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STATUTORY INSTRUMENTS

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**2019 No. 1514**

**The Marriage (Same-sex Couples) and Civil Partnership  
(Opposite-sex Couples) (Northern Ireland) Regulations 2019**

**PART 4**

**Amendments: Children and Families**

**Fatherhood**

**21.** In section 2(1)(a) of the Family Law Act (Northern Ireland) 2001<sup>(1)</sup> (presumption, where man is married to mother of a child at the birth or at any time during the pregnancy, that man is father of the child), after “was married to” insert “, or was the civil partner of,”.

**Registration of births**

**22.**—(1) The Births and Deaths Registration (Northern Ireland) Order 1976<sup>(2)</sup> is amended as follows.

(2) In Article 2(2A)<sup>(3)</sup> (interpretation of references to marital status of parents at time of child’s birth), after “married to” insert “, or civil partners of,”.

(3) In Article 14<sup>(4)</sup> (registration of father where parents not married)—

(a) in the heading, after “not married” insert “or civil partners”, and

(b) in paragraph (1), after “not married to” insert “, or civil partners of,”.

(4) In Article 18(1)(b)<sup>(5)</sup> (re-registration of birth in certain cases)—

(a) in the words before paragraph (i), after “not married to” insert “, or civil partners of,” and

(b) in paragraph (i), after “were so married” insert “or were civil partners of each other”.

(5) In Article 19(7) (re-registration of births of legitimated persons: interpretation), after “marriage” insert “or civil partnership”.

(6) In Article 37(7)(a)(i) and (ii) and (b)(i)<sup>(6)</sup> (parents as qualified applicants for registration of change of child’s name), after “married to” insert “, or civil partners of,”.

**Legitimacy**

**23.**—(1) The Legitimacy Act (Northern Ireland) 1928<sup>(7)</sup> is amended as follows.

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(1) 2001 c.12 (N.I.).

(2) S.I. 1976/1041 (N.I. 14).

(3) Article 2(2A) was inserted by paragraph 83 of Schedule 9 to the Children (Northern Ireland) Order 1995.

(4) Article 14 was substituted by paragraph 84 of Schedule 9 to the Children (Northern Ireland) Order 1995.

(5) Article 18(1)(b) was substituted by paragraph 85 of Schedule 9 to the Children (Northern Ireland) Order 1995.

(6) Article 37(7)(a) and (b) were substituted by paragraph 88 of Schedule 9 to the Children (Northern Ireland) Order 1995; Article 37(7)(b) as so substituted was further substituted by paragraph 66(b) of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c.22).

(7) 1928 c.5 (N.I.); section 1 was amended by section 1 of the Legitimacy Act (Northern Ireland) 1961 (c.5 (N.I.)), and sections 1, 8 and 11 were amended by paragraphs 57 to 59 of Schedule 6 to the Human Fertilisation and Embryology Act 2008.

(2) Before section 1 insert—

**“Legitimacy of children of civil partners**

**A1.**—(1) A child is legitimate by virtue of a civil partnership between the natural parents of the child if, had the civil partnership been a marriage (and all other circumstances were the same), the child would have been legitimate at common law by virtue of the marriage.

(2) Subsection (1) applies to a child born on or after 13th January 2020.”.

(3) In section 1 (legitimation by subsequent marriage or civil partnership of parents)—

(a) in subsection (1), for “parents” substitute “mother and father”,

(b) after subsection (1) insert—

“(1ZA) Where—

(a) the mother and father of an illegitimate person become civil partners of one another on or after 13th January 2020, and

(b) the father of the illegitimate person is, at the date of the formation of the civil partnership, domiciled in Northern Ireland,

the civil partnership renders that person, if living (and whether born before, on or after 13th January 2020), legitimate from the date of the formation of the civil partnership.”, and

(c) in subsection (1A)—

(i) in paragraph (b), for “not” substitute “neither married nor”,

(ii) in paragraph (c), after “subsequently” insert “marry or”,

(iii) in paragraph (d), after “the date of” insert “the marriage or”,

(iv) in the words after paragraph (d), before “the civil partnership”, in the first place it occurs, insert “the marriage or”, and

(v) in those words, after “the date of” insert “the marriage or”.

