
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.