

Reciprocal enforcement between judgments made by UK Courts by the Isle of Man and other Crown Dependencies

1. The Manx Courts jurisdiction to make an Order for Ancillary Relief depends on the grant of a Decree in the main suite, i.e. the Divorce Proceedings. Section 21 of the Matrimonial Proceedings Act 2003 provides

21 Jurisdiction Further Provisions:

(i) The Court has jurisdiction to entertain proceedings for a Divorce Order or Separation Order if and only if either of the parties to the marriage a) is domiciled in the Island on the date when the proceedings are begun, or b) was habitually resident in the Island throughout the period of one year ending with that date.

The usual provisions as are applicable under English Law then follow for Orders for general Financial Provision including transfer of property, lump sum and pension sharing. In addition we have similar provisions for Reciprocal Enforcement as in England (part III of the Matrimonial Proceedings Act 1984) but within the British Isles section 117 of the Matrimonial Proceedings Act 2003 of The Isle of Man is the relevant provision.

Enforcement of UK Orders in the Isle of Man

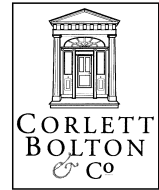
2. Part 4 of the Matrimonial Proceedings Act 2003 deals with financial relief after a foreign divorce. It provides that where a marriage has been dissolved in a "*foreign country*", either party to the marriage may under appropriate circumstances apply to the Isle of Man High Court for financial relief, including a Pension Sharing Order (section 83). However, section 90 provides that, for the purposes of Part 4, "*foreign country*" means a country or territory outside the British Islands". This means that parties to a marriage dissolved in the United Kingdom or the Channel Islands cannot seek relief in the Isle of Man under this Part.
3. The problem with which we have been specifically concerned is the means for recognition and enforcement in the Isle of Man of pension sharing orders made by the courts of the United Kingdom and the Channel Islands. That said, it would be appreciated that the same principle applies, not only to pension sharing orders, but also to financial provision orders, property adjustment orders and sale of property orders, as defined under the Matrimonial Proceedings Act 2003.
4. Part 6 of the Isle of Man's Matrimonial Proceedings Act 2003 deals with reciprocal enforcement in the Isle of Man of certain financial orders on divorce made in any part of the United Kingdom or the Channel Islands.

Section 117 of the Matrimonial Proceedings Act 2003 provides:

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"(1) If the Council of Ministers is satisfied that provision is or will be made by the law of any part of the United Kingdom or any of the Channel Islands providing for the enforcement in that territory of a financial order of any description, it may by order designate that territory for the purposes of this Part with respect to any order of a description specified in the designation order, being an order-

- (a) made by a court in that territory on or after the making of a decree or order dissolving or annulling a marriage or providing for the separation of the parties to a marriage, and*
 - (b) appearing to the Council of Ministers to correspond to a financial order of that description.*
- (2) Where a designation order is in force in relation to any territory, the following provisions of this Part shall apply in relation to any order of the specified description.*
- (3) A designation order shall not have effect unless it is approved by Tynwald.*
- (4) In this Part-*

'the Court' means the High Court;

'designated territory' means a territory designated by a designation order;

'designation order' means an order under subsection (1);

'financial order' means a financial provision order, a property adjustment order, a sale of property order or a pension sharing order made by the Court on or after the making of a divorce order, annulment order or separation order, but does not include-

- (a) an interim order, or*
- (b) a maintenance order within the meaning of Part 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1995;*

'overseas order' means an order to which the following provisions of this Part apply by virtue of subsection (2);

'the relevant territory', in relation to an overseas order, means the territory in which the order was made.

"

5. Despite the provisions of section 117 of the Matrimonial Proceedings Act 2003 (of the Isle of Man) an Order of the English Court cannot be enforced in the Isle of Man as the necessary Designation Order has not been made by the Council Of Ministers in the Isle of Man. The Council of Ministers would be prepared to make the necessary Designation Order but it must be made on a reciprocal basis. I am informed that the Attorney General's Office in the Isle of Man has been advised that a designation order as required to enable reciprocity is not a priority in the Ministry Of Justice in London. (See opinion of Peter Davey of Attorney Generals Chambers in Isle of Man.) An English Capital Order likewise cannot be

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enforced in the Isle of Man as the Judgements (Reciprocal Enforcement) Act 1968 of the Isle of Man specifically excludes Matrimonial Judgements.