(4) In section 3(1) (right of legitimated person, or their spouse or issue, to take interests in property as if born legitimate), after “spouse” insert “or civil partner”.

(5) In section 5 (application of Act to illegitimate persons dying before marriage of parents)—

(a) after “marriage”, in each place it occurs, insert “or civil partnership”,

(b) for “parents”, in each place it occurs, substitute “mother and father”,

(c) after “spouse”, in the first place it occurs, insert “, civil partner”

(d) after “spouse”, in the second place it occurs, insert “or civil partner”, and

(e) in the heading, for “of parents” substitute “, or civil partnership, of mother and father”.

(6) In section 8 (provisions as to persons legitimated by law other than that of Northern Ireland)—

(a) in subsection (1), for “parents” substitute “mother and father”,

(b) after subsection (1) insert—

“(1ZA) Where—

(a) the mother and father of an illegitimate person become civil partners of one another on or after 13th January 2020,

(b) at the time of the formation of the civil partnership, the father of the illegitimate person is domiciled in a country other than Northern Ireland, and

(c) by the law of that other country, the illegitimate person becomes legitimated by virtue of the civil partnership,

that person, if living, is to be recognised in Northern Ireland as having been so legitimated from the date of the formation of the civil partnership.

(1ZB) Subsection (1ZA) applies even where the person's father was not, at the time of the person's birth, domiciled in a country in which legitimation by subsequent civil partnership was permitted by law.”,

- (c) in subsection (1A)—
  - (i) in paragraph (b), for “not” substitute “neither married nor”,
  - (ii) in paragraph (c), after “subsequently” insert “marry or”,
  - (iii) in paragraph (d), after “the time of” insert “the marriage or”,
  - (iv) in paragraph (d), after “by virtue of the” insert “marriage or”,
  - (v) in the words after paragraph (d), after “the date of” insert “the marriage or”, and
  - (vi) in those words, after “subsequent” insert “marriage or”
- (d) in subsection (2)—
  - (i) after “spouse” insert “or civil partner”,
  - (ii) after “marriage” insert “or civil partnership”, and
  - (iii) for “parents” substitute “mother and father”.

(7) In section 11 (interpretation), in the definition of “date of legitimation”—

- (a) for “or where” substitute—

“but—

  - (a) where (if the legitimation is by marriage)”,
- (b) before “the commencement”, in the second place it occurs, insert “means”, and
- (c) after “this Act”, in the second place it occurs, insert—

“, and

  - (b) where (if the legitimation is by civil partnership) the date of the formation of the civil partnership is before 13th January 2020, means 13th January 2020”.

**24.—(1)** Section 2 of the Legitimacy Act (Northern Ireland) 1961<sup>(8)</sup> (legitimacy of children of certain void marriages) is amended as follows.

- (2) In the heading, after “void marriages” insert “and civil partnerships”.
- (3) In subsection (1)—
  - (a) after “void marriage” insert “or a void civil partnership”,
  - (b) after “celebration of the marriage” insert “, or the formation of the civil partnership,”, and
  - (c) after “that the marriage” insert “or civil partnership”.
- (4) In subsection (2)—
  - (a) after “where” insert—

“\_\_

    - (a)”,
    - and
  - (b) after “death” insert—

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<sup>(8)</sup> 1961 c.5 (N.I.); section 2 was amended by paragraph 14 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).

“, or

- (b) if a woman is treated as the female parent of a child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, that female parent was domiciled in Northern Ireland at the time of the birth, or if she died before the birth, was so domiciled immediately before her death.”.

(5) In subsection (2A), after “marriage” insert “or civil partnership”.

