

DRAFT STATUTORY INSTRUMENTS

2014 No.

JUDGMENTS, ENGLAND AND WALES

FAMILY LAW, ENGLAND AND WALES

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

Made - - - - *****

Coming into force - - *13th March 2014*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by paragraph 5 of Schedule A1 to the Domicile and Matrimonial Proceedings Act 1973(a). In accordance with paragraph 5(6) of Schedule A1 to that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014 and shall come into force on 13th March 2014.

(2) These Regulations extend to England and Wales only.

PART 2

Jurisdiction

Jurisdiction

2. The court has jurisdiction in proceedings for the divorce of, or annulment of the marriage of, a same sex couple or for the judicial separation of a married same sex couple where—

- (a) both spouses are habitually resident in England and Wales;
- (b) both spouses were last habitually resident in England and Wales and one of the spouses continues to reside there;

(a) 1973 c. 45. Schedule A1 was inserted by Schedule 4 to the Marriage (Same Sex Couples) Act 2013 (c.30).

- (c) the respondent is habitually resident in England and Wales;
- (d) the petitioner is habitually resident in England and Wales and has resided there for at least one year immediately preceding the presentation of the petition;
- (e) the petitioner is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately preceding the presentation of the petition; or
- (f) both spouses are domiciled in England and Wales.

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(a), 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.

(a) S.I. 2010/2995.

(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.

Signatory text

Date

Name
Minister of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are to make corresponding provision, as far as is possible in domestic law, for marriages of same sex couples as to the jurisdiction and recognition elements of Council Regulation (EC) 2201/2003 for proceedings for the divorce of, or annulment of a marriage of, a same sex couple or the judicial separation of a married same sex couple as regards the law of England and Wales.

The Regulations apply to all marriages of same sex couples, including those registered outside England and Wales, entitled to be treated as marriages, by virtue of the Marriage (Same Sex Couples) Act 2013 (c.30) (“the 2013 Act”).

Regulation 2 provides that the court will have jurisdiction in proceedings for the divorce of, or annulment of a marriage of, a same sex couple or the judicial separation of a married same sex couple if the couple meet the criteria set out in sub paragraphs (a) to (f).

Regulations 3 and 4 provide that if a court of an EU member State (other than the United Kingdom) gives judgment in respect of the divorce of, or annulment of a marriage of, a same sex couple or the judicial separation of a married same sex couple, that judgment must be recognised in England and Wales unless any of the matters in regulation 5 apply.

Regulation 5(1) provides that the court shall refuse to recognise a judgment of a court of a member State if that judgment was obtained at a time when it was irreconcilable with a decision of a court of England and Wales or a judgment of a court of another member State, if that judgment was capable of recognition in England and Wales, in respect of the same marriage of a same sex couple.

Regulations 5(2) and 5(3) provide that the court shall refuse to recognise a judgment of a court of a member State if that judgment was obtained at a time when the law of England and Wales did not recognise marriages of same sex couples. However, regulation 5(3) provides that regulation 5(2) will not apply where the marriage of a same sex couple would have been entitled to be treated as a subsisting civil partnership by the law of England and Wales at the time the judgment was obtained.

Regulations 5(4) and 5(5) provide that the court shall refuse to recognise a judgment of a court of a member State if: that judgment was obtained without steps being taken to notify a spouse of the proceedings or without a spouse having been given the chance to take part in proceedings; there is no official document as to the validity of the judgment; or the recognition of the judgment would be manifestly contrary to public policy in England and Wales.

Regulations 6 and 7 prevent a court in England and Wales from reviewing the jurisdiction of the court of the member State that made the original judgment and from reviewing the substance of that judgment.

Regulation 8 ensures that a judgment is recognised notwithstanding that there might well have been a different outcome if the law of England and Wales had been applied to the facts of the case.

Regulation 9 allows the court to stay proceedings for recognition of a judgment when there is an appeal outstanding against that judgment.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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