

PART 20 - Recognition of Certain Divorces, Legal Separations and Marriage Annulments

Minister for Justice and Equality

Head 20-1. Definitions and application (Part 20)

Provide that -

(1) In this Part—

“Council Regulation” means Council Regulation (EC) No. 2201/2003 of 27 November 2003¹ concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, as amended by Council Regulation (EC) No. 2116/2004 of 2 December 2004² amending Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, as regards treaties with the Holy See;

“relevant jurisdiction” means—

- (a) England and Wales,
- (b) Scotland,
- (c) Northern Ireland, or
- (d) Gibraltar.

(2) Section 5 of the Domicile and Recognition of Foreign Divorces Act 1986 shall not apply to a divorce to which Head 20-2 or 20-3 applies.

Explanatory Note:

Head 20-1 re-enacts the provisions of section 5 (Definitions and application (Part 3)) of the Family Law Act 2019.

Head 20-1 makes general provision for Part 20 (Recognition of Certain Divorces, Legal Separations and Marriage Annulments) of the General Scheme.

Subhead (1) defines certain terms for the purposes of Part 3.

¹ O.J. No. L338, 23.12.2003, p. 1

² O.J. No. L367, 14.12.2004, p. 1

“Council Regulation” is defined as meaning EU Council Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (also known as the Brussels IIa Regulation).

“Relevant jurisdiction” is defined as meaning England and Wales, Scotland, Northern Ireland or Gibraltar.

Subhead (2) provides that section 5 of the Domicile and Recognition of Foreign Divorces Act 1986 shall not apply to a divorce to which Head 20-2 or 20-3 applies.

Head 20-2. Recognition of certain divorces, legal separations and marriage annulments granted in United Kingdom or Gibraltar before coming into operation of head

Provide that -

A divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction that, prior to the coming into operation of this head, was recognised under the Council Regulation shall continue to be recognised.

Explanatory Note:

Head 20-2 re-enacts the provisions of section 6 (Recognition of certain divorces, legal separations and marriage annulments granted in United Kingdom or Gibraltar before coming into operation of section) of the Family Law Act 2019.

Head 20-2 provides that a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction that, prior to the coming into operation of the head, was recognised under the Council Regulation shall continue to be recognised.

Head 20-3. Recognition of certain divorces, legal separations and marriage annulments granted in United Kingdom or Gibraltar after coming into operation of head

Provide that -

(1) This head shall apply to a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction on or after the coming into operation of this head.

(2) A divorce, legal separation or marriage annulment to which this head applies shall, subject to subhead (3), be recognised if, at the date of the institution of the

proceedings relating to the divorce, legal separation or marriage annulment concerned, at least one of the following requirements is satisfied:

- (a) the spouses were habitually resident in a relevant jurisdiction;
- (b) the spouses were last habitually resident in a relevant jurisdiction, insofar as one of them still resided there;
- (c) the respondent was habitually resident in a relevant jurisdiction;
- (d) the applicant—
 - (i) was habitually resident in a relevant jurisdiction, and
 - (ii) had resided there for at least a year immediately prior to that date;
- (e) either of the spouses was domiciled in a relevant jurisdiction.

(3) A divorce, legal separation or marriage annulment to which this head applies shall not be recognised—

- (a) if such recognition is manifestly contrary to public policy,
- (b) where the judgment in the proceedings relating to the divorce, legal separation or marriage annulment concerned (“the relevant judgment”) was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally,
- (c) if the relevant judgment is irreconcilable with a judgment given in proceedings between the same parties in the State, or
- (d) if the relevant judgment is irreconcilable with an earlier judgment given in a state other than the State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the State.

Explanatory Note:

Head 20-3 re-enacts the provisions of section 7 (Recognition of certain divorces, legal separations and marriage annulments granted in United Kingdom or Gibraltar after coming into operation of section) of the Family Law Act 2019.

Head 20-3 provides for recognition of divorces, legal separations or marriage annulments granted under the law of a relevant jurisdiction on or after the coming into operation of the head.

Subhead (1) provides that Head 20-3 shall apply to a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction on or after the coming into operation of the head.

Subhead (2) sets out the jurisdictional criteria for recognition of a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction. The criteria correspond with the jurisdiction requirements of the Brussels IIa Regulation.

Subhead (3) sets out the grounds for refusal of recognition of a divorce, legal separation or marriage annulment granted under the law of a relevant jurisdiction. The grounds of refusal correspond with the grounds of refusal of recognition set out in the Brussels IIa Regulation.

Head 1-4. Repeals

Provide that -

Head 1-4 also to include -

(c) Part 3 of the Family Law Act 2019.

Explanatory Note:

Part 3 (Recognition of Certain Divorces, Legal Separations and Marriage Annulments) of the Family Law Act 2019 is governed by the long title of the Act which provides for the event of the UK withdrawal occurring without an agreement between the UK and the EU under Article 50 of the Treaty on European Union. As such an agreement has been made, Part 3 of the 2019 Act can no longer apply and should be repealed.