

SCHEDULE 2

AMENDMENTS TO THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982

PART III—

JURISDICTION IN SCOTLAND

6. In section 20 (rules as to jurisdiction in Scotland)—
 - (a) in subsection (1), after “Subject to” insert “ the Regulation, to ”;
 - (b) omit subsection (4); and
 - (c) in subsection (5)—
 - (i) omit “and derived to any extent from Title II of the 1968 Convention”;
 - (ii) in paragraph (a), after “Convention” insert “ or Chapter II of the Regulation ”; and
 - (iii) in paragraph (a), after “that Title” insert “ or that Chapter ”.
7. For Schedule 8 (rules as to jurisdiction in Scotland) substitute—

“SCHEDULE 8

RULES AS TO JURISDICTION IN SCOTLAND

General

1. Subject to the following rules, persons shall be sued in the courts for the place where they are domiciled.

Special jurisdiction

2. Subject to rules 3 (jurisdiction over consumer contracts), 4 (jurisdiction over individual contracts of employment), 5 (exclusive jurisdiction) and 6 (prorogation), a person may also be sued—
 - (a) where he has no fixed residence, in a court within whose jurisdiction he is personally cited;
 - (b) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
 - (c) in matters relating to delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
 - (d) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings to the extent that the court has jurisdiction to entertain civil proceedings;
 - (e) in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which has jurisdiction to entertain those proceedings, provided that an action for adherence and aliment or of affiliation and aliment shall be treated as a matter relating to maintenance which is not ancillary to proceedings concerning the status of a person;

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- (f) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
- (g) in his capacity as settlor, trustee or beneficiary of a trust domiciled in Scotland created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the Court of Session, or the appropriate sheriff court within the meaning of section 24A of the Trusts (Scotland) Act 1921;
- (h) where he is not domiciled in the United Kingdom, in the courts for any place where—
 - (i) any movable property belonging to him has been arrested; or
 - (ii) any immovable property in which he has any beneficial interest is situated;
- (i) in proceedings which are brought to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, in the courts for the place where the property is situated;
- (j) in proceedings for interdict, in the courts for the place where it is alleged that the wrong is likely to be committed;
- (k) in proceedings concerning a debt secured over immovable property, in the courts for the place where the property is situated;
- (l) in proceedings which have as their object a decision of an organ of a company or other legal person or of an association of natural or legal persons, in the courts for the place where that company, legal person or association has its seat;
- (m) in proceedings concerning an arbitration which is conducted in Scotland or in which the procedure is governed by Scots law, in the Court of Session;
- (n) in proceedings principally concerned with the registration in the United Kingdom or the validity in the United Kingdom of patents, trade marks, designs or other similar rights required to be deposited or registered, in the Court of Session;
- (o)
 - (i) where he is one of a number of defenders, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
 - (ii) as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
 - (iii) on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
- (p) in matters relating to a contract, if the action may be combined with an action against the same defender in matters relating to rights in rem in immovable property, in the courts for the place where the property is situated;
- (q) as regards a claim for limitation of liability arising from the use or operation of a ship, in the court having jurisdiction in the action relating to such liability.

Jurisdiction over consumer contracts

3.—(1) In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, subject to rule 5, jurisdiction shall be determined by this rule if—

- (a) it is a contract for the sale of goods on instalment credit terms; or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in Scotland or, by any means, directs such activities to Scotland or to several places including Scotland, and the contract falls within the scope of such activities.

(2) This rule shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

(3) A consumer may bring proceedings against the other party to a contract only in—

- (a) the courts for the place in which that party is domiciled;
- (b) the courts for the place in which he is himself domiciled; or
- (c) any court having jurisdiction by virtue of rule 2(f) or (i).

(4) Proceedings may be brought against a consumer by the other party to the contract only in the courts for the place where the consumer is domiciled or any court having jurisdiction under rule 2(i).

(5) The provisions of this rule shall not affect the right to bring a counterclaim in the court in which, in accordance with this rule, the original claim is pending.

