

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

**EXITING THE EUROPEAN UNION
FAMILY LAW, ENGLAND AND WALES
FAMILY LAW, NORTHERN IRELAND
JUDGMENTS, ENGLAND AND WALES
JUDGMENTS, NORTHERN IRELAND**

The Civil Partnership and Marriage (Same
Sex Couples) (Jurisdiction and Judgments)
(Amendment etc.) (EU Exit) Regulations 2019

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(1).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Civil Partnership and Marriage (Same Sex Couples) (Jurisdiction and Judgments) (Amendment etc.) (EU Exit) Regulations 2019 and come into force on exit day.

Extent

2.—(1) Subject to paragraphs (2) to (4), these Regulations extend to England and Wales and Northern Ireland.

(2) Regulation 4(2)(c) extends to England and Wales, Northern Ireland and Scotland.

(3) Regulation 5(5) extends to Northern Ireland only.

(4) The following provisions extend to England and Wales only—

(a) regulation 3;

(b) regulation 5(4);

(c) regulation 6.

PART 2

Amendment of primary legislation

Amendment of the Domicile and Matrimonial Proceedings Act 1973

3.—(1) Paragraph 5 of Schedule A1 (power to make provision corresponding to EC Regulation 2201/2003) to the Domicile and Matrimonial Proceedings Act 1973(2) is amended as follows.

(2) In the heading for “EC Regulation 2201/2003” substitute “provision for opposite sex married couples”.

(3) In sub-paragraph (1)—

(a) in paragraph (a)—

(i) in sub-paragraph (i) for “a member state,” substitute “England and Wales, or”;

(ii) omit sub-paragraph (ii) and the “or” following it;

(iii) in sub-paragraph (iii) for “a part of the United Kingdom or the Republic of Ireland” substitute “England and Wales”;

(b) omit paragraph (b) and the “and” preceding it.

(4) Omit sub-paragraphs (2) to (4).

Amendment of the Civil Partnership Act 2004

4.—(1) The Civil Partnership Act 2004(3) is amended as follows.

(2) In section 219 (power to make provision corresponding to EC Regulation 2201/2003)—

(a) in the heading, for “corresponding to EC Regulation 2201/2003” substitute “as to jurisdiction in relation to civil partnerships”;

(b) in subsection (1)—

(i) in paragraph (a)—

(aa) in sub-paragraph (i) for “a member state,” substitute “England and Wales, or”;

(bb) omit sub-paragraph (ii) and the “or” following it;

(2) 1973 c. 45, Schedule A1 was inserted by the Marriage (Same Sex Couples) Act 2013, Schedule 4, Part 4, paragraph 8; there are other amending instruments but none is relevant.

(3) 2004 c. 33, amended by S.I. 2010/976; there are other amending instruments but none is relevant.

- (cc) in sub-paragraph (iii) for “a part of the United Kingdom or the Republic of Ireland” substitute “England and Wales”;
 - (ii) omit paragraph (b) and the “and” preceding it;
 - (c) in subsection (1A)—
 - (i) in paragraph (a) for “in such cases as are mentioned in subsection (1)(a), and” substitute “in cases where a civil partner—
 - “(i) is or has been habitually resident in Northern Ireland, or
 - (ii) is domiciled in Northern Ireland.”;
 - (ii) omit paragraph (b);
 - (d) omit subsections (3) to (5).
- (3) In section 234 (recognition in the UK of overseas dissolution, annulment or separation)—
- (a) in subsection (1) omit “Subject to subsection (2),”;
 - (b) omit subsection (2);
 - (c) in subsection (3) for “subsections (1) and (2)” substitute “subsection (1)”.

PART 3

Amendment of secondary legislation

Amendment of the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005

5.—(1) The Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005(4) are amended as follows.

- (2) In regulation 2—
 - (a) in paragraph (2) for “Regulations 4 and 11(1) extend” substitute “Regulation 4 extends”;
 - (b) in paragraph (3) for “Regulations 5 and 11(2) extend” substitute “Regulation 5 extends”.
- (3) In regulation 3 omit paragraph (2).
- (4) In regulation 4—
 - (a) after “where” insert “on the date of the application”;
 - (b) in sub-paragraphs (d) and (e) for “petitioner”, in both places it occurs, substitute “applicant”;
 - (c) in sub-paragraphs (d) and (e) for “preceding the presentation of the petition”, in both places it occurs, substitute “before the application was made”;
 - (d) at the end of sub-paragraph (d), omit “or”;
 - (e) at the end of sub-paragraph (e), insert “or”;
 - (f) after sub-paragraph (e) insert—
 - “(f) both civil partners are domiciled in England and Wales.”.
- (5) In regulation 5—
 - (a) after “where” insert “on the date of the application”;

- (b) in sub-paragraphs (d) and (e) for “petitioner”, in both places it occurs, substitute “applicant”;
 - (c) in sub-paragraphs (d) and (e) for “preceding the presentation of the petition”, in both places it occurs, substitute “before the application was made”;
 - (d) at the end of sub-paragraph (d), omit “or”;
 - (e) at the end of sub-paragraph (e), insert “or”;
 - (f) after sub-paragraph (e) insert—
 - “(f) both civil partners are domiciled in Northern Ireland”.
- (6) Omit regulations 6 to 12.

Amendment of the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014

6.—(1) The Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014⁽⁵⁾ are amended as follows.

- (2) In regulation 2—
 - (a) after “where” insert “on the date of the application”;
 - (b) in paragraphs (a), (b) and (f) for “both spouses”, in each place it occurs, substitute “both parties to the marriage”;
 - (c) in paragraph (b) for “the spouses” substitute “them”;
 - (d) in paragraphs (d) and (e) for “petitioner”, in both places it occurs, substitute “applicant”;
 - (e) in paragraphs (d) and (e) for “preceding the presentation of the petition”, in both places it occurs, substitute “before the application was made”.
- (3) Omit regulations 3 to 9.

PART 4

Transitional provision

Transitional and saving provision

7. The amendments made by regulations 5 and 6 do not apply in relation to proceedings before a court in England and Wales or Northern Ireland—

- (a) issued before exit day pursuant to the jurisdiction provisions of—
 - (i) Part 1 of the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005; or
 - (ii) Part 2 of the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014;
- (b) issued before exit day in accordance with the recognition and refusal of recognition provisions of—
 - (i) Part 2 of the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005; or
 - (ii) Part 3 of the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014.

(5) [S.I. 2014/543](#).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Civil Partnership and Marriage (Same Sex Couples) (Jurisdiction and Judgments) (Amendment etc.) (EU Exit) Regulations 2019 No. 495*

Signed by authority of the Secretary of State for Justice

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively in England and Wales and Northern Ireland and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular, the deficiencies under paragraphs (c), (d) and (g) of section 8(2) and paragraph (a) of section 8(3)).

These Regulations make amendments to the powers in the Civil Partnership Act 2004 and Domicile and Matrimonial Proceedings Act 1973 as they extend to England and Wales and Northern Ireland to make provision corresponding to EC regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. EC regulation 2201/2003, as incorporated by section 3 of the European Union (Withdrawal) Act 2018, is being revoked by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019. Part 2 amends the primary legislation powers that enable future regulations to be made.

Part 3 amends the existing regulations that make corresponding provision for civil partners and same sex married couples to EC regulation 2201/2003. The amendments to these regulations correspond to the amendments to divorce jurisdiction and position on divorce recognition in the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019.

Regulation 7 provides that the amendments made by these Regulations do not apply in relation to proceedings issued in England and Wales or Northern Ireland before exit day.

We have assessed the impact of this instrument and will publish a full Impact Assessment shortly.