



Family Law (Scotland) Act 2006

2006 asp 2

Private international law

38 Validity of marriages

- (1) Subject to [^{F1}section 13(1) of, and Schedule 6 to, the Marriage (Same Sex Couples) Act 2013 and to any Orders in Council made under that Schedule], the question whether a marriage is formally valid shall be determined by the law of the place where the marriage was celebrated.
- (2) The question whether a person who enters into a marriage—
 - (a) had capacity; or
 - (b) consented,to enter into it shall, subject to subsections (3) and (4) and to section 50 of the Family Law Act 1986 (c. 55) (non-recognition of divorce or annulment in another jurisdiction no bar to remarriage), be determined by the law of the place where, immediately before the marriage, that person was domiciled.
- (3) If a marriage entered into in Scotland is void under a rule of Scots internal law, then, notwithstanding subsection (2), that rule shall prevail over any law under which the marriage would be valid.
- (4) The capacity of the person to enter into the marriage shall not be determined under the law of the place where, immediately before the marriage, the person was domiciled in so far as it would be contrary to public policy in Scotland for such capacity to be so determined.
- (5) If the law of the place in which a person is domiciled requires a person under a certain age to obtain parental consent before entering into a marriage, that requirement shall not be taken to affect the capacity of a person to enter into a marriage in Scotland unless failure to obtain such consent would render invalid any marriage that the person purported to enter into in any form anywhere in the world.

Textual Amendments

- F1** Words in s. 38(1) substituted (3.6.2014) by [The Marriage \(Same Sex Couples\) Act 2013](#) (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(3), [Sch. 1](#)

Changes to legislation: There are currently no known outstanding effects for the Family Law (Scotland) Act 2006, Section 38. (See end of Document for details)

para. 31; and said words also substituted by [The Consular Marriages and Marriages under Foreign Law Order 2014 \(S.I. 2014/1110\)](#), arts. 1(1), **18**

Commencement Information

I1 S. 38 in force at 4.5.2006 by [S.S.I. 2006/212](#), **art. 2** (with [art. 4](#))

Changes to legislation:

There are currently no known outstanding effects for the Family Law (Scotland) Act 2006, Section 38.