(6) The provisions of this rule may be departed from only by an agreement—

- (a) which is entered into after the dispute has arisen; or
- (b) which allows the consumer to bring proceedings in courts other than those indicated in this rule; or
- (c) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Regulation State, and which confers jurisdiction on the courts of that Regulation State, provided that such an agreement is not contrary to the law of that Regulation State.

Jurisdiction over individual contracts of employment

4.—(1) In matters relating to individual contracts of employment, jurisdiction shall be determined by this rule, without prejudice to rule 2(f).

(2) An employer may be sued—

- (a) in the courts for the place where he is domiciled; or
- (b) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so; or
- (c) if the employee does not or did not habitually carry out his work in any one place, in the courts for the place where the business which engaged the employee is or was situated.

(3) An employer may bring proceedings only in the courts for the place in which the employee is domiciled.

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(4) The provisions of this rule shall not affect the right to bring a counter-claim in the court in which, in accordance with this rule, the original claim is pending.

(5) The provisions of this rule may be departed from only by an agreement on jurisdiction—

- (a) which is entered into after the dispute has arisen; or
- (b) which allows the employee to bring proceedings in courts other than those indicated in this rule.

Exclusive jurisdiction

5.—(1) Notwithstanding anything contained in any of rules 1 to 4 above or 6 to 9 below but subject to paragraph (3) below, the following courts shall have exclusive jurisdiction:—

- (a) in proceedings which have as their object rights in rem in, or tenancies of, immovable property, the courts for the place where the property is situated;
- (b) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, the courts for the place where the company, legal person or association has its seat;
- (c) in proceedings which have as their object the validity of entries in public registers, the courts for the place where the register is kept;
- (d) in proceedings concerned with the enforcement of judgments, the courts for the place where the judgment has been or is to be enforced.

(2) No court shall exercise jurisdiction in a case where immovable property, the seat of a body mentioned in paragraph (1)(b) above, a public register or the place where a judgment has been or is to be enforced is situated outside Scotland and where paragraph (1) would apply if the property, seat, register or, as the case may be, place of enforcement were situated in Scotland.

(3) In proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts for the place in which the defender is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and tenant are domiciled in Scotland.

Prorogation of jurisdiction

6.—(1) If the parties have agreed that a court is to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court shall have jurisdiction.

(2) Such an agreement conferring jurisdiction shall be either—

- (a) in writing or evidenced in writing; or
- (b) in a form which accords with practices which the parties have established between themselves; or
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

(3) Any communication by electronic means which provides a durable record of the agreement shall be equivalent to “writing”.

(4) The court on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

(5) Where an agreement or a trust instrument confers jurisdiction on the courts of the United Kingdom or of Scotland, proceedings to which paragraph (1) or, as the case may be, (4) above applies may be brought in any court in Scotland.

(6) Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of rule 5 or where rule 5(2) applies.

7.—(1) Apart from jurisdiction derived from other provisions of this Schedule, a court before whom a defender enters an appearance shall have jurisdiction.

(2) This rule shall not apply where appearance was entered to contest jurisdiction, or where another court has exclusive jurisdiction by virtue of rule 5 or where rule 5(2) applies.

Examination as to jurisdiction and admissibility

8. Where a court is seised of a claim which is principally concerned with a matter over which another court has exclusive jurisdiction by virtue of rule 5, or where it is precluded from exercising jurisdiction by rule 5(2), it shall declare of its own motion that it has no jurisdiction.

9. Where in any case a court has no jurisdiction which is compatible with this Schedule, and the defender does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction.”.

8. In Schedule 9 (proceedings excluded from Schedule 8), in paragraph 14(a)—
- (a) after “Article 57”, insert “, or Article 71 of the Regulation, ”; and
 - (b) omit “in the 1968 Convention”.

Changes to legislation:

There are currently no known outstanding effects for the The Civil Jurisdiction and Judgments Order 2001, PART III—.