

Private International Law (Miscellaneous Provisions) Act 1995 (c. 42)

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1995 Chapter c. 42

An Act to make provision about interest on judgment debts and arbitral awards expressed in a currency other than sterling; to make further provision as to marriages entered into by unmarried persons under a law which permits polygamy; to make provision for choice of law rules in tort and delict; and for connected purposes.

[8th November 1995]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

***PART I . Interest on Judgment Debts and Arbitral Awards* ➔**

Interest on judgment debts generally.

1.—(1) In the [1970 c. 31.] Administration of Justice Act 1970, after section 44 (interest on judgment debts) there shall be inserted the following section—

"Interest on judgment debts expressed in currencies other than sterling.

44A. — (1) Where a judgment is given for a sum expressed in a currency other than sterling and the judgment debt is one to which section 17 of the Judgments Act 1838 applies, the court may order that the interest rate applicable to the debt shall be such rate as the court thinks fit.

(2) Where the court makes such an order, section 17 of the Judgments Act 1838 shall have effect in relation to the judgment debt as if the rate specified in the order were substituted for the rate specified in that section.

"

(2) Subsection (1) above does not apply in relation to a judgment given before the commencement of this section.

Interest on county court judgment debts.

2. In section 74 of the [1984 c. 28.] County Courts Act 1984 (interest on judgment debts etc.), after subsection (5) there shall be inserted the following subsection— "(5A) The power conferred by subsection (1) includes power to make provision enabling a county court to order that the rate of interest applicable to a sum expressed in a currency other than sterling shall be such rate as the court thinks fit (instead of the rate otherwise applicable)."

Interest on arbitral awards.

3.—(1) In the [1950 c. 27.] Arbitration Act 1950, for section 20 (interest on awards) there shall be substituted the following section—

"Interest on awards.

20. — (1) A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award.

(2) The rate of interest shall be—

(a) the rate for judgment debts specified in section 17 of the Judgments Act 1838 at the date of the award; or

(b) if the power under subsection (3) below is exercised, the rate specified in the award.

(3) Where the sum is expressed in a currency other than sterling, the award may specify such rate as the arbitrator or umpire thinks fit instead of the rate mentioned in subsection (2)(a) above.

"

(2) Subsection (1) above does not apply in relation to an award made before the commencement of this section.

Part I: consequential amendments.

4.—(1) In section 24(1) of the [1947 c. 44.] Crown Proceedings Act 1947 (interest on debts etc.), after the word "interest)" there shall be inserted the words "and section 44A of the Administration of Justice Act 1970 (which enables the court to order an appropriate rate for a judgment debt expressed in a currency other than sterling)".

(2) In Schedule 11 to the [1986 c. 5.] Agricultural Holdings Act 1986, in paragraph 22 (interest on awards), for the words "same rate as a judgment debt" there shall be substituted the words "same rate as that specified in section 17 of the Judgments Act 1838 at the date of the award".

A corresponding amendment shall be deemed to have been made in paragraph 20B of Schedule 6 to the [1948 c. 63.] Agricultural Holdings Act 1948 in relation to any case to which it continues to apply.

(3) In section 10(3) of the [1994 c. 37.] Drug Trafficking Act 1994 (interest on sums unpaid under confiscation orders), for the words from "that" to the end there shall be substituted the words "the same rate as that specified in section 17 of the Judgments Act 1838 (interest on civil judgment debts)".

PART II. Validity of Marriages under a Law which permits Polygamy ➔

Validity in English law of potentially polygamous marriages.

5.—(1) A marriage entered into outside England and Wales between parties neither of whom is already married is not void under the law of England and Wales on the ground that it is entered into under a law which permits polygamy and that either party is domiciled in England and Wales.

(2) This section does not affect the determination of the validity of a marriage by reference to the law of another country to the extent that it falls to be so determined in accordance with the rules of private international law.

Application of section 5 to prior marriages.

6.—(1) Section 5 above shall be deemed to apply, and always to have applied, to any marriage entered into before commencement which is not excluded by subsection (2) or (3) below.

(2) That section does not apply to a marriage a party to which has (before commencement) entered into a later marriage which either—

(a) is valid apart from this section but would be void if section 5 above applied to the earlier marriage; or

(b) is valid by virtue of this section.

(3) That section does not apply to a marriage which has been annulled before commencement, whether by a decree granted in England and Wales or by an annulment obtained elsewhere and recognised in England and Wales at commencement.

(4) An annulment of a marriage resulting from legal proceedings begun before commencement shall be treated for the purposes of subsection (3) above as having taken effect before that time.

(5) For the purposes of subsections (3) and (4) above a marriage which has been declared to be invalid by a court of competent jurisdiction in any proceedings concerning either the validity of the marriage or any right dependent on its validity shall be treated as having been annulled.

