

Changes to legislation: There are currently no known outstanding effects for the Domicile and Matrimonial Proceedings Act 1973, SCHEDULE 1B. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 1B

(introduced by section 8A)

JURISDICTION IN RELATION TO SAME SEX MARRIAGES (SCOTLAND)

Textual Amendments

- F1** Sch. 1B inserted (1.9.2014 for specified purposes, 16.12.2014 in so far as not already in force) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), s. 36, [Sch. 1 para. 1\(4\)](#); [S.S.I. 2014/212](#), art. 2, Sch. (as amended (1.9.2014) by [S.S.I. 2014/218](#), art. 2(3), Sch.); [S.S.I. 2014/287](#), art. 3, Sch.

Introduction

- 1 (1) This Schedule has effect with respect to the jurisdiction of the Court of Session and of the sheriff court to entertain, in relation to same sex marriages, proceedings for—
- (a) divorce,
 - (b) separation,
 - (c) declarator of marriage,
 - (d) declarator of nullity of marriage,
 - (e) declarator of recognition, or non-recognition, of a relevant foreign decree.
- (2) References in this Schedule to “relevant proceedings” are to such proceedings as are mentioned in sub-paragraph (1).
- (3) In this Schedule—
- “relevant foreign decree” means a decree of divorce, separation or nullity granted outwith [^{F2}the United Kingdom, the Channel Islands and the Isle of Man],
 - “same sex marriage” means a marriage between persons of the same sex.

Textual Amendments

- F2** Words in [Sch. 1B para. 1\(3\)](#) substituted (31.12.2020) by [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, [sch. 1 para. 1\(7\)\(a\)](#) (with reg. 6) (as amended by [S.S.I. 2020/441](#), regs. 1(2)(a), 16); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Power to make provision corresponding to EC Regulation 2201/2003

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Textual Amendments

- F3** Sch. 1B para. 2 omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, [sch. 1 para. 1\(7\)\(b\)](#) (with reg. 6) (as amended by [S.S.I. 2020/441](#), regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)

Divorce or separation

- 3 (1) The Court of Session has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if (and only if) [^{F4}either of the parties to the marriage] —
- [^{F5}(a) is domiciled in Scotland on the date when the proceedings are begun, or
 (b) was habitually resident in Scotland throughout the period of one year ending with that date.]
- (2) The sheriff court has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if (and only if)—
- (a) the requirements of paragraph (a) or (b) of sub-paragraph (1) are met, and
 (b) either party to the marriage—
- (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.
- (3) Despite sub-paragraph (2), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if the following requirements are met—
- (a) the parties married each other in Scotland,
 (b) no court has, or is recognised as having, jurisdiction ^{F6}..., and
 (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Textual Amendments

- F4** Words in Sch. 1B para. 3(1) inserted (31.12.2020) by [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, [sch. 1 para. 1\(7\)\(c\)\(i\)](#) (with reg. 6) (as amended by [S.S.I. 2020/441](#), regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Sch. 1B para. 3(1)(a)(b) substituted (31.12.2020) by [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, [sch. 1 para. 1\(7\)\(c\)\(ii\)](#) (with reg. 6) (as amended by [S.S.I. 2020/441](#), regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Sch. 1B para. 3(3)(b) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, [sch. 1 para. 1\(7\)\(c\)\(iii\)](#) (with reg. 6) (as amended by [S.S.I. 2020/441](#), regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)

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Declarator of marriage

- 4 (1) In relation to a same sex marriage, the Court of Session has jurisdiction to entertain proceedings for declarator of marriage if (and only if) either of the parties to the marriage—
- (a) is domiciled in Scotland on the date on which the proceedings are begun,
 - (b) was habitually resident in Scotland throughout the period of one year ending with that date, or
 - (c) died before that date and either—
 - (i) was at death domiciled in Scotland, or
 - (ii) had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) In relation to a same sex marriage, the sheriff court has jurisdiction to entertain proceedings for declarator of marriage if (and only if)—
- (a) the requirements of paragraph (a), (b) or (c) of sub-paragraph (1) are met in relation to either party to the marriage, and
 - (b) either party of the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.

Nullity of marriage

- 5 (1) The Court of Session has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if (and only if)—
- ^{F7}(a)
 - (b) ^{F7}... either party to the marriage—
 - (i) is domiciled in Scotland on the date on which the proceedings are begun [^{F8}, or was habitually resident in Scotland throughout the period of one year ending with that date], or
 - (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) The sheriff court has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if (and only if)—
- (a) the requirements of ^{F9}... sub-paragraph (1) are met, and
 - (b) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.
- (3) Despite sub-paragraph (2), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if the following requirements are met—
- (a) the parties married each other in Scotland,

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- (b) no court has, or is recognised as having, jurisdiction ^{F10}..., and
- (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Textual Amendments

- F7** Words in Sch. 1B para. 5(1) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, [sch. 1 para. 1\(7\)\(d\)\(i\)\(aa\)](#) (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in Sch. 1B para. 5(1) inserted (31.12.2020) by [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, [sch. 1 para. 1\(7\)\(d\)\(i\)\(bb\)](#) (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Sch. 1B para. 5(2) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, [sch. 1 para. 1\(7\)\(d\)\(ii\)](#) (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in Sch. 1B para. 5(3) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, [sch. 1 para. 1\(7\)\(d\)\(iii\)](#) (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)

Recognition, or non-recognition, of foreign decrees

- 6 (1) The Court of Session has jurisdiction to entertain proceedings for declarator of recognition, or non-recognition, of a relevant foreign decree relating to a same sex marriage if (and only if) ^{F11}... either party to the marriage—
- (i) is domiciled in Scotland on the date on which the proceedings are begun [^{F12}, or was habitually resident in Scotland throughout the period of one year ending with that date], or
 - (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) The sheriff court has jurisdiction to entertain proceedings for declarator of recognition, or non-recognition, of a relevant foreign decree relating to a same sex marriage if (and only if)—
- (a) the requirements of ^{F13}... sub-paragraph (1) are met, and
 - (b) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.

Textual Amendments

- F11** Words in Sch. 1B para. 6(1) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations](#)

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- 2019 (S.S.I. 2019/104), reg. 1, **sch. 1 para. 1(7)(e)(i)(aa)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in Sch. 1B para. 6(1) inserted (31.12.2020) by [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, **sch. 1 para. 1(7)(e)(i)(bb)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in Sch. 1B para. 6(2) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, **sch. 1 para. 1(7)(e)(ii)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)

Supplementary provision

- 7 (1) Paragraph 3(1) does not affect any rule of law under which the Court of Session has jurisdiction in certain circumstances to entertain proceedings for separation as a matter of necessity and urgency.
- (2) Paragraphs 3 and 5 do not affect any jurisdiction of a sheriff court to entertain any proceedings for separation, divorce or declarator of nullity of marriage remitted to the court under any enactment or rule of court^{F14}....
- (3) At any time when proceedings are pending in respect of which a court has jurisdiction by virtue of any of paragraphs 3 to 6 (or this paragraph), the court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, separation or declarator of marriage or of nullity of marriage even though that jurisdiction would not be exercisable under any of paragraphs 3 to 6.]

Textual Amendments

- F14** Words in Sch. 1B para. 7(2) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family, Civil Partnership and Marriage \(Same Sex Couples\)\) \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/104\)](#), reg. 1, **sch. 1 para. 1(7)(f)** (with reg. 6) (as amended by S.S.I. 2020/441, regs. 1(2)(a), 16); 2020 c. 1, Sch. 5 para. 1(1)

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