SCOTTISH STATUTORY INSTRUMENTS

2019 No. 104

EXITING THE EUROPEAN UNION
FAMILY LAW
JUDGMENTS
CHILDREN AND YOUNG PERSONS

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

Made - - - - 19th March 2019

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraphs 1(1) and (3) of schedule 2, and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 [M1] and all other powers enabling them to do so.

In accordance with paragraph 4(b) of schedule 2 of that Act, they have consulted with the Secretary of State.

In accordance with paragraph 1(7) of schedule 7 of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Marginal Citations

M1 2018 c.16.

PART 1

Introduction

Citation and commencement

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

Commencement Information

I1 Reg. 1 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Interpretation

2. In these Regulations—

"Council Regulation No. 2201/2003" means Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, and

"competent authority" means the Court of Session or the sheriff court as appropriate.

Commencement Information

I2 Reg. 2 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

PART 2

Revocation of retained direct EU legislation

Revocation of Council Regulation No. 2201/2003

3. Council Regulation No. 2201/2003 is revoked.

Commencement Information

I3 Reg. 3 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

PART 3

Amendment of primary legislation

Amendment of primary legislation

4. Schedule 1 has effect.

Commencement Information

I4 Reg. 4 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

PART 4

Revocation and amendment of secondary legislation

Revocation and amendment of secondary legislation

5. Schedule 2 has effect.

Commencement Information

I5 Reg. 5 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

PART 5

Saving and transitional provisions

[[F1]Saving and transitional provisions

6. Nothing in these Regulations affects the application of paragraphs 1, 2(b) and 3(a) of Article 67 of the withdrawal agreement and legislation amended or revoked by these Regulations continues to have effect for the purposes of those paragraphs as if the amendments and revocations had not been made.**]**

Textual Amendments

F1 Reg. 6 substituted (31.12.2020 immediately before IP completion day) by The Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/441), regs. 1(2)(a), **16**

Commencement Information

I6 Reg. 6 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

St Andrew's House,
Edinburgh

Ash Denham
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 4

Amendment of primary legislation

Amendment of the Domicile and Matrimonial Proceedings Act 1973

1.—(1) The Domicile and Matrimonial Proceedings Act 1973 [M2] is amended as follows.

(2) In section 7 [M3] (jurisdiction of Court of Session)—

(a) in subsection (2A)—

(i) after "if (and only if)", insert " either of the parties to the marriage ", and

(ii) for paragraphs (a) and (b) substitute—

"(a) is domiciled in Scotland on the date when the action is begun, or

(b) was habitually resident in Scotland throughout the period of one year ending with that date.",

(b) in subsection (3A)—

(i) after "if (and only if)" insert " either of the parties to the marriage ",

(ii) omit the first paragraphs (a) and (b),

(iii) for the second paragraphs (a) and (b) substitute—

"(a) is domiciled in Scotland on the date when the action is 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.",

(c) omit subsection (3B),

(d) omit subsection (5A), and

(e) in subsection (9) for "a member state of the European Union" substitute " the United Kingdom, the Channel Islands and the Isle of Man ".

(3) In section 8 [M4] (jurisdiction of sheriff court in respect of actions for separation)—

(a) in subsection (2)—

(i) omit "or for declarator of recognition, or non-recognition, of a relevant foreign decree",

(ii) for paragraph (a) substitute—

"(a) either of the parties to the marriage—

(i) is domiciled in Scotland on the date when the action is begun, or

(ii) was habitually resident in Scotland throughout the period of one year ending with that date, and",

(b) in subsection (2A)—

(i) after "marriage" where it first occurs insert " or for declarator of recognition, or non-recognition, of a relevant foreign decree ",

(ii) for paragraph (b) substitute—

"(b) either party to the marriage—

(i) is domiciled in Scotland on the date when the action is begun,

(ii) was habitually resident in Scotland throughout the period of one year ending with that date, or

(ii) died before that date and either–

(A) was at death domiciled in Scotland, or

(B) had been habitually resident in Scotland throughout the period of one year ending with the date of death.",

(c) omit subsections (2B), (2C) and (2D),

(d) omit subsection (3A), and

(e) in subsection (4) omit ", provided that entertaining the action would not contravene Article 6 of the Council Regulation".

(4) In section 10 [M5] (ancillary and collateral orders) omit subsections (1B) [M6] and (1BA) [M7].

(5) In section 11 [M8] (sisting of certain actions) omit subsection (2).

(6) In section 12 [M9] (supplementary), in subsection (5) omit paragraphs (b) to (d).

