

# MARRIAGE (SAME SEX COUPLES) ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS AND SCHEDULES

#### *Schedule 4 – Effect of extension of marriage: further provision*

#### **Part 4 – Matrimonial proceedings**

116. Same sex couples who marry in England and Wales but remain or become habitually resident or domiciled in another country may not be able to end their marriage in that country if it does not recognise the existence of the relationship. Part 4 therefore amends the Domicile and Matrimonial Proceedings Act 1973 to provide a "jurisdiction of last resort" so that those same sex couples who are unable to divorce or obtain other matrimonial orders in the country which would normally have jurisdiction are able to have their case heard in the courts in England and Wales. "Jurisdiction" means a court's authority to deal with the case. The courts in England and Wales will be able to assume jurisdiction if the couple were married in England or Wales and where it is the interests of justice to do so.
117. [Paragraph 6](#) amends section 5 of the Domicile and Matrimonial Proceedings Act 1973 to set out which provisions in respect of jurisdiction in matrimonial causes do not apply to marriages of same sex couples, which are instead dealt with in Schedule A1. It also amends section 5 to provide that Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973, which relates to stays of proceedings, will apply to marriages of opposite sex and same sex couples. [Paragraph 7](#) amends section 6 of that Act to insert reference to Schedule A1. [Paragraph 8](#) inserts Schedule A1 to that Act. [Paragraph 1](#) of Schedule A1 sets out the jurisdiction of the court in proceedings for orders relating to the ending of a marriage (divorce, judicial separation, nullity of marriage or because one of the couple is dead) and orders relating to declarations of validity.
118. [Paragraph 2](#) of Schedule A1 provides that the court is able to deal with divorce, judicial separation and nullity cases either (a) where the court has jurisdiction because of regulations made under [paragraph 5](#) of Schedule A1 (see below), or (b) when no court has that jurisdiction and either of the married same sex couple is domiciled in England and Wales when the case starts, or (c) when the same sex couple married under the law of England and Wales, no court has the [paragraph 5](#) jurisdiction and it appears to the court in the interests of justice for it to deal with the case. In nullity cases the court additionally has jurisdiction if either of the couple died before the case started and was domiciled in England and Wales on the date of death or had been habitually resident in England and Wales throughout the year ending with the date of death.
119. The court also has jurisdiction to deal with divorce, judicial separation or nullity for the same marriage when proceedings are pending under sub-paragraphs (1) or (2).
120. [Paragraph 3](#) of Schedule A1 provides that the court has jurisdiction to deal with an application by one of a couple for an order which ends their marriage on the ground that their spouse is dead, provided that at the time the application was made the High Court did not have jurisdiction under the Presumption of Death Act 2013 to hear an application for a declaration that the applicant's spouse is presumed dead, the two people

*These notes refer to the Marriage (Same Sex Couples) Act  
2013 (c.30) which received Royal Assent on 17 July 2013*

concerned married under the law of England and Wales and it appears to the court to be in the interests of justice to deal with the case.

121. Paragraph 4 of Schedule A1 says the court has jurisdiction to deal with an application for a declaration of validity if either party to the marriage concerned is domiciled in England and Wales on the date the case starts, was habitually resident in England and Wales throughout the year before the date the case starts, or died before that date and at death was either domiciled in England and Wales or had been habitually resident in England and Wales throughout the year ending with the date of death, or the two people concerned married under the law of England and Wales and it appears to the court to be in the interests of justice to deal with the case.
122. Paragraph 5 of Schedule A1 enables the Lord Chancellor to make regulations about the jurisdiction of the courts to deal with divorce, judicial separation and nullity cases and about the recognition of such orders for a married same sex couple. These regulations would apply where one of the couple: is or has been habitually resident in a Member State of the European Union (EU), or is an EU national, or is domiciled in a part of the UK or the Republic of Ireland. The regulations may correspond with the terms of Council Regulation (EC) No 2201/2003 (known as Brussels IIa) on jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility. Brussels IIa deals with marriage of opposite sex couples. The provisions on recognition of judgments can apply retrospectively. A statutory instrument containing these regulations will be subject to the affirmative resolution procedure.
123. Paragraph 6 of Schedule A1 sets out the meaning of "declaration of validity" in that Schedule as: a declaration as to the validity of a marriage, a declaration as to whether a marriage existed on a particular date, or a declaration as to the validity of matrimonial orders obtained outside England and Wales.
124. Paragraph 10 of Schedule 4 to the Act makes transitory provision to ensure that the provisions on the court's jurisdiction to hear presumption of death proceedings will function under section 19 of the Matrimonial Causes Act 1973 if this Act were to come into force before the entry into force of the Presumption of Death Act 2013 and until the Presumption of Death Act 2013 comes into force.