 and is amended by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 S.I. 2019/ .

Changes to legislation:
There are currently no known outstanding effects for the The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019, SCHEDULE 1.