# POLICY NOTE

# THE MARRIAGE (SAME SEX COUPLES) (JURISDICTION AND RECOGNITION OF JUDGMENTS) (SCOTLAND) REGULATIONS 2014

## SSI 2014/

The above instrument is made in exercise of the powers conferred by paragraph 2 of Schedule 1B to the Domicile and Matrimonial Proceedings Act 1973. The instrument is subject to the affirmative procedure.

## Policy Objectives

The Marriage and Civil Partnership (Scotland) Act 2014 allows same sex couples to get married in Scotland. As a consequence, cases relating to same sex married couples may be raised in the Scottish courts.

The main aim of these Regulations is to make provision corresponding to that made by Council Regulation (EC) No 2201/2003 of 27 November 2003 ("Brussels IIa")[1] on jurisdiction and the recognition and enforcement of judgments in matrimonial matters. The underlying reason for taking this approach is because the Scottish Government's understanding is that Brussels IIa does not extend to cases relating to same sex marriage.

Part 1 of the Regulations sets out when the courts in Scotland will have jurisdiction in proceedings for the divorce of, declarator of nullity of, or judicial separation of a married same sex couple.

Part 1 also sets out when the Scottish courts will have jurisdiction in proceedings for a declarator of recognition or non-recognition of a decree from outwith the European Union on the divorce of, nullity of, or judicial separation of a married same sex couple.

Part 2 of the Regulations makes provision on the recognition and refusal of recognition of a judgement from a member State of the European Union other than the United Kingdom. Part 2 makes it clear that the courts in Scotland may not review the substance of the judgement from elsewhere in the EU and that recognition may not be refused just because the law in Scotland may be different from the law in the originating member State.

Similar regulations on the jurisdiction of the Scottish courts were made following the introduction of civil partnerships – The Civil Partnership (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2005 (SSI 2005/629)[2].

Similar regulations were made by the UK Government for England and Wales following the introduction of same sex marriage south of the border - The Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014 (SI 2014/543)[3].

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[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R2201:EN:HTML
[2] Available at http://www.legislation.gov.uk/ssi/2005/629/contents/made
[3] Available at http://www.legislation.gov.uk/uksi/2014/543/contents/made

**Consultation**

Between 2 September and 9 December 2011, the Scottish Government consulted on the registration of civil partnership and same sex marriage[4].

The Scottish Government then consulted on the draft Marriage and Civil Partnership (Scotland) Bill from 12 December 2012 until 20 March 2013[5].

The Scottish Government also consulted on these draft regulations[6]. The Faculty of Advocates provided a substantive response.

**Impact Assessments**

No impact assessments were prepared for these Regulations. However, the Scottish Government prepared a Business and Regulatory Impact Assessment (BRIA)[7] and an Equality Impact Assessment (EQIA)[8] for the Marriage and Civil Partnership (Scotland) Bill's introduction to Parliament on 26 June 2013. The BRIA indicated that there might be a modest increase in the number of legally established unions of same sex couples after same sex marriage is introduced in Scotland and took into account that there may be an increase in the matrimonial maters dealt with by the Scottish courts.

**Financial Effects**

Accompanying documents were also produced for the Bill in line with the Parliament's Standing Orders[9]. One of the accompanying documents for the Bill was the Financial Memorandum. This again took into account that there might be a modest increase in the number of legally established unions of same sex couples after same sex marriage is introduced in Scotland. Paragraphs 39 to 44 outlined possible additional costs for the Scottish Legal Aid Board in relation to potential increased number of divorces dealt with by the courts. Paragraph 44 estimated these costs as £264,000 in total, payable over a number of years as divorces occur.

**Scottish Government**
**Justice Directorate**
**October 2014**

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[4] This consultation is at
http://www.scotland.gov.uk/Topics/Justice/law/17867/samesex/consultations
[5] The consultation on the draft Bill is at
http://www.scotland.gov.uk/Publications/2012/12/9433
[6] The consultation on these draft regulations is at
http://www.scotland.gov.uk/Topics/Justice/law/17867/samesex/closed-consultations
[7] The BRIA for the Bill is at
http://www.scotland.gov.uk/Topics/Justice/law/17867/samesex/BRIA
[8] The EQIA for the Bill is at
http://www.scotland.gov.uk/Topics/Justice/law/17867/samesex/EQIA
[9] The Accompanying Documents for the Bill are at
http://www.scottish.parliament.uk/parliamentarybusiness/Bills/64983.aspx