(6) Nothing in section 5 above, in its application to marriages entered into before commencement—

(a) gives or affects any entitlement to an interest—

(i) under the will or codicil of, or on the intestacy of, a person who died before commencement; or

(ii) under a settlement or other disposition of property made before that time (otherwise than by will or codicil);

(b) gives or affects any entitlement to a benefit, allowance, pension or other payment—

(i) payable before, or in respect of a period before, commencement; or

(ii) payable in respect of the death of a person before that time;

(c) affects tax in respect of a period or event before commencement; or

(d) affects the succession to any dignity or title of honour.

(7) In this section "commencement" means the commencement of this Part.

Validity and effect in Scots law of potentially polygamous marriages.

7.—(1) A person domiciled in Scotland does not lack capacity to enter into a marriage by reason only that the marriage is entered into under a law which permits polygamy.

(2) For the avoidance of doubt, a marriage valid by the law of Scotland and entered into—

(a) under a law which permits polygamy; and

(b) at a time when neither party to the marriage is already married,

has, so long as neither party marries a second spouse during the subsistence of the marriage, the same effects for all purposes of the law of Scotland as a marriage entered into under a law which does not permit polygamy.

Part II: supplemental.

8.—(1) Nothing in this Part affects any law or custom relating to the marriage of members of the Royal Family.

(2) The enactments specified in the Schedule to this Act (which contains consequential amendments and amendments removing unnecessary references to potentially polygamous marriages) are amended in accordance with that Schedule.

(3) Nothing in that Schedule affects either the generality of any enactment empowering the making of subordinate legislation or any such legislation made before the commencement of this Part.

PART III. Choice of Law in Tort and Delict ➔

Purpose of Part III.

9.—(1) The rules in this Part apply for choosing the law (in this Part referred to as "the applicable law") to be used for determining issues relating to tort or (for the purposes of the law of Scotland) delict.

(2) The characterisation for the purposes of private international law of issues arising in a claim as issues relating to tort or delict is a matter for the courts of the forum.

(3) The rules in this Part do not apply in relation to issues arising in any claim excluded from the operation of this Part by section 13 below.

(4) The applicable law shall be used for determining the issues arising in a claim, including in particular the question whether an actionable tort or delict has occurred.

(5) The applicable law to be used for determining the issues arising in a claim shall exclude any choice of law rules forming part of the law of the country or countries concerned.

(6) For the avoidance of doubt (and without prejudice to the operation of section 14 below) this Part applies in relation to events occurring in the forum as it applies in relation to events occurring in any other country.

(7) In this Part as it extends to any country within the United Kingdom, "the forum" means England and Wales, Scotland or Northern Ireland, as the case may be.

(8) In this Part "delict" includes quasi-delict.

Abolition of certain common law rules.

10. The rules of the common law, in so far as they—

(a) require actionability under both the law of the forum and the law of another country for the purpose of determining whether a tort or delict is actionable; or

(b) allow (as an exception from the rules falling within paragraph (a) above) for the law of a single country to be applied for the purpose of determining the issues, or any of the issues, arising in the case in question,

are hereby abolished so far as they apply to any claim in tort or delict which is not excluded from the operation of this Part by section 13 below.

Choice of applicable law: the general rule.

11.—(1) The general rule is that the applicable law is the law of the country in which the events constituting the tort or delict in question occur.

(2) Where elements of those events occur in different countries, the applicable law under the general rule is to be taken as being—

(a) for a cause of action in respect of personal injury caused to an individual or death resulting from personal injury, the law of the country where the individual was when he sustained the injury;

(b) for a cause of action in respect of damage to property, the law of the country where the property was when it was damaged; and

(c) in any other case, the law of the country in which the most significant element or elements of those events occurred.

(3) In this section "personal injury" includes disease or any impairment of physical or mental condition.

Choice of applicable law: displacement of general rule.

12.—(1) If it appears, in all the circumstances, from a comparison of—

(a) the significance of the factors which connect a tort or delict with the country whose law would be the applicable law under the general rule; and

(b) the significance of any factors connecting the tort or delict with another country,

that it is substantially more appropriate for the applicable law for determining the issues arising in the case, or any of those issues, to be the law of the other country, the general rule is displaced and the applicable law for determining those issues or that issue (as the case may be) is the law of that other country.

(2) The factors that may be taken into account as connecting a tort or delict with a country for the purposes of this section include, in particular, factors relating to the parties, to any of the events which constitute the tort or delict in question or to any of the circumstances or consequences of those events.

Exclusion of defamation claims from Part III.

13.—(1) Nothing in this Part applies to affect the determination of issues arising in any defamation claim.

(2) For the purposes of this section "defamation claim" means—

(a) any claim under the law of any part of the United Kingdom for libel or slander or for slander of title, slander of goods or other malicious falsehood and any claim under the law of Scotland for verbal injury; and

(b) any claim under the law of any other country corresponding to or otherwise in the nature of a claim mentioned in paragraph (a) above.

Transitional provision and savings.

14.—(1) Nothing in this Part applies to acts or omissions giving rise to a claim which occur before the commencement of this Part.

(2) Nothing in this Part affects any rules of law (including rules of private international law) except those abolished by section 10 above.