(6) In subsection (2B)—

- (a) after “child” insert “of a void marriage”,
- (b) after “Children (Northern Ireland) Order 1995,” insert “or a child of a void civil partnership (whenever born),”,
- (c) after “void marriage” insert “or civil partnership”,
- (d) after “celebration of the marriage” insert “, or the formation of the civil partnership,”, and
- (e) after “that the marriage” insert “or civil partnership”.

**25.**—(1) Article 155 of the Children (Northern Ireland) Order 1995<sup>(9)</sup> (parents not being married to each other to have no effect in law on relationships) is amended as follows.

(2) In the heading, after “married to” insert “, or civil partners of,”.

(3) In paragraph (2), after “married to”, in both places it occurs, insert “, or civil partners of,”.

(4) In paragraph (3)(a), after “section 1” insert “or 2”.

(5) Omit paragraphs (4A) to (4D).

(6) Before paragraph (5) insert—

“(4E) Paragraph (4F) applies to a person—

- (a) who was born before 13th January 2020,
- (b) whose parents had formed a civil partnership before that date, and
- (c) who does not fall within paragraph (3)(ba) or (bb).

(4F) A reference falling within paragraph (2)(a) or (b) does not include or (as the case may be) exclude the person by virtue of that civil partnership.”.

### **Parental status in cases of assisted reproduction**

**26.**—(1) The Human Fertilisation and Embryology Act 2008<sup>(10)</sup> is amended as follows.

(2) In section 35<sup>(11)</sup> (meaning of “father” in cases where woman married at time of treatment)—

- (a) in the heading, after “Woman married” insert “to, or civil partner of, a man”, and
- (b) in subsection (1)—
  - (i) in paragraph (a), after “marriage” insert “with a man or a civil partnership with a man”, and
  - (ii) in paragraph (b), and in the words after that paragraph, after “marriage” insert “or civil partnership”.

(3) In section 38(2) (saving for presumptions about legitimacy)—

<sup>(9)</sup> *S.I. 1995/755 (N.I. 2)*. In Article 155, subsections (3)(ba) and (bb) and (4A) to (4D) were inserted by paragraph 75 of Schedule 6 to the Human Fertilisation and Embryology Act 2008.

<sup>(10)</sup> *2008 c.22*.

<sup>(11)</sup> Section 35 was amended (for England and Wales) by paragraph 38 of Schedule 7 to the Marriage (Same Sex Couples) Act 2013 and (for Scotland) by paragraph 18(2) of Schedule 5 to *S.I. 2014/3229*.

- (a) after “common law” insert “or section A1(2) of the Legitimacy Act 1976”**(12)**,
  - (b) before “, that” insert “or section 2(1)(a) of the Family Law Act (Northern Ireland) 2001”**(13)**, and
  - (c) after “marriage” insert “or civil partnership”.
- (4) In section 40**(14)** (embryo transferred after death of husband etc)—
- (a) in the heading, for “husband etc” substitute “male spouse, civil partner or intended parent”, and
  - (b) in subsection (1)—
    - (i) in paragraph (b), after “marriage” insert “with a man or a civil partnership with a man”, and
    - (ii) in paragraphs (c), (d) and (e), after “marriage” insert “or civil partnership”.
- (5) In section 42**(15)** (woman in civil partnership at time of treatment)—
- (a) in the heading, after “civil partnership” insert “or marriage to a woman”, and
  - (b) in subsection (1)—
    - (i) after “W was a party to a civil partnership” insert “with another woman or a marriage with another woman”, and
    - (ii) after “the other party to the civil partnership” insert “or marriage”.
- (6) In section 45(2) (saving for presumptions about legitimacy)—
- (a) after “common law” insert “or section A1(2) of the Legitimacy Act 1976”,
  - (b) before “, that” insert “or section 2(1)(a) of the Family Law Act (Northern Ireland) 2001”, and
  - (c) after “marriage” insert “or civil partnership”.
- (7) In section 46**(16)** (embryo transferred after death of civil partner etc)—
- (a) in the heading, for “civil partner or intended female parent” substitute “female spouse, civil partner or intended parent”, and
  - (b) in subsection (1)—
    - (i) in paragraph (b), after “to a civil partnership” insert “with a woman or a marriage with a woman”, and
    - (ii) in paragraphs (c), (d) and (e), and in the words following paragraph (f), after “civil partnership” insert “or marriage”.
- (8) In section 48(6)(b) (legitimacy), after “party to a” insert “marriage or”.
- (9) In section 50 (meaning of “parties to a civil partnership”), omit subsection (2) (when “civil partnership” includes one that is void).
- (10) The repeal of that subsection does not affect the status of any person born before 13th January 2020 who was treated as legitimate by virtue of that subsection (but is not so treated by virtue of section 2 of the Legitimacy Act (Northern Ireland) 1961 as amended by these Regulations).

