
EXPLANATORY NOTE

(This note is not part of the Order)

These rules amend the Family Procedure Rules 2010 (“the Rules”) to make consequential amendments in light of the Marriage (Same Sex Couples) Act 2013 (c. 30) (“the 2013 Act”).

Rule 3 amends rule 7.11(3)(a)(ii) of the Rules to replace the reference to “husband and wife” in that rule with a reference to “a married couple”. This amendment will ensure that this rule applies to marriages of opposite sex and same sex couples.

Rule 4 amends rule 7.26 of the Rules to make it clear that this rule only applies to marriages of opposite sex couples. Paragraph 4 of Schedule 4 to the 2013 Act inserted a new subsection (2) into section 12 of the Matrimonial Causes Act 1973 (c.18) (“the 1973 Act”). Section 12(2) provides that the grounds on which a marriage is voidable in section 12(a) (incapacity to consummate the marriage) and section 12(b) (wilful refusal to consummate the marriage) do not extend to marriages of same sex couples. Rule 4 therefore makes consequential amendments to rule 7.26 of the Rules to reflect this position that the grounds on which a marriage is voidable in section 12(a) and 12(b) of the 1973 Act only extend to marriages of opposite sex couples.

Rules 5 to 11 amend certain rules in Part 31 of the Rules. These rules make consequential amendments to include reference to The Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014. Those Regulations 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.