

Draft Regulations laid before the Scottish Parliament under paragraph 1(7) of schedule 7 of the European Union (Withdrawal) Act 2018, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

**EXITING THE EUROPEAN UNION
FAMILY LAW
JUDGMENTS
CHILDREN AND YOUNG PERSONS**

The Jurisdiction and Judgments (Family, Civil
Partnership and Marriage (Same Sex Couples)) (EU
Exit) (Scotland) (Amendment etc.) Regulations 2019

Made - - - - 2019

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraphs 1(1) and (3) of schedule 2, and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018⁽¹⁾ and all other powers enabling them to do so.

In accordance with paragraph 4(b) of schedule 2 of that Act, they have consulted with the Secretary of State.

In accordance with paragraph 1(7) of schedule 7 of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 and come into force on exit day.

(1) 2018 c.16.

Interpretation

2. In these Regulations—

“Council Regulation No. 2201/2003” means Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, and

“competent authority” means the Court of Session or the sheriff court as appropriate.

PART 2

Revocation of retained direct EU legislation

Revocation of Council Regulation No. 2201/2003

3. Council Regulation No. 2201/2003 is revoked.

PART 3

Amendment of primary legislation

Amendment of primary legislation

4. Schedule 1 has effect.

PART 4

Revocation and amendment of secondary legislation

Revocation and amendment of secondary legislation

5. Schedule 2 has effect.

PART 5

Saving and transitional provisions

Saving and transitional provisions

6.—(1) The amendments and revocations made by these Regulations do not apply in relation to—

- (a) proceedings before a court in a Member State seised before these Regulations come into force in reliance upon the provisions of Chapter II (jurisdiction) of Council Regulation No. 2201/2003,
- (b) applications, requests for assistance or specific measures, where the application or request is received by the Scottish Ministers as the relevant Central Authority or where the competent authority is seised before these Regulations come into force, in accordance with Chapter III (recognition and enforcement) or Chapter IV (cooperation between Central Authorities in matters of parental responsibility) of Council Regulation No. 2201/2003,

- (c) proceedings commenced before these Regulations come into force pursuant to the jurisdiction provisions of Part 1 of—
 - (i) the Civil Partnership (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2005⁽²⁾, or
 - (ii) the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2014⁽³⁾,
- (d) proceedings commenced before these Regulations come into force in accordance with the recognition and refusal of recognition provisions of Part 2 of—
 - (i) the Civil Partnership (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2005, or
 - (ii) the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2014.
- (2) For the purposes of sub-paragraphs (1)(a) and (b) of this regulation—
 - (a) a court is seised—
 - (i) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps the applicant was required to take to have service effected on the respondent, or
 - (ii) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps the applicant was required to take to have the document lodged with the court, and
 - (b) references to “Member State” in Council Regulation No. 2201/2003 and any implementing legislation are to be read as including the United Kingdom.

St Andrew’s House, Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

⁽²⁾ S.S.I. 2005/629.
⁽³⁾ S.S.I. 2014/362.

SCHEDULE 1

Regulation 4

Amendment of primary legislation

Amendment of the Domicile and Matrimonial Proceedings Act 1973

- 1.—(1) The Domicile and Matrimonial Proceedings Act 1973⁽⁴⁾ is amended as follows.
- (2) In section 7⁽⁵⁾ (jurisdiction of Court of Session)—
- (a) in subsection (2A)—
 - (i) after “if (and only if)”, insert “either of the parties to the marriage”, and
 - (ii) for paragraphs (a) and (b) substitute—
 - “(a) is domiciled in Scotland on the date when the action is begun, or
 - (b) was habitually resident in Scotland throughout the period of one year ending with that date.”,
 - (b) in subsection (3A)—
 - (i) after “if (and only if)” insert “either of the parties to the marriage”,
 - (ii) omit the first paragraphs (a) and (b),
 - (iii) for the second paragraphs (a) and (b) substitute—
 - “(a) is domiciled in Scotland on the date when the action is 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.”,
 - (c) omit subsection (3B),
 - (d) omit subsection (5A), and
 - (e) in subsection (9) for “a member state of the European Union” substitute “the United Kingdom, the Channel Islands and the Isle of Man”.
- (3) In section 8⁽⁶⁾ (jurisdiction of sheriff court in respect of actions for separation)—
- (a) in subsection (2)—
 - (i) omit “or for declarator of recognition, or non-recognition, of a relevant foreign decree”,
 - (ii) for paragraph (a) substitute—
 - “(a) either of the parties to the marriage—
 - (i) is domiciled in Scotland on the date when the action is begun, or
 - (ii) was habitually resident in Scotland throughout the period of one year ending with that date, and”,

(4) 1973 c.45.

(5) Section 7 was amended by the Presumption of Death (Scotland) Act 1977, (c.27), section 19 and schedule 2, the Family Law (Scotland) Act 2006, (asp 2), section 37(2) and schedule 2, paragraph 1, [S.S.I. 2001/36](#) and [S.S.I. 2005/42](#).

(6) Section 8 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), sections 6(1), 7(4) and schedule 1, paragraph 18, the Family Law (Scotland) Act 2006, (asp 2), section 37(3), the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011, (asp 15), section 15, the Marriage and Civil Partnership (Scotland) Act 2014, (asp 5), section 23, [S.S.I. 2001/36](#) and [S.S.I. 2005/42](#).