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**(12)** 1976 c.31; section A1 is inserted by [S.I. 2019/1458](#).

**(13)** 2001 c.12 (N.I.); section 2(1)(a) is amended by these Regulations.

**(14)** Section 40(1)(b) was amended (for England and Wales) by paragraph 39 of Schedule 7 to the Marriage (Same Sex Couples) Act 2013 and (for Scotland) by paragraph 18(3) of Schedule 5 to [S.I. 2014/3229](#).

**(15)** Section 41 was amended (for England and Wales) by paragraph 40 of Schedule 7 to the Marriage (Same Sex Couples) Act 2013 and (for Scotland) by paragraph 18(4) of Schedule 5 to [S.I. 2014/3229](#).

**(16)** Section 46 was amended (for England and Wales) by paragraph 41 of Schedule 7 to the Marriage (Same Sex Couples) Act 2013 and (for Scotland) by paragraph 18(5) of Schedule 5 to [S.I. 2014/3229](#).

**Parental responsibility**

**27.**—(1) The Children (Northern Ireland) Order 1995 is amended as follows.

(2) In Article 2(5) (interpretation of references to marital status of parents at time of child’s birth), after “married to” insert “, or civil partners of,”.

(3) In Article 5(1) (both parents have parental responsibility if married to each other at child’s birth), after “married to” insert “, or civil partners of,”.

(4) In Articles 5(2) and 7(1)(17) (cases where parents not married to each other at child’s birth), after “not married to” insert “, or civil partners of,”.

(5) In Article 7(1ZB) (meaning of “parental responsibility agreement”), for “or (1ZA)(b)” substitute “, (1ZA)(b) or (1A)(b)”.

(6) In Article 7(1A) (court may give parental responsibility to step-parent)—

(a) after “if” insert—

“—

(a),  
and

(b) at the end insert—

“; or

(b) the step-parent, and—

(i) the parent of the child who is the spouse or civil partner of the step-parent,  
or

(ii) if the other parent of the child also has parental responsibility for the child,  
both parents,

make an agreement providing for the step-parent to have parental responsibility for the child.”.

**28.**—(1) The Children (Parental Responsibility Agreement) Regulations (Northern Ireland) 1996(18) are amended as follows.

(2) In regulation 2(19) (form of parental responsibility agreement), in paragraph (a), for “unmarried father” substitute “father who is not married or a civil partner”.

(3) After regulation 2 insert—

“**2A.**—(1) Where the agreement is under Article 7(1A)(b) of the Children (Northern Ireland) Order 1995 (acquisition of parental responsibility by step-parents), the agreement is to be in the form set out in Part 1 of the Schedule but with the following modifications (including in the notes).

(2) For the Declaration and Agreement substitute—

(17) Article 7(1) was amended, and Article 7(1A) was inserted, by section 1 of the Family Law Act (Northern Ireland) 2001 (c.12); Article 7(1) was amended, and Article 7(1ZB) was inserted, by paragraph 72 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c.22).

