



Family Law (Scotland) Act 2006

2006 asp 2

Private international law

38 Validity of marriages

- (1) Subject to [F1 section 13(1) of, and Schedule 6 to, the Marriage (Same Sex Couples) Act 2013 and to any Orders in Council made under that Schedule], the question whether a marriage is formally valid shall be determined by the law of the place where the marriage was celebrated.
- (2) The question whether a person who enters into a marriage—
 - (a) had capacity; or
 - (b) consented,to enter into it shall, subject to subsections (3) and (4) and to section 50 of the Family Law Act 1986 (c. 55) (non-recognition of divorce or annulment in another jurisdiction no bar to remarriage), be determined by the law of the place where, immediately before the marriage, that person was domiciled.
- (3) If a marriage entered into in Scotland is void under a rule of Scots internal law, then, notwithstanding subsection (2), that rule shall prevail over any law under which the marriage would be valid.
- (4) The capacity of the person to enter into the marriage shall not be determined under the law of the place where, immediately before the marriage, the person was domiciled in so far as it would be contrary to public policy in Scotland for such capacity to be so determined.
- (5) If the law of the place in which a person is domiciled requires a person under a certain age to obtain parental consent before entering into a marriage, that requirement shall not be taken to affect the capacity of a person to enter into a marriage in Scotland unless failure to obtain such consent would render invalid any marriage that the person purported to enter into in any form anywhere in the world.

Textual Amendments

- F1** Words in s. 38(1) substituted (3.6.2014) by [The Marriage \(Same Sex Couples\) Act 2013](#) (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(3), [Sch. 1](#)

Changes to legislation: There are currently no known outstanding effects for the Family Law (Scotland) Act 2006, Cross Heading: Private international law. (See end of Document for details)

para. 31; and said words also substituted by [The Consular Marriages and Marriages under Foreign Law Order 2014 \(S.I. 2014/1110\)](#), arts. 1(1), **18**

Commencement Information

I1 S. 38 in force at 4.5.2006 by [S.S.I. 2006/212](#), **art. 2** (with [art. 4](#))

39 Matrimonial property

- (1) Any question in relation to the rights of spouses to each other's immoveable property arising by virtue of the marriage shall be determined by the law of the place in which the property is situated.
- (2) Subject to subsections (4) and (5), if spouses are domiciled in the same country, any question in relation to the rights of the spouses to each other's moveable property arising by virtue of the marriage shall be determined by the law of that country.
- (3) Subject to subsections (4) and (5), if spouses are domiciled in different countries then, for the purposes of any question in relation to the rights of the spouses to each other's moveable property arising by virtue of the marriage, the spouses shall be taken to have the same rights to such property as they had immediately before the marriage.
- (4) Any question in relation to—
 - (a) the use or occupation of a matrimonial home which is moveable; or
 - (b) the use of the contents of a matrimonial home (whether the home is moveable or immoveable),
 shall be determined by the law of the country in which the home is situated.
- (5) A change of domicile by a spouse (or both spouses) shall not affect a right in moveable property which, immediately before the change, has vested in either spouse.
- (6) This section shall not apply—
 - (a) in relation to the law on aliment, financial provision on divorce, transfer of property on divorce or succession;
 - (b) to the extent that spouses agree otherwise.
- (7) In this section, “matrimonial home” has the same meaning as in section 22 of the 1981 Act.

Commencement Information

I2 S. 39 in force at 4.5.2006 by [S.S.I. 2006/212](#), **art. 2** (with [art. 4](#))

40 Aliment

Subject to the Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18), a court in Scotland shall apply Scots internal law in any action for aliment which comes before it.

Commencement Information

I3 S. 40 in force at 4.5.2006 by [S.S.I. 2006/212](#), **art. 2** (with [art. 4](#))

Changes to legislation: *There are currently no known outstanding effects for the Family Law (Scotland) Act 2006, Cross Heading: Private international law. (See end of Document for details)*

41 Effect of parents' marriage in determining status to depend on law of domicile

Any question arising as to the effect on a person's status of—

- (a) the person's parents being, or having been, married to each other; or
- (b) the person's parents not being, or not having been, married to each other,

shall be determined by the law of the country in which the person is domiciled at the time at which the question arises.

Commencement Information

I4 S. 41 in force at 4.5.2006 by [S.S.I. 2006/212](#), **art. 2** (with [art. 4](#))

Changes to legislation:

There are currently no known outstanding effects for the Family Law (Scotland) Act 2006, Cross
Heading: Private international law.