(3) Without prejudice to the generality of subsection (2) above, nothing in this Part—

(a) authorises the application of the law of a country outside the forum as the applicable law for determining issues arising in any claim in so far as to do so—

(i) would conflict with principles of public policy; or

(ii) would give effect to such a penal, revenue or other public law as would not otherwise be enforceable under the law of the forum; or

(b) affects any rules of evidence, pleading or practice or authorises questions of procedure

in any proceedings to be determined otherwise than in accordance with the law of the forum.

(4) This Part has effect without prejudice to the operation of any rule of law which either has effect notwithstanding the rules of private international law applicable in the particular circumstances or modifies the rules of private international law that would otherwise be so applicable.

Crown application.

15.—(1) This Part applies in relation to claims by or against the Crown as it applies in relation to claims to which the Crown is not a party.

(2) In subsection (1) above a reference to the Crown does not include a reference to Her Majesty in Her private capacity or to Her Majesty in right of Her Duchy of Lancaster or to the Duke of Cornwall.

(3) Without prejudice to the generality of section 14(2) above, nothing in this section affects any rule of law as to whether proceedings of any description may be brought against the Crown.

PART IV. Supplemental ➔

Commencement.

16.—(1) Part I shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint; and different days may be appointed for different provisions.

(2) Part II shall come into force at the end of the period of two months beginning with the day on which this Act is passed.

(3) Part III shall come into force on such day as the Lord Chancellor and the Lord Advocate may by order made by statutory instrument appoint; and different days may be appointed for the commencement of Part III as it extends to England and Wales, Scotland or Northern Ireland.

Modification of Northern Ireland Act 1974.

17. An Order in Council under paragraph 1(1)(b) of Schedule 1 to the [1974 c. 28.] Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is only made for purposes corresponding to the purposes of any provision of Part II shall not be subject to paragraph 1(4) and (5) of that Schedule (requirement for affirmative resolution procedure) but shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Extent.

18.—(1) Any amendment made by this Act has the same extent as the enactment being amended.

(2) In Part II, sections 5 and 6 extend to England and Wales only, section 7 extends to Scotland only and section 8 extends to England and Wales and Scotland.

(3) Part III extends to England and Wales, Scotland and Northern Ireland.

Short title.

19. This Act may be cited as the Private International Law (Miscellaneous Provisions) Act 1995.

SCHEDULE. ➔

Section 8(2).

Consequential and minor amendments relating to Part II

Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c. 38)

1.—(1) Section 2 of the Matrimonial Proceedings (Polygamous Marriages) Act 1972 (matrimonial relief etc. in relation to polygamous marriages: Scotland) shall be amended as follows.

(2) In subsection (1), for the words "the marriage" onwards there shall be substituted the words "either party to the marriage is, or has during the subsistence of the marriage been, married to more than one person".

(3) For subsection (3) there shall be substituted— "(3) Provision may be made by rules of court—

(a) for requiring notice of proceedings brought by virtue of this section to be served on any additional spouse of a party to the marriage in question; and

(b) for conferring on any such additional spouse the right to be heard in the proceedings,

in such cases as may be specified in the rules."

Matrimonial Causes Act 1973 (c. 18)

2.—(1) The Matrimonial Causes Act 1973 shall be amended as follows.

(2) In section 11 (grounds on which a marriage is void), for the words "may be polygamous although" there shall be substituted the words "is not polygamous if".

(3) In section 47 (matrimonial relief and declarations in respect of polygamous marriage)—

(a) in subsection (1), for the words "the marriage" onwards there shall be substituted the words "either party to the marriage is, or has during the subsistence of the marriage been, married to more than one person" and

(b) for subsection (4) there shall be substituted— "(4) Provision may be made by rules of

court—

(a) for requiring notice of proceedings brought by virtue of this section to be served on any additional spouse of a party to the marriage in question; and

(b) for conferring on any such additional spouse the right to be heard in the proceedings,

in such cases as may be specified in the rules."

Matrimonial Homes Act 1983 (c. 19)

3. In section 10 of the Matrimonial Homes Act 1983 (interpretation), for subsection (2) there shall be substituted— "(2) It is hereby declared that this Act applies as between the parties to a marriage notwithstanding that either of them is, or has at any time during the marriage's subsistence been, married to more than one person."

Social Security Contributions and Benefits Act 1992 (c. 4)

4.—(1) The Social Security Contributions and Benefits Act 1992 shall be amended as follows.

(2) In section 121(1)(b) (regulations as to application of provisions of Parts I to VI to polygamous marriages), for the words following "section" there shall be substituted the words "applies, a marriage during the subsistence of which a party to it is at any time married to more than one person is to be treated as having, or as not having, the same consequences as any other marriage."

(3) In section 147(5) (regulations as to application of provisions of Part IX to polygamous marriages), for the words following "in which" there shall be substituted the words "a marriage during the subsistence of which a party to it is at any time married to more than one person is to be treated for the purposes of this Part of this Act as having, or not having, the same consequences as any other marriage."