(7) In schedule 1B (jurisdiction in relation to same sex marriages (Scotland)) [M10]—

(a) in paragraph 1(3), in the definition of "relevant foreign decree" for "a member State" substitute " the United Kingdom, the Channel Islands and the Isle of Man ",

(b) omit paragraph 2 (power to make provision corresponding to EC Regulation 2201/2003),

(c) in paragraph 3 (divorce or separation)—

(i) in sub-paragraph (1), after "if (and only if)" insert " either of the parties to the marriage ",

(ii) for sub-paragraph (1)(a) and (b), substitute—

"(a) is domiciled in Scotland on the date when the proceedings are begun, or

(b) was habitually resident in Scotland throughout the period of one year ending with that date.", and

(iii) in sub-paragraph (3)(b), omit "under regulations under paragraph 2",

(d) in paragraph 5 (nullity of marriage)—

(i) in sub-paragraph (1)—

(aa) omit from beginning of head (a) to "those regulations and",

(bb) in sub-head (i), after "proceedings are begun", insert " , or was habitually resident in Scotland throughout the period of one year ending with that date ",

(ii) in sub-paragraph (2), in head (a), omit "paragraph (a) or (b) of",

(iii) in sub-paragraph (3), in head (b), omit "under regulations under paragraph 2",

(e) in paragraph 6 (recognition, or non-recognition, of foreign decrees)—

(i) in sub-paragraph (1)—

(aa) omit from beginning of head (a) to "those regulations and",

(bb) in sub-head (i), after "proceedings are begun", insert " , or was habitually resident in Scotland throughout the period of one year ending with that date ",

(ii) in sub-paragraph (2), in head (a), omit "paragraph (a) or (b) of", and

(f) in paragraph 7 (supplementary provision), in sub-paragraph (2), omit “, if entertaining the proceedings would not contravene regulations under paragraph 2”.

Commencement Information

I7 Sch. 1 para. 1 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations

M2 1973 c.45.

M3 Section 7 was amended by the Presumption of Death (Scotland) Act 1977, (c.27), section 19 and schedule 2, the Family Law (Scotland) Act 2006, (asp 2), section 37(2) and schedule 2, paragraph 1, S.S.I. 2001/36 and S.S.I. 2005/42.

M4 Section 8 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), **sections 6(1)**, 7(4) and schedule 1, paragraph 18, the Family Law (Scotland) Act 2006, (asp 2), section 37(3), the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011, (asp 15), section 15, the Marriage and Civil Partnership (Scotland) Act 2014, (asp 5), section 23, S.S.I. 2001/36 and S.S.I. 2005/42.

M5 Section 10 was amended by the Children (Scotland) Act 1995, (c.36), schedule 4, paragraph 20(2), S.I. 2011/1484 and is amended by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/ .

M6 Subsection (1B) was added by S.S.I. 2001/36 and amended by S.S.I. 2005/42.

M7 Subsection (1BA) was added by the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5), **schedule 1**, paragraph 1(3).

M8 Section 11 was amended by S.S.I. 2005/42.

M9 Section 12 was amended by S.S.I. 2001/36 and S.S.I. 2005/42.

M10 Schedule 1B was inserted by the Marriage and Civil Partnership (Scotland) Act 2014, (asp 5), schedule 1, paragraph 1(4).

Amendment of the Family Law Act 1986

2.—(1) The Family Law Act 1986 [M11] is amended as follows.

(2) In section 14 [M12] (power of court to refuse application or sist proceedings) in subsection (2)—

(a) at the end of paragraph (b) insert “ or ”,

(b) omit paragraph (c), and

(c) in the words following paragraph (d), omit “Article 15 of the Council Regulation or” and “of the Council Regulation”.

(3) In section 15 [M13] (duration, variation and recall of orders) in subsection (1)(b) omit “or by virtue of the Council Regulation”.

(4) In section 17A [M14], omit “Sections 2 and 3 of Chapter II of the Council Regulation and are subject to”.

(5) In section 26 [M15] (recognition: special Scottish rule), omit subsection (2).

(6) In section 42 [M16] (general interpretation of Part 1), in subsection (1), omit the definition of “the Council Regulation”.

(7) In section 45 [M17] (recognition in the United Kingdom of overseas divorces, annulments and legal separations)—

(a) in subsection (1) omit “subsection (2) of this section and to”, and

(b) omit subsection (2).

(8) In section 54 [M18] (interpretation of Part 2), in subsection (1), omit the definition of "the Council Regulation".

Commencement Information

I8 Sch. 1 para. 2 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations

M11 1986 c.55.

M12 Section 14 was amended by the Children Act 1989 (c.41), **schedule 13**, paragraph 62(2)(a), S.S.I. 2005/42 and S.S.I. 2010/213.

M13 Section 15 was amended by the Children Act 1989 (c.41), **schedule 13**, paragraph 62(2)(a), the Children (Scotland) Act 1995 (c.36), **schedule 4**, paragraph 41(4) and schedule 5, paragraph 1 and S.S.I. 2001/36.

M14 Section 17A was inserted by S.S.I. 2005/42 and amended by S.S.I. 2010/213.

M15 Section 26(2) was inserted by S.S.I. 2001/36 and amended by S.S.I. 2005/42.

M16 Section 42 was amended by S.S.I. 2005/623 and S.S.I. 2010/213.

