



# Family Law Act 1986

## 1986 CHAPTER 55

### PART II

#### RECOGNITION OF DIVORCES, ANNULMENTS AND LEGAL SEPARATIONS

##### *Divorces, annulments and judicial separations granted in the British Islands*

#### **44 Recognition in United Kingdom of divorces, annulments and judicial separations granted in the British Islands.**

- (1) Subject to section 52(4) and (5)(a) of this Act, no divorce or annulment obtained in any part of the British Islands shall be regarded as effective in any part of the United Kingdom unless granted by a court of civil jurisdiction.
- (2) Subject to section 51 of this Act, the validity of any divorce, annulment or judicial separation granted by a court of civil jurisdiction in any part of the British Islands shall be recognised throughout the United Kingdom.

##### *Overseas divorces, annulments and legal separations*

#### **45 Recognition in the United Kingdom of overseas divorces, annulments and legal separations.**

Subject to sections 51 and 52 of this Act, the validity of a divorce, annulment or legal separation obtained in a country outside the British Islands (in this Part referred to as an overseas divorce, annulment or legal separation) shall be recognised in the United Kingdom if, and only if, it is entitled to recognition—

- (a) by virtue of sections 46 to 49 of this Act, or
- (b) by virtue of any enactment other than this Part.

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#### **46 Grounds for recognition.**

- (1) The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if—
  - (a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and
  - (b) at the relevant date either party to the marriage—
    - (i) was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
    - (ii) was domiciled in that country; or
    - (iii) was a national of that country.
- (2) The validity of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings shall be recognised if—
  - (a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained;
  - (b) at the relevant date—
    - (i) each party to the marriage was domiciled in that country; or
    - (ii) either party to the marriage was domiciled in that country and the other party was domiciled in a country under whose law the divorce, annulment or legal separation is recognised as valid; and
  - (c) neither party to the marriage was habitually resident in the United Kingdom throughout the period of one year immediately preceding that date.
- (3) In this section “the relevant date” means—
  - (a) in the case of an overseas divorce, annulment or legal separation obtained by means of proceedings, the date of the commencement of the proceedings;
  - (b) in the case of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings, the date on which it was obtained.
- (4) Where in the case of an overseas annulment, the relevant date fell after the death of either party to the marriage, any reference in subsection (1) or (2) above to that date shall be construed in relation to that party as a reference to the date of death.
- (5) For the purpose of this section, a party to a marriage shall be treated as domiciled in a country if he was domiciled in that country either according to the law of that country in family matters or according to the law of the part of the United Kingdom in which the question of recognition arises.

#### **47 Cross-proceedings and divorces following legal separations.**

- (1) Where there have been cross-proceedings, the validity of an overseas divorce, annulment or legal separation obtained either in the original proceedings or in the cross-proceedings shall be recognised if—
  - (a) the requirements of section 46(1)(b)(i), (ii) or (iii) of this Act are satisfied in relation to the date of the commencement either of the original proceedings or of the cross-proceedings, and
  - (b) the validity of the divorce, annulment or legal separation is otherwise entitled to recognition by virtue of the provisions of this Part.
- (2) Where a legal separation, the validity of which is entitled to recognition by virtue of the provisions of section 46 of this Act or of subsection (1) above is converted, in the

country in which it was obtained, into a divorce which is effective under the law of that country, the validity of the divorce shall be recognised whether or not it would itself be entitled to recognition by virtue of those provisions.

#### **48 Proof of facts relevant to recognition.**

- (1) For the purpose of deciding whether an overseas divorce, annulment or legal separation obtained by means of proceedings is entitled to recognition by virtue of section 46 and 47 of this Act, any finding of fact made (whether expressly or by implication) in the proceedings and on the basis of which jurisdiction was assumed in the proceedings shall—
  - (a) if both parties to the marriage took part in the proceedings, be conclusive evidence of the fact found; and
  - (b) in any other case, be sufficient proof of that fact unless the contrary is shown.
- (2) In this section “finding of fact” includes a finding that either party to the marriage—
  - (a) was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
  - (b) was under the law of that country domiciled there; or
  - (c) was a national of that country.
- (3) For the purposes of subsection (1)(a) above, a party to the marriage who has appeared in judicial proceedings shall be treated as having taken part in them.

#### *Supplemental*

#### **49 Modifications of Part II in relation to countries comprising territories having different systems of law.**

- (1) In relation to a country comprising territories in which different systems of law are in force in matters of divorce, annulment or legal separation, the provisions of this Part mentioned in subsections (2) to (5) below shall have effect subject to the modifications there specified.
- (2) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (1)(b)(i) or (ii) of section 46 of this Act are satisfied, that section and, in the case of a legal separation, section 47(2) of this Act shall have effect as if each territory were a separate country.
- (3) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (1)(b)(iii) of section 46 of this Act are satisfied—
  - (a) that section shall have effect as if for paragraph (a) of subsection (1) there were substituted the following paragraph—
    - “(a) the divorce, annulment or legal separation is effective throughout the country in which it was obtained;”;and
  - (b) in the case of a legal separation, section 47(2) of this Act shall have effect as if for the words “is effective under the law of that country” there were substituted the words “is effective throughout that country”.
- (4) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (2)(b) of section 46 of

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this Act are satisfied, that section and section 52(3) and (4) of this Act and, in the case of a legal separation, section 47(2) of this Act shall have effect as if each territory were a separate country.

- (5) Paragraphs (a) and (b) of section 48(2) of this Act shall each have effect as if each territory were a separate country.

