

SCHEDULE 1 JURISDICTION IN PROCEEDINGS RELATING TO SAME SEX MARRIAGES

Domicile and Matrimonial Proceedings Act 1973

1 (1) The Domicile and Matrimonial Proceedings Act 1973 is amended in accordance with this paragraph.

(2) After section 8 insert—

“8A Same sex marriages

(1) Sections 7 and 8 do not apply in relation to marriages between persons of the same sex.

(2) Schedule 1B (jurisdiction in relation to same sex marriages (Scotland)) has effect.”.

(3) In section 10 (ancillary and collateral orders), after subsection (1B) insert—

“(1BA) In relation to a marriage between persons of the same sex, subsection (1) does not give the Court of Session or a sheriff court jurisdiction to entertain an application in proceedings where—

- (a) the court is exercising jurisdiction in the proceedings by virtue of regulations under paragraph 2 of Schedule 1B; and
- (b) the making or variation of an order in consequence of the application would contravene the regulations.”.

(4) Before schedule 2 insert—

“SCHEDULE 1B

(introduced by section 8A)

JURISDICTION IN RELATION TO SAME SEX MARRIAGES (SCOTLAND)

Introduction

1 (1) This Schedule has effect with respect to the jurisdiction of the Court of Session and of the sheriff court to entertain, in relation to same sex marriages, proceedings for—

- (a) divorce,
- (b) separation,
- (c) declarator of marriage,
- (d) declarator of nullity of marriage,
- (e) declarator of recognition, or non-recognition, of a relevant foreign decree.

(2) References in this Schedule to “relevant proceedings” are to such proceedings as are mentioned in sub-paragraph (1).

(3) In this Schedule—

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“relevant foreign decree” means a decree of divorce, separation or nullity granted outwith a member State,

“same sex marriage” means a marriage between persons of the same sex.

Power to make provision corresponding to EC Regulation 2201/2003

- 2 (1) The Scottish Ministers may by regulations make provision—
- (a) as to the jurisdiction of courts in Scotland in relevant proceedings in relation to a same sex marriage where one of the parties to the marriage—
 - (i) is or has been habitually resident in a member State,
 - (ii) is a national of a member State, or
 - (iii) is domiciled in a part of the United Kingdom or in the Republic of Ireland, and
 - (b) as to the recognition in Scotland of any judgment of a court of another member State which orders the divorce or separation of the parties to a same sex marriage, or the annulment of a same sex marriage.
- (2) The regulations may in particular make provision corresponding to that made by Council Regulation (EC) No 2201/2003 of 27 November 2003 in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial matters.
- (3) The regulations may provide that for the purposes of this Schedule and the regulations “member State” means—
- (a) all member States with the exception of such member States as are specified in the regulations, or
 - (b) such member States as are specified in the regulations.
- (4) The regulations may make provision under sub-paragraph (1)(b) which applies even in a case where the date of the divorce, separation or annulment is earlier than the date on which this paragraph comes into force.
- (5) The regulations are subject to the affirmative procedure.

Divorce or separation

- 3 (1) The Court of Session has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if (and only if)—
- (a) the Scottish courts have jurisdiction under regulations under paragraph 2, or
 - (b) no court has, or is recognised as having, jurisdiction under those regulations and either party to the marriage is domiciled in Scotland on the date on which the proceedings are begun.
- (2) The sheriff court has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if (and only if)—

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- (a) the requirements of paragraph (a) or (b) of sub-paragraph (1) are met, and
 - (b) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.
- (3) Despite sub-paragraph (2), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if the following requirements are met—
- (a) the parties married each other in Scotland,
 - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 2, and
 - (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Declarator of marriage

- 4 (1) In relation to a same sex marriage, the Court of Session has jurisdiction to entertain proceedings for declarator of marriage if (and only if) either of the parties to the marriage—
- (a) is domiciled in Scotland on the date on which the proceedings are begun,
 - (b) was habitually resident in Scotland throughout the period of one year ending with that date, or
 - (c) died before that date and either—
 - (i) was at death domiciled in Scotland, or
 - (ii) had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) In relation to a same sex marriage, the sheriff court has jurisdiction to entertain proceedings for declarator of marriage if (and only if)—
- (a) the requirements of paragraph (a), (b) or (c) of sub-paragraph (1) are met in relation to either party to the marriage, and
 - (b) either party of the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.

Nullity of marriage

- 5 (1) The Court of Session has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if (and only if)—
- (a) the Scottish courts have jurisdiction under regulations under paragraph 2, or
 - (b) no court has, or is recognised as having, jurisdiction under those regulations and either party to the marriage—
 - (i) is domiciled in Scotland on the date on which the proceedings are begun, or
 - (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) The sheriff court has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if (and only if)—
- (a) the requirements of paragraph (a) or (b) of sub-paragraph (1) are met, and
 - (b) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.
- (3) Despite sub-paragraph (2), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if the following requirements are met—
- (a) the parties married each other in Scotland,
 - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 2, and
 - (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Recognition, or non-recognition, of foreign decrees

- 6 (1) The Court of Session has jurisdiction to entertain proceedings for declarator of recognition, or non-recognition, of a relevant foreign decree relating to a same sex marriage if (and only if)—
- (a) the Scottish courts have jurisdiction under regulations under paragraph 2, or
 - (b) no court has, or is recognised as having, jurisdiction under those regulations and either party to the marriage—
 - (i) is domiciled in Scotland on the date on which the proceedings are begun, or

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- (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) The sheriff court has jurisdiction to entertain proceedings for declarator of recognition, or non-recognition, of a relevant foreign decree relating to a same sex marriage if (and only if)—
 - (a) the requirements of paragraph (a) or (b) of sub-paragraph (1) are met, and
 - (b) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.

Supplementary provision

- 7 (1) Paragraph 3(1) does not affect any rule of law under which the Court of Session has jurisdiction in certain circumstances to entertain proceedings for separation as a matter of necessity and urgency.
- (2) Paragraphs 3 and 5 do not affect any jurisdiction of a sheriff court to entertain any proceedings for separation, divorce or declarator of nullity of marriage remitted to the court under any enactment or rule of court, if entertaining the proceedings would not contravene regulations under paragraph 2.
- (3) At any time when proceedings are pending in respect of which a court has jurisdiction by virtue of any of paragraphs 3 to 6 (or this paragraph), the court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, separation or declarator of marriage or of nullity of marriage even though that jurisdiction would not be exercisable under any of paragraphs 3 to 6.”