(18) S.R. (N.I.) 1996 No. 455.

(19) Regulation 2 was substituted (and the Schedule was re-numbered as Part 1 of the Schedule, and Part 2 of the Schedule was inserted) by paragraph 12 of Schedule 1, and by Schedule 2, to the Human Fertilisation and Embryology (Consequential Amendments and Transitional and Saving Provisions) Order 2009 (S.I. 2009/1892).

**“Declaration by and agreement of child’s parent, or parents, and step-parent**

We declare that we are [a parent of the child who has parental responsibility for the child, and the parent’s spouse or civil partner (“the step-parent”),] [the parents of the child who each have parental responsibility for the child, and the spouse or civil partner of one of the parents (“the step-parent”),] (*delete whichever does not apply*) and we agree that the step-parent is to have parental responsibility for the child (in addition to any parent of the child who has parental responsibility for the child).”.

(3) Except in the Declaration and Agreement—

(a) for references to the child’s father, substitute references to the step-parent; and

(b) for references to the child’s mother—

(i) substitute references to the parent who is the spouse, or civil partner, of the step-parent, or

(ii) where both of the child’s parents are entering into the agreement, substitute references to the child’s parents.”.

(4) In regulation 3—

(a) after paragraph (2) insert—

“(3) But where the agreement is under Article 7(1A)(b) of the Children (Northern Ireland) Order 1995 (acquisition of parental responsibility by step-parents)—

(a) if the agreement is between the step-parent and both parents, paragraph (1) has effect as if it required three (rather than two) copies, and

(b) paragraph (2) has effect as if it required a sealed copy to be sent to each party to the agreement.”.

**Adoption**

**29.**—(1) The Adoption (Hague Convention) Act (Northern Ireland) 1969(**20**) is amended as follows.

(2) In section 1 (convention adoption orders)—

(a) in subsection (4), omit “married”,

(b) in subsection (7), after “spouse” insert “or civil partner”, and

(c) after subsection (8) insert—

“(9) In subsection (4) “couple” has the same meaning as in the Order of 1987 (see Article 2 of that Order).”.

(3) In section 2(a) (which applied the original Article 14(2) of the Adoption (Northern Ireland) Order 1987 with modifications), for “14(2) (adoption by married couples)” substitute “14(4) (adoption by couples)”.

(4) In section 6(2) (person legitimated following foreign convention adoption by just one parent), after “marriage of” insert “, or formation of a civil partnership by,”.

**30.**—(1) The Adoption (Northern Ireland) Order 1987 is amended as follows.

(2) In Article 2(**21**) (interpretation), after paragraph (5) insert—

“(6) In this Order “a couple” means—

(20) 1969 c.22 (N.I.); sections 1 and 2 were substituted by paragraph 6 of Schedule 4 to the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).

(21) In Article 2, paragraphs (4) and (5) were inserted by paragraph 139 of Schedule 9 to S.I. 1995/755 (N.I. 2).

- (a) a married couple,
- (b) two people who are civil partners of each other, or
- (c) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.

(7) Paragraph (6)(c) does not include two people one of whom is the other's parent, grandparent, sister, brother, aunt or uncle.

(8) References to relationships in paragraph (7)—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for adoption, and
- (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.”.

(3) In Article 13(3)(**22**) (adoption order not to be made in absence of opportunities to see child in home environment with adopters), in the words before paragraph (a) omit “married”.

(4) In Article 14(**23**) (requirement that there be sole applicant for adoption order except in the case of application by a married couple)—

- (a) in the heading omit “married”,
- (b) in paragraph (2), for “married couple where both the husband and the wife” substitute “couple where both of them”,
- (c) in paragraph (3)—
  - (i) omit “married”,
  - (ii) in sub-paragraph (a), for “the husband or the wife” substitute “one of the couple”, and
  - (iii) in sub-paragraph (b), for “his or her spouse” substitute “the other”, and
- (d) in paragraph (4) omit “married”.