M17 Section 45 was amended by S.I. 2001/310 and S.I. 2005/265.

M18 The definition in section 54(1) was inserted by S.S.I. 2005/42.

Amendment of the Children (Scotland) Act 1995

3. In section 14 of the Children (Scotland) Act 1995 [M19] (jurisdiction and choice of law in relation to certain matters), omit subsection (5).

Commencement Information

I9 Sch. 1 para. 3 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations

M19 1995 c.36, **section 14(5)** was added by S.S.I. 2005/42.

Amendment of the Civil Partnership Act 2004

4.—(1) The Civil Partnership Act 2004 [M20] is amended as follows.

(2) Omit section 219 (power to make provision corresponding to EC Regulation 2201/2003).

(3) In section 225 (jurisdiction of Scottish courts)—

(a) in subsection (1)—

(i) after "if (and only if)" insert " either civil partner ",

(ii) for paragraphs (a) and (b), substitute—

"(a) is domiciled in Scotland on the date when proceedings are begun, or

(b) was habitually resident in Scotland throughout the period of one year ending with that date, or", and

(iii) in paragraph (c)(ii) omit "under section 219 regulations",

(b) in subsection (3)—

(i) for paragraphs (a) and (b) substitute—

"(a) either of the ostensible civil partners—

(i) is domiciled in Scotland on the date when the proceedings are begun or was habitually resident in Scotland throughout the period of one year ending with that date, 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, or",

(ii) in paragraph (c)(ii) omit "under section 219 regulations".

(4) In section 227 [M21] (Scottish ancillary and collateral orders)—

(a) in subsection (3), for "Subject to subsection (3A) if", substitute " If ",

(b) omit subsection (3A).

(5) In section 234 (recognition in the UK of overseas dissolution, annulment or separation)—

(a) in subsection (1)—

(i) for "Subject to subsection (2), the", substitute " The ", and

(ii) for "the United Kingdom" substitute " Scotland ",

(b) omit subsection (2), and

(c) in subsection (3), for "subsections (1) and (2)", substitute " subsection (1) ".

Commencement Information

I10 Sch. 1 para. 4 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations

M20 2004 c.33.

M21 Section 227 was amended by S.I. 2011/1484 and is amended by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 S.I. 2019/ .

SCHEDULE 2

Regulation 5

Revocation and amendment of secondary legislation

Revocation of the European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005

1. The European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005 [M22] are revoked.

Commencement Information

I11 Sch. 2 para. 1 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations
M22 S.S.I. 2005/42.

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

2. The Civil Partnership (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2005 [M23] are revoked.

Commencement Information
I12 Sch. 2 para. 2 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations
M23 S.S.I. 2005/629.

Amendment of the Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010

3.—(1) The Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010 [M24] are amended as follows.

(2) In regulation 2 [M25] (interpretation), omit the definitions of "the Council Regulation" and "member State".

(3) Omit regulation 6 (application of Article 15).

(4) Omit regulation 10 [M26] (requests for information under Council Regulation).

(5) In regulation 12 [M27] (local authorities and Children's Hearings: placement of child in another Contracting State)—

(a) in paragraph (1)—

(i) in sub-paragraph (a), omit ", or", and

(ii) omit sub-paragraph (b),

(b) in paragraph (2)—

(i) in sub-paragraph (a), omit ", or", and

(ii) omit sub-paragraph (b), and

(c) in paragraph (3)—

(i) omit "or Articles 8 to 14 of the Council Regulation, as the case may be",

(ii) in sub-paragraph (a) omit ", or", and

(iii) omit sub-paragraph (b).

Commencement Information
I13 Sch. 2 para. 3 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations

M24 S.S.I. 2010/213.

M25 Regulation 2 was amended by S.S.I. 2013/147.

M26 Regulation 10 was amended by S.S.I. 2013/147 and S.S.I. 2011/211.

M27 Regulation 12 was amended by S.S.I. 2013/147.

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

4. The Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2014 [M28] are revoked.

Commencement Information

I14 Sch. 2 para. 4 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

Marginal Citations

M28 S.S.I. 2014/362.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraphs 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies in retained EU law (in particular to address reciprocal arrangements which no longer exist and are no longer appropriate) arising from the withdrawal of the UK from the European Union.

Regulation 3 revokes Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility which is retained direct EU legislation in terms of the 2018 Act. Regulation 4 and schedule 1 amend primary legislation and regulation 5 and schedule 2 revoke and amend secondary legislation, in both cases to reflect the revocation of the Council Regulation. The legislation amended relates to jurisdiction and recognition of judgments in matrimonial matters for opposite and same sex couples and for civil partners. Regulation 6 makes saving and transitional provision for matters arising before exit day.

The Scottish Government has prepared for these Regulations and is publishing on its website, a Business and Regulatory Impact Assessment, an Equality Impact Assessment and a Child Rights and Wellbeing Impact Assessment.

Changes to legislation:
There are currently no known outstanding effects for the The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019.