
SCOTTISH STATUTORY INSTRUMENTS

2001 No. 36

The European Communities (Matrimonial Jurisdiction and Judgments) (Scotland) Regulations 2001

Amendment of the Domicile and Matrimonial Proceedings Act 1973

2.—(1) The Domicile and Matrimonial Proceedings Act 1973⁽¹⁾ is amended in accordance with paragraphs (2) to (5) of this regulation.

(2) In section 7⁽²⁾—

- (a) in subsection (2), the words “divorce, separation or ” are repealed;
- (b) after that subsection, insert—

“(2A) The Court shall have jurisdiction to entertain an action for divorce or separation if (and only if)—

- (a) the Scottish courts have jurisdiction under the Council Regulation; or
- (b) the action is an excluded action and either of the parties to the marriage in question is domiciled in Scotland on the date when the action is begun.”;

(c) in subsection (3), the words “or declarator of nullity of marriage” are repealed;

(d) after that subsection, insert—

“(3A) The Court shall have jurisdiction to entertain an action for declarator of nullity of marriage if (and only if)—

- (a) the Scottish courts have jurisdiction under the Council Regulation; or
- (b) the action is one to which subsection (3B) below applies and either of the parties to the marriage—
 - (a) is domiciled in Scotland on the date when the action is begun; or
 - (b) 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.

(3B) This subsection applies to an action—

- (a) which is an excluded action; or
- (b) where one of the parties to the marriage died before the date when the action is begun.”;

(e) in subsection (5)—

- (i) for “or (3) above”, substitute “, (2A), (3) or (3A) above”; and
- (ii) for “under subsection (2) or (3)”, substitute “under any of those subsections”;

(f) after that subsection, insert—

⁽¹⁾ 1973

⁽²⁾ Section 7 was amended by the Presumption of Death (Scotland) Act 1977 (c. 27), Schedu

- “(5A) Subsection (5) does not give the Court jurisdiction to entertain proceedings in contravention of Article 7 of the Council Regulation.”; and
- (g) in subsection (8), for “subsection (2) or (5) above” substitute “this section”.
- (3) In section 8(3)–
- (a) in subsection (2), for paragraph (a) substitute–
- “(a) either–
- (i) the Scottish courts have jurisdiction under the Council Regulation; or
- (ii) the action is an excluded action where either party to the marriage in question is domiciled in Scotland at the date when the action is begun;”;
- (b) after subsection (3), insert–
- “(3A) Subsection (3) does not give the court jurisdiction to entertain an action in contravention of Article 7 of the Council Regulation.”; and
- (c) in subsection (4), after “enactment or rule of court” add “, provided that entertaining the action would not contravene Article 7 of the Council Regulation”.
- (4) In section 10(4), after subsection (1A) insert–
- “(1B) Subsection (1) above does not give the Court of Session or a sheriff court jurisdiction to entertain an application in proceedings where–
- (a) the court is exercising jurisdiction in the proceedings by virtue of Article 2 of the Council Regulation; and
- (b) the making or variation of an order in consequence of the application would contravene Article 7 of the Council Regulation.”.
- (5) In section 12, in subsection (5)–
- (a) the words from “any reference” to the end shall be paragraph (a); and
- (b) after that paragraph, add–
- “(b) “Contracting State” means Belgium, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden, and the United Kingdom;
- (c) “the Council Regulation” means Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses(5); and
- (d) “excluded action” means an action in respect of which no court of a Contracting State has jurisdiction under the Council Regulation and the defender is not a person who is–
- (i) a national of a Contracting State (other than the United Kingdom or Ireland); or
- (ii) domiciled in Ireland”.

(3) Section 8 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraph 2

(4) Section 10 was amended by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 2

(5) O.J. No. L 160, 30.6.00,