(5) In Article 15(1)(**24**) (conditions for sole application for adoption order), after sub-paragraph (b) insert—

“, or

- (c) is a civil partner and the court is satisfied—
  - (i) the person's civil partner cannot be found, or
  - (ii) the civil partners have separated and are living apart, and the separation is likely to be permanent, or
  - (iii) the person's civil partner is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order, or
- (d) the court is satisfied—
  - (i) the person, and a parent of the child, are a couple, and
  - (ii) the person is not the child's parent.”.

(6) In Article 17(2) (applications for freeing orders where mother's spouse is not a parent of the child), after “spouse” insert “or civil partner”.

(**22**) Article 13(3) was amended by Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2)) and by paragraph 1(1)(d) of Schedule 6 to the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1 (N.I.)).

(**23**) Article 14 was substituted by paragraph 141 of Schedule 9 to the Children (Northern Ireland) Order 1995.

(**24**) Article 15(1)(a) was amended by section 203(4) of the Civil Partnership Act 2004.



- (7) In Article 20(3)(25) (effect of revoking a freeing order)—
- (a) in sub-paragraph (b)(ii), after “married to” insert “, or civil partners of,” and
  - (b) in sub-paragraph (c)(ii), for “7(1)” substitute “7”.
- (8) In Article 40 (status conferred by adoption)—
- (a) in paragraph (1), after sub-paragraph (a) insert—
    - “(aa) where the adopters are two people who are civil partners of each other, as if the child had been born as a child of the civil partnership (whether or not the child was in fact born after the formation of the civil partnership);”,
  - (b) in paragraph (1)(b), before “adopter”, in both places it occurs, insert “adopters or”,
  - (c) after paragraph (5) insert—
    - “(5A) But paragraph (1)(aa) applies only as from 13th January 2020, even in the case of an adoption before that date.”, and
  - (d) after paragraph (6) insert—
    - “(7) For the purposes of the application of paragraph (6) in a case within paragraph (1)(aa), the reference in paragraph (6)(b) to the commencement of this Part is to be read as a reference to 12th January 2020.”.
- (9) In Article 41 (adoptive relatives)—
- (a) the existing provision becomes paragraph (1) of Article 41;
  - (b) after that provision insert—
    - “(2) A reference (however expressed) to the adoptive mother and father of a child adopted by—
      - (a) a couple of the same sex, or
      - (b) a partner of the child’s parent, where the couple are of the same sex,is to be read as a reference to the child’s adoptive parents.”.
- (10) In Article 42(5) (interpretation of property dispositions: adoption when 55 or over), for “as the child of her spouse (if any)” substitute “(if she does so as one of a couple) as the child of the other one of the couple”.
- (11) The amendment made by paragraph (10) applies only in relation to dispositions of property effected on or after 13th January 2020.
- (12) In Article 55(1) (person legitimated following adoption by just one parent), after “marriage of” insert “, or formation of a civil partnership by,”.
- 31.** In the Adoption Agencies Regulations (Northern Ireland) 1989(26), in Part 6 of the Schedule (particulars relating to the prospective adopter)—
- (a) in paragraph 4, after “marriage” insert “or civil partnership”;
  - (b) in paragraph 5, for “married person” substitute “person who is married or a civil partner”.
- 32.—**(1) The Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003(27) are amended as follows.
- (2) In regulation 2 (interpretation)—
- (a) after the definition of “contact order” insert—

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(25) Article 20(3) was inserted by paragraph 146 of Schedule 9 to the Children (Northern Ireland) Order 1995.

(26) S.R. 1989/253.

(27) S.R. (N.I.) 2003 No. 16.

“couple” has the same meaning as in the Adoption (Northern Ireland) Order 1987 (see Article 2 of that Order);”;

(b) in the definition of “prospective adopter”, omit “married”.

(3) In regulation 3 (application for determination of eligibility, and assessment of suitability, to adopt), in paragraph (1), omit “married”.

(4) In regulation 4 (eligibility requirements and requirement to notify), in paragraph (1), omit “married” in both places.

(5) In regulation 10 (procedure following receipt of the Article 16 report), in paragraph (3)(b), omit “married”.

(6) In regulation 19 (prescribed requirements for the purposes of making a Convention adoption order), in paragraph (1)—

(a) in sub-paragraph (a)—

(i) for “spouses” substitute “of the couple”;

(ii) omit “married”;

(b) in paragraph (d)—

(i) for “spouses” substitute “couple”;

(ii) omit “married”.

(7) In regulation 29 (preparation of the Article 16 report for RSCA), in paragraph (7), omit “married”.

(8) In regulation 30 (prescribed requirements for the purposes of making a Convention adoption order), in paragraph (a)—

(a) for “spouses” substitute “of the couple”;

(b) omit “married”.

### **Fostering**

**33.** In Schedule 1 to the Foster Placement (Children) Regulations (Northern Ireland) 1996<sup>(28)</sup> (information as to prospective foster parent and other family and household members), in paragraph 1—

(a) after “marital” insert “or civil partnership”;

(b) after “marriage” insert “or civil partnership”.

### **Child abduction**

**34.**—(1) The Child Abduction (Northern Ireland) Order 1985<sup>(29)</sup> is amended as follows.

(2) In Article 2(2)(d)<sup>(30)</sup> (interpretation of references to children and parents), after “married to” insert “, or civil partners of,”.

(3) In Article 3(2)(b)<sup>(31)</sup> (“connected person” includes person believed to be father of a child born to unmarried parents), after “married to” insert “, or civil partners of,”.

(4) In Article 4—

<sup>(28)</sup> S.I. 1996/467.

<sup>(29)</sup> S.I. 1985/1638 (N.I. 17).

<sup>(30)</sup> Article 2(2)(d) was inserted by paragraph 120 Schedule 9 to the Children (Northern Ireland) Order 1995.

<sup>(31)</sup> Article 3(2)(b) was substituted by paragraph 121(3) of Schedule 9 to the Children (Northern Ireland) Order 1995.

(a) in paragraph (2)(a) and (b)(32) (meaning of “parent” etc), after “married to” insert “, or civil partners of,”;

(b) in paragraph (3)(a) (defences), after “married to” insert “, or civil partners of,”.

### **Divorce, annulment and judicial separation**

**35.**—(1) The Matrimonial Causes (Northern Ireland) Order 1978 is amended as follows.

(2) In Article 2(2), in the definition of “child”(33), after “married to” insert “, or civil partners of,”.

(3) In Article 3 (matters of which the court must be satisfied before granting a divorce), after paragraph (6) insert—

“(7) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this Article.”.

(4) In Article 4(6) (interpretation of references to living apart), for “a husband and wife” substitute “the parties to a marriage”.

(5) In Article 14 (grounds on which a marriage is voidable), after paragraph (h) insert—

“,

but paragraphs (a) and (b) do not apply to the marriage of a same-sex couple.”.

(6) In Article 49(34) (jurisdiction of the court), after paragraph (1) insert—

“(1A) Paragraphs (2) and (3) apply only in relation to a marriage of a man and a woman (but see Article 49A as regards jurisdiction in proceedings concerning a marriage of a same-sex couple).”.

(7) After Article 49 insert—

#### **“Jurisdiction of court: proceedings in relation to a marriage of a same-sex couple**

**49A.**—(1) Paragraphs (2) to (4) have effect with respect to the jurisdiction of the court to entertain any of the following proceedings in relation to a marriage of a same-sex couple—

- (a) proceedings for divorce,
- (b) proceedings for judicial separation, and
- (c) proceedings for nullity of marriage.