This leaves a potential loophole enabling the sheltering particularly of pensions assets in the Isle of Man or the Channel Islands, as at present the only means of enforcing a capital award is by using Money Order as the basis of a Claim in the Isle of Man.(see VAG UK v Davis (1996-98 MLR252)

Enforcement of Manx Order in the UK

6. Part III of the Matrimonial and Family Proceedings Act 1984 of England provides generally for the English Courts to exercise jurisdiction in ancillary matters after an "overseas" decree of divorce. Section 27 of that Act defines overseas country as ""overseas country" means a country or territory outside the British Islands. ".

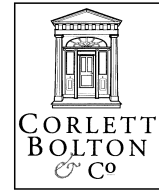
The British Islands are defined in the Interpretation Act 1978 of England as "*British Islands means the United Kingdom the Channel Islands and The Isle of Man*". Consequently whilst it appears to be anomalous it is not possible for a person having divorced in the Isle of Man to utilise the provisions of Part III of the Matrimonial and Family Proceedings Act 1984 to seek ancillary relief in England.

7. There this is an error or lacuna in the law and that it was surely not the intention of Parliament that persons divorcing in the Isle of Man should be precluded from the provisions of Part III. However, suffice to say it is the case that a Manx Order for capital provision cannot be enforced in England under Part III of the Act as the Isle of Man does not fall within the definition of "overseas country".
8. Accordingly it is not possible for an Applicant to utilise the offices of the English Court System to make financial provision for her under matrimonial legislation if the divorce proceedings commenced in the Isle of Man, notwithstanding that both Applicant and the Respondent both later reside in England or that the former matrimonial home and only property is also in England.
9. It is established principle that the Court should not make an Order which cannot be enforced. However there a number of alternative or complementary proceedings which would provide a means of enforcement of an order made in the Isle of Man in England:
 - the Maintenance Orders (Reciprocal Enforcement) Act 1972 provides for the registration of a maintenance order made in a reciprocating country for enforcement (s6 attached hereto). S21 of that Act defines a maintenance order as,
"an Order for payment of a lump sum or the making of periodical payments towards the maintenance of any person"
 - the Foreign Judgements (Reciprocal Enforcement) Act 1933 provides for the reciprocal enforcement of a fixed sum judgement from the reciprocating country. The Isle of Man is a Reciprocating country and a lump sum order could be enforced by the means if there were not an exclusion for

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Matrimonial Orders. It is accepted that it would not be possible to make a property adjustment order which could be enforced in England.

10. Attempts to resolve the problem

There has been correspondence with various UK authorities since at least February 1999 on this point with no substantive progress to date.

In March 1999, the Attorney General's Chambers were informed by the Office of the Solicitor in London that *"Departmental responsibility for reciprocal recognition and enforcement of foreign judgments rests with the Lord Chancellor's Department which also has responsibility for family law. I have spoken with officials there. They were generally sympathetic to the idea of extending the application of principles of co-operation and mutual recognition of judgments, particularly in relation to judgments from other jurisdictions within the British Islands. They have indicated that this may be a matter which could be taken further across a broader front when resources permit. It is, however, not a departmental priority at present."*

After further correspondence over the next few years, including an offer from the Isle of Man for relevant officials to meet and discuss, the matter appears to rest with a letter from the Lord Chancellor's Department dated 3rd December 2002 stating that, whilst they agreed in principle with reciprocal enforcement of pension sharing orders with the Isle of Man, *"officials in the Family Policy division have informed us that they have insufficient resources to take forward this initiative at present. However, officials there are currently investigating the legislative requirements to enable this to take place."*

In January 2009, Deputy Deemster Corlett's Clerk raised with the Chief Minister's Office the ongoing lack of any designation orders under section 117 of the Matrimonial Proceedings Act 2003. The letter cites the example of a case before the Isle of Man High Court in which Court is unable to enforce an English County Court Pension Sharing Order where the husband resides in the Isle of Man and the wife in England. The parties wished the pension fund, held by two Isle of Man pension providers, to be dealt with in accordance with the County Court Order, but are unable to do so owing to the lack of the appropriate designation order.

The Deemster's Clerk informs me that this is a growing problem and the courts have to deal with 4/5 such ineffective applications each year and with the increasing movements of people within the finance sector in particular, the problem on both sides requires an early resolution and perhaps pressure could be brought to bear to raise it further up the list of priorities within the Ministry of Justice.

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For further information on these or any other family law issues, please contact Sally Bolton on on (01624) 676868 or by e-mail Sally.bolton@corlettbolton.com

This publication is intended only to provide a brief guide. It does not purport to be comprehensive or to provide legal advice.

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