**50 Non-recognition of divorce or annulment in another jurisdiction no bar to remarriage.**

Where, in any part of the United Kingdom—

- (a) a divorce or annulment has been granted by a court of civil jurisdiction, or
- (b) the validity of a divorce or annulment is recognised by virtue of this Part,

the fact that the divorce or annulment would not be recognised elsewhere shall not preclude either party to the marriage from re-marrying in that part of the United Kingdom or cause the re-marriage of either party (wherever the re-marriage takes place) to be treated as invalid in that part.

**51 Refusal of recognition.**

- (1) Subject to section 52 of this Act, recognition of the validity of—

- (a) a divorce, annulment or judicial separation granted by a court of civil jurisdiction in any part of the British Islands, or
- (b) an overseas divorce, annulment or legal separation,

may be refused in any part of the United Kingdom if the divorce, annulment or separation was granted or obtained at a time when it was irreconcilable with a decision determining the question of the subsistence or validity of the marriage of the parties previously given (whether before or after the commencement of this Part) by a court of civil jurisdiction in that part of the United Kingdom or by a court elsewhere and recognised or entitled to be recognised in that part of the United Kingdom.

- (2) Subject to section 52 of this Act, recognition of the validity of—

- (a) a divorce or judicial separation granted by a court of civil jurisdiction in any part of the British Islands, or
- (b) an overseas divorce or legal separation,

may be refused in any part of the United Kingdom if the divorce or separation was granted or obtained at a time when, according to the law of that part of the United Kingdom (including its rules of private international law and the provisions of this Part), there was no subsisting marriage between the parties.

- (3) Subject to section 52 of this Act, recognition by virtue of section 45 of this Act of the validity of an overseas divorce, annulment or legal separation may be refused if—

- (a) in the case of a divorce, annulment or legal separation obtained by means of proceedings, it was obtained—
  - (i) without such steps having been taken for giving notice of the proceedings to a party to the marriage as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or
  - (ii) without a party to the marriage having been given (for any reason other than lack of notice) such opportunity to take part in the

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- proceedings as, having regard to those matters, he should reasonably have been given; or
- (b) in the case of a divorce, annulment or legal separation obtained otherwise than by means of proceedings—
- (i) there is no official document certifying that the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; or
- (ii) where either party to the marriage was domiciled in another country at the relevant date, there is no official document certifying that the divorce, annulment or legal separation is recognised as valid under the law of that other country; or
- (c) in either case, recognition of the divorce, annulment or legal separation would be manifestly contrary to public policy.
- (4) In this section—
- “official”, in relation to a document certifying that a divorce, annulment or legal separation is effective, or is recognised as valid, under the law of any country, means issued by a person or body appointed or recognised for the purpose under that law;
- “the relevant date” has the same meaning as in section 46 of this Act;
- and subsection (5) of that section shall apply for the purposes of this section as it applies for the purposes of that section.
- (5) Nothing in this Part shall be construed as requiring the recognition of any finding of fault made in any proceedings for divorce, annulment or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

## **52 Provisions as to divorces, annulments etc. obtained before commencement of Part II.**

- (1) The provisions of this Part shall apply—
- (a) to a divorce, annulment or judicial separation granted by a court of civil jurisdiction in the British Islands before the date of the commencement of this Part, and
- (b) to an overseas divorce, annulment or legal separation obtained before that date,
- as well as to one granted or obtained on or after that date.
- (2) In the case of such a divorce, annulment or separation as is mentioned in subsection (1) (a) or (b) above, the provisions of this Part shall require or, as the case may be, preclude the recognition of its validity in relation to any time before that date as well as in relation to any subsequent time, but those provisions shall not—
- (a) affect any property to which any person became entitled before that date, or
- (b) affect the recognition of the validity of the divorce, annulment or separation if that matter has been decided by any competent court in the British Islands before that date.
- (3) Subsections (1) and (2) above shall apply in relation to any divorce or judicial separation granted by a court of civil jurisdiction in the British Islands before the date of the commencement of this Part whether granted before or after the commencement of section 1 of the Recognition of Divorces and Legal Separations Act 1971.

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- (4) The validity of any divorce, annulment or legal separation mentioned in subsection (5) below shall be recognised in the United Kingdom whether or not it is entitled to recognition by virtue of any of the foregoing provisions of this Part.
- (5) The divorces, annulments and legal separations referred to in subsection (4) above are—
- (a) a divorce which was obtained in the British Islands before 1st January 1974 and was recognised as valid under rules of law applicable before that date;
  - (b) an overseas divorce which was recognised as valid under the Recognition of Divorces and Legal Separations Act 1971 and was not affected by section 16(2) of the Domicile and Matrimonial Proceedings Act 1973 (proceedings otherwise than in a court of law where both parties resident in United Kingdom);
  - (c) a divorce of which the decree was registered under section 1 of the Indian and Colonial Divorce Jurisdiction Act 1926;
  - (d) a divorce or annulment which was recognised as valid under section 4 of the Matrimonial Causes (War Marriages) Act 1944; and
  - (e) an overseas legal separation which was recognised as valid under the Recognition of Divorces and Legal Separations Act 1971.

### **53 Effect of divorces and annulments on wills.**

In subsection (1) of section 18A of the Wills Act 1837 (effect of a decree of divorce or nullity of marriage on wills)—

- (a) after the word “court” there shall be inserted the words “of civil jurisdiction in England and Wales”; and
- (b) for the words “or declares it void” there shall be substituted the words “or his marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in England and Wales by virtue of Part II of the Family Law Act 1986”.

### **54 Interpretation of Part II.**

(1) In this Part—

“annulment” includes any decree or declarator of nullity of marriage, however expressed;

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

“proceedings” means judicial or other proceedings.

(2) In this Part “country” includes a colony or other dependent territory of the United Kingdom but for the purposes of this Part a person shall be treated as a national of such a territory only if it has a law of citizenship or nationality separate from that of the United Kingdom and he is a citizen or national of that territory under that law.