SCOTTISH STATUTORY INSTRUMENTS

2005 No. 42

The European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005

Citation, commencement and extent

1.—(1) These Regulations may be cited as the European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations 2005 and shall come into force on 1st March 2005.

(2) These Regulations extend to Scotland only.

Amendment of the Domicile and Matrimonial Proceedings Act 1973

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

(2) In section 7(5A)(**2**) for "Article 7" substitute "Article 6".

(3) In section 8(**3**)–

(a) in subsection (2)(a)(ii) for "where" substitute "and"; and

(b) in each of subsections (3A) and (4) for "Article 7" substitute "Article 6".

(4) In section 10(**4**)–

(a) in subsection (1B)(a) for "Article 2" substitute "Article 3"; and

(b) in subsection (1B)(b) for "Article 7" substitute "Article 6".

(5) In section 11–

(a) the existing words become subsection (1); and

(b) after that subsection insert–

"(2) Subsection (1) above and Schedule 3 to this Act and any power mentioned in subsection (1)(b) are subject to Article 19 of the Council Regulation.".

(6) In subsection (5) of section 12(**5**)–

(a) for paragraph (b) substitute–

"(b) "Contracting State" means Belgium, Cyprus, Czech Republic, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovak Republic, Slovenia, Finland, Sweden and the United Kingdom;"; and

(**1**) 1973 c. 45.
(**2**) section 7 was amended by the Presumption of Death (Scotland) Act 1977 (c. 27) section 19 and Schedule 2, and by S.S.I. 2001/36.
(**3**) section 8 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12) Schedule 1, paragraph 18 and by S.S.I. 2001/36.
(**4**) section 10 was amended by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 20 and by S.S.I. 2001/36.
(**5**) section 12 was amended by S.S.I. 2001/36.

(b) for paragraph (c) substitute–

"(c) "the Council Regulation" means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility(**6**);".

Amendment of the Child Abduction and Custody Act 1985

3. The Child Abduction and Custody Act 1985(**7**) is amended as follows:–

(a) in section 1(the Hague Convention) after subsection (2) add–

"(3) But–

(a) those provisions of the Convention;

(b) this Part of this Act; and

(c) rules of court under section 10 of this Act,

are subject to Article 60 of the Council Regulation (by virtue of which the Regulation takes precedence over the Convention, in so far as it concerns matters governed by the Regulation).

(4) "The Council Regulation" means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility."; and

(b) in section 12 (the European Convention), for subsection (3) substitute–

"(3) But–

(a) those provisions of the Convention;

(b) this Part of this Act; and

(c) rules of court