EXPLANATORY MEMORANDUM TO

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

2014 No. 543

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make corresponding provision in respect of marriages of same sex couples as to the jurisdiction and recognition of judgments provisions of Council Regulation (EC) No 2201/2003 (known as "Brussels IIa"). The Regulations set out when "the court" in England and Wales[1] will have jurisdiction to deal with proceedings for divorce, judicial separation or nullity ("divorce, etc") in respect of marriages of same sex couples. The Regulations also set out when the court in England and Wales will be obliged to recognise, or refuse to recognise, a judgment of a court of a Member State of the European Union that relates to the divorce etc of a marriage of a same sex couple.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Certain provisions of the Marriage (Same Sex Couples) Act 2013 ("the Act") for the purpose of making subordinate legislation were commenced by SI 2013/2789 on 31 October 2013. These included the powers of the Lord Chancellor in Schedule 4, which inserted new Schedule A1 into the Domicile and Matrimonial Proceedings Act 1973, to make regulations concerning jurisdiction of the courts and the recognition of judgments concerning proceedings for divorce, etc of marriages of same sex couples under which these Regulations are made.

4.2 These Regulations are one of a number of orders and regulations which are being laid before Parliament at the same time as these Regulations and which are necessary for implementation of the majority of the Act. They include, briefly, statutory instruments:

[1] For the purposes of these Regulations "the court" has the same meaning as section 5(1A) of the Domicile and Matrimonial Proceedings Act 1973 (c. 45) ("the High Court and a divorce county court within the meaning of Part V of the Matrimonial and Family Proceedings Act 1984").

- making consequential and other amendments to primary and subordinate legislation in England and Wales[2];
- allowing registration of religious buildings and appointment of authorised persons for marriage of same sex couples[3];
- setting out procedures for registration of shared religious buildings for the solemnization of marriages of same sex couples[4];
- setting out procedures for registration of military chapels for marriage of same sex couples[5];
- setting out procedures for marriages in British consulates and overseas armed forces bases[6];
- providing for graduated retirement benefit to be inheritable by a surviving same sex spouse[7];
- making changes to particular public service pension schemes to provide survivor benefits for married same sex couples on the same basis as civil partners[8].

5. Territorial Extent and Application

5.1 These Regulations extend to England and Wales.

6. European Convention on Human Rights

6.1 Simon Hughes MP, Minister of State in the Ministry of Justice, has made the following statement regarding Human Rights:

In my view the provisions of the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 The overall purpose of the Act is to make marriage of same sex couples possible in England and Wales. The Act seeks to secure that same sex married couples are generally treated in the same way as opposite sex married couples, while making provision to protect religious freedom in relation to the solemnization of marriage.

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[2] The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 and the Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014.
[3] The Marriage of Same Sex Couples (Registration of Buildings and Appointment of Authorised Persons) Regulations 2014.
[4] The Marriage of Same Sex Couples (Registration of Shared Buildings) Regulations 2014.
[5] The Marriage of Same Sex Couples (Use of Armed Forces' Chapels) Regulations 2014.
[6] The Consular Marriages and Marriages under Foreign Law Order 2014, and the Overseas Marriage (Armed Forces) Order 2014.
[7] The Social Security (Graduated Retirement Benefit) (Married Same Sex Couples) Regulations 2014.
[8] The National Health Service Pension Scheme Additional Voluntary Contributions, Compensation for Premature Retirement and Injury Benefits (Amendment) Regulations 2014, and the Police Pensions (Amendment) Regulations 2014.

7.2 To achieve this overall purpose the Act makes provision setting out when the court in England and Wales will have jurisdiction to deal with proceedings on divorce, etc in respect of marriages of same sex couples. The current rules on jurisdiction to deal with such matters in respect of marriages of opposite sex couples are set out in section 5 of the Domicile and Matrimonial Proceedings Act 1973 ("the 1973 Act"). Section 5(2) and (3) of the 1973 Act provide that the court will have jurisdiction to hear proceedings for divorce, etc if the court has jurisdiction under Brussels IIa or if no Member State of the EU has jurisdiction under Brussels IIa and either of the parties to the marriage is domiciled in England and Wales on the date the proceedings begin. It was not possible in the Act to extend section 5 to marriages of same sex couple because there was, and remains, doubt as to whether Brussels IIa applies to marriages of same sex couples. The Act therefore inserted a new Schedule A1 into the 1973 Act which makes provision for the Lord Chancellor to make regulations that correspond with the jurisdiction and recognition of judgments provisions of Brussels IIa. A similar approach was taken in respect of Civil Partnerships which resulted in The Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 (SI 2005/3334).

7.3 To ensure that these Regulations correspond as far as is possible in domestic law with Brussels IIa, the language used throughout the Regulations replicates that in Brussels IIa wherever possible.

8. Consultation outcome

8.1 A limited consultation with specialist judiciary, practitioners and academics was carried out. Minor drafting amendments were suggested in response and have been accepted. The consultation also asked for comments arising from the experience of operation of The Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005. No comments were received.

9. Guidance

9.1 The Regulations will be published on the legislation website. No specific guidance is considered necessary.

10. Impact

10.1 An Impact Assessment has not been prepared for these Regulations. They do not impose burdens for business, charities or voluntary bodies. They do not impose costs on business or civil society organisations. The impact on the public sector is below £5 million.

11. Regulating small business

11.1 These Regulations will have no impact on the regulation of small business save that small firms of legal representatives will need to be aware of them.

12. Monitoring & review

12.1 Brussels IIa is currently subject to review by the EU Commission with the possibility of amendments being proposed in late 2014. The Ministry of Justice will consider the impact on these Regulations of any changes made to Brussels IIa.

13. Contact

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