(2) The court has jurisdiction to entertain proceedings for divorce or judicial separation if (and only if)—

- (a) both parties to the marriage are habitually resident in Northern Ireland,
- (b) both parties to the marriage were last habitually resident in Northern Ireland and one of them continues to reside there,
- (c) the respondent is habitually resident in Northern Ireland,
- (d) the applicant is habitually resident in Northern Ireland and has resided there for at least one year immediately before the proceedings are begun,
- (e) either of the parties to the marriage is domiciled in Northern Ireland, or
- (f) the following conditions are met—

- (i) the parties married each other under the law of Northern Ireland, and

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(32) Article 4(2) and (3) were substituted by paragraph 122(3) of Schedule 9 to the Children (Northern Ireland) Order 1995.

(33) In Article 2(2), the definition of “child” was amended by Schedule 9 to the Children (Northern Ireland) Order 1995.

(34) In Article 49, paragraphs (2) and (3) were inserted by regulation 3 of S.I. 2001/660. Other non-relevant amendments have been made to Article 49.

- (ii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (3) The court has jurisdiction to entertain proceedings for nullity of marriage if (and only if)—
- (a) both parties to the marriage are habitually resident in Northern Ireland,
  - (b) both parties to the marriage were last habitually resident in Northern Ireland and one of them continues to reside there,
  - (c) the respondent is habitually resident in Northern Ireland,
  - (d) the applicant is habitually resident in Northern Ireland and has resided there for at least one year immediately before the proceedings are begun,
  - (e) either of the parties to the marriage—
    - (i) is domiciled in Northern Ireland, or
    - (ii) died before the proceedings are begun and either was at death domiciled in Northern Ireland or had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death, or
  - (f) the following conditions are met—
    - (i) the parties married each other under the law of Northern Ireland, and
    - (ii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

(4) At any time when proceedings are pending in respect of which the court has jurisdiction by virtue of paragraph (2) or (3) (or of this paragraph), the court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, even though that jurisdiction would not be exercisable under paragraph (2) or (3).”.

**36.** In Article 2(2) of the Domestic Proceedings (Northern Ireland) Order 1980<sup>(35)</sup>, in the definition of “child”, after “married to” insert “, or civil partners of,”.

#### **Declarations as to marital status: jurisdiction of the courts**

**37.** In Article 31 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989<sup>(36)</sup> (declarations as to marital status)—

- (a) in paragraph (2) (when court has jurisdiction), after “if (and only if)” insert “paragraph (2A) applies or”, and
- (b) after paragraph (2) insert—
  - “(2A) This paragraph applies where—
    - (a) the two people concerned are of the same sex and married each other under the law of Northern Ireland, and
    - (b) it appears to the court to be in the interests of justice to assume jurisdiction in the case.”.

#### **Property rights where parents not married to, or civil partners of, each other**

**38.**—(1) Article 157 of the Children (Northern Ireland) Order 1995 (property rights) is amended as follows.

<sup>(35)</sup> *S.I. 1980/563 (N.I. 5)*. In Article 2(2), the definition of “child” was amended by Schedule 9 to the Children (Northern Ireland) Order 1995.

<sup>(36)</sup> *S.I. 1989/677 (N.I. 4)*.

(2) After “not married to” insert “, or civil partners of”.

**39.**—(1) Schedule 6 to the Children (Northern Ireland) Order 1995 (property rights where parents not married to each other) is amended as follows.

(2) In the heading, after “not married to” insert “or civil partners of”.

(3) In paragraph 1 (succession on intestacy), in sub-paragraph (2), after “not married to” insert “, or civil partners of”.

(4) In paragraph 4 (entitlement to grant of probate etc), in sub-paragraph (1)(a), after “not married to” insert “, or civil partners of”.

### **Representations procedure**

**40.** In regulation 10 of the Representations Procedure (Children) Regulations (Northern Ireland) 1996<sup>(37)</sup> (application to voluntary organisations and registered children’s homes), in paragraph (2) (c), after “spouse” insert “or civil partner”.

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<sup>(37)</sup> S.R. 1996/451.