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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Marriage (Same Sex Couples) (Jurisdiction  
and Recognition of Judgments) Regulations 2014**

**PART 3**

**Recognition and Refusal of Recognition of Judgments**

**Interpretation and application of Part 3**

**3.—(1)** In this Part—

- (a) “judgment” means a judgment of a court of a member State which orders the divorce of, or annulment of the marriage of, a same sex couple or the judicial separation of a married same sex couple;
- (b) “member State” means a member State of the European Union other than the United Kingdom.

(2) A “court of a member State” referred to in paragraph (1)(a) means any authority, whether judicial or administrative, in a member State with jurisdiction in those matters falling within the scope of these Regulations.

(3) This Part applies to all judgments even if the date of the judgment is earlier than the date on which paragraph 5 of Schedule A1 to the Domicile and Matrimonial Proceedings Act 1973 and these Regulations come into force.

**Recognition of a judgment**

**4.—(1)** Where a judgment is (or has been) given in respect of a marriage of a same sex couple, that judgment shall, without any special formalities, be recognised.

(2) Any interested party may, in accordance with the procedure set out in the Family Procedure Rules 2010(1), apply to the court for a judgment to be, or not to be, recognised.

(3) Where the recognition of a judgment is raised as an incidental issue in proceedings before the court, that court may determine the issue.

**Refusal of recognition of a judgment**

**5.—(1)** The court shall refuse to recognise the validity of a judgment if the judgment was obtained at a time when it was irreconcilable with a decision determining the question of the subsistence or validity of the marriage —

- (a) previously given in proceedings between the same parties by a court of civil jurisdiction in England and Wales, or

- (b) previously given in proceedings between the same parties by a court elsewhere, but only if that decision was capable of being recognised or was entitled to be recognised in England and Wales at the time it was obtained.
- (2) The court shall refuse to recognise the validity of a judgment if the judgment was obtained at a time when the law of England and Wales did not recognise marriages of same sex couples.
- (3) Paragraph (2) does not prevent the recognition of a judgment if, at the time the judgment was obtained, the marriage would have been treated as a subsisting civil partnership according to the law of England and Wales.
- (4) The court shall refuse to recognise the validity of a judgment if—
- (a) in the case of a judgment obtained by means of proceedings, it was obtained—
    - (i) without such steps having been taken for giving notice of the proceedings to a spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken, or
    - (ii) without a spouse having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he or she should reasonably have been given; or
  - (b) in the case of a judgment obtained otherwise than by means of proceedings—
    - (i) there is no official document certifying that the judgment is effective under the law of the country in which it was obtained, or
    - (ii) where either spouse was domiciled in another country at the relevant date, there is no official document certifying that the judgment is recognised as valid under the law of that other country; or
  - (c) in either case, recognition of the judgment would be manifestly contrary to public policy.
- (5) In this regulation—
- “official”, in relation to a document certifying that a judgment is effective, or is recognised as valid, under the law of any country, means issued by a person or body appointed or recognised for the purpose under that law;
- “the relevant date” means—
- (a) in the case of a judgment obtained by means of proceedings, the date of the commencement of the proceedings;
  - (b) in the case of a judgment obtained otherwise than by means of proceedings, the date on which it was obtained.

### **Jurisdiction and review**

- 6. The court may not review the jurisdiction of the court which issued the judgment.
- 7. A judgment may not be reviewed as to its substance.

### **Differences in applicable law**

- 8. The court may not refuse to recognise a judgment because the law of England and Wales would not allow divorce, annulment or judicial separation on the same facts.

### **Stay of proceedings**

- 9. Where recognition is sought of a judgment given in a member State and an appeal against that judgment has been lodged in that member State, the court may stay the proceedings.

