

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 1 – Marriage

Chapter 6 – Sheriff court jurisdiction in relation to declarator of marriage

Section 23: Sheriff court jurisdiction in relation to declarator of marriage

114. A declarator of marriage is a court judgment that a valid marriage exists, or existed, between two parties.
115. [Section 23](#) clarifies the jurisdiction of the sheriff court in relation to declarators of marriage. It does so by amending section 8 of the Domicile and Matrimonial Proceedings Act 1973 (“the 1973 Act”).
116. The amendments made by section 23 of the Act to the 1973 Act only relate to opposite sex marriage. Paragraph 1(2) of schedule 1 to this Act disapplies section 8 (and section 7) of the 1973 Act in relation to same sex marriage. Schedule 1 to the Act makes provision on the jurisdiction of the Scottish courts in relation to same sex matrimonial court actions, including declarators of marriage.
117. By virtue of the amendments made by section 23(2) and (3), the sheriff court has jurisdiction in declarator of marriage cases when either party to the marriage (a) is domiciled in Scotland when the action is raised or (b) was habitually resident in Scotland for a year before the action is raised or (c) died before the date when the action is raised and at death was domiciled in Scotland or had been habitually resident in Scotland for a year. In addition, either party to the marriage must have been:
- resident in the sheriffdom for a period of 40 days before the court action is raised; or
 - resident in the sheriffdom for at least 40 days ending not more than 40 days before the court action is raised and with no known residence in Scotland when the action is raised.