

Status: Point in time view as at 13/03/2014.

Changes to legislation: There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013, Paragraph 8. (See end of Document for details)

SCHEDULES

SCHEDULE 4

EFFECT OF EXTENSION OF MARRIAGE: FURTHER PROVISION

PART 4

MATRIMONIAL PROCEEDINGS

Amendment of the Domicile and Matrimonial Proceedings Act 1973

8 Before Schedule 1 insert—

“SCHEDULE A1 JURISDICTION IN RELATION TO MARRIAGE OF SAME SEX COUPLES

Introduction

- 1 This Schedule shall have effect, subject to section 6(3) and (4), 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, judicial separation or nullity of marriage;
 - (b) proceedings for an order which ends a marriage on the ground that one of the couple is dead; and
 - (c) proceedings for a declaration of validity.

Divorce, judicial separation or annulment

- 2 (1) The court has jurisdiction to entertain proceedings for divorce or judicial separation if (and only if)—
- (a) the court has jurisdiction under regulations under paragraph 5,
 - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5 and either of the married same sex couple is domiciled in England and Wales on the date when the proceedings are begun, or
 - (c) the following conditions are met—
 - (i) the two people concerned married each other under the law of England and Wales,
 - (ii) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5, and
 - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (2) The court has jurisdiction to entertain proceedings for nullity of marriage if (and only if)—

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- (a) the court has jurisdiction under regulations under paragraph 5,
 - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5 and either of the married same sex couple—
 - (i) is domiciled in England and Wales on the date when the proceedings are begun, or
 - (ii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of 1 year ending with the date of death, or
 - (c) the following conditions are met—
 - (i) the two people concerned married each other under the law of England and Wales,
 - (ii) no court has, or is recognised as having, jurisdiction under regulations under paragraph 5, and
 - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (3) At any time when proceedings are pending in respect of which the court has jurisdiction by virtue of sub-paragraph (1) or (2) (or this sub-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 subsection (1) or (2).

Presumption of death order

- 3 The court has jurisdiction to entertain proceedings for an order which ends a marriage on the ground that one of the couple is dead on an application made by the other of the couple (“the applicant”) if (and only if)—
- (a) at the time the application is made, the High Court does not have jurisdiction to entertain an application by the applicant under section 1 of the Presumption of Death Act 2013 for a declaration that the applicant's spouse is presumed to be dead, and
 - (b) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Declaration of validity

- 4 The court has jurisdiction to entertain an application for a declaration of validity if (and only if)—
- (a) either of the parties to the marriage to which the application relates—
 - (i) is domiciled in England and Wales on the date of the application,
 - (ii) has been habitually resident in England and Wales throughout the period of 1 year ending with that date, or
 - (iii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of 1 year ending with the date of death, or

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- (b) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Power to make provision corresponding to EC Regulation 2201/2003

- 5 (1) The Lord Chancellor may by regulations make provision—
- (a) as to the jurisdiction of courts in England and Wales in proceedings for the divorce of, or annulment of the marriage of, a same sex couple or for judicial separation of a married same sex couple where one of the couple—
 - (i) is or has been habitually resident in a member State,
 - (ii) is a national of a member State, or
 - (iii) is domiciled in a part of the United Kingdom or the Republic of Ireland, and
 - (b) as to the recognition in England and Wales of any judgment of a court of another member State which orders the divorce of, or annulment of a marriage of, a same sex couple or the judicial separation of a married same sex couple.
- (2) The regulations may in particular make provision corresponding to that made by Council Regulation (EC) No 2201/2003 of 27th November 2003 in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial matters.
- (3) The regulations may provide that for the purposes of the regulations “member State” means—
- (a) all member States with the exception of such member States as are specified in the regulations, or
 - (b) such member States as are specified in the regulations.
- (4) The regulations may make provision under sub-paragraph (1)(b) which applies even if the date of the divorce, annulment or judicial separation is earlier than the date on which this paragraph comes into force.
- (5) Regulations under this paragraph are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this paragraph may not be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by resolution of, each House of Parliament.

Interpretation

- 6 In this Schedule “declaration of validity” means—
- (a) a declaration as to the validity of a marriage,
 - (b) a declaration as to the subsistence of a marriage, or
 - (c) a declaration as to the validity of a divorce, annulment or judicial separation obtained outside England and Wales in respect of a marriage.”.

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Commencement Information

- I1** Sch. 4 para. 8 in force at 31.10.2013 for specified purposes by S.I. 2013/2789, **art. 2(b)**
- I2** Sch. 4 para. 8 in force at 13.3.2014 in so far as not already in force by S.I. 2014/93, **art. 3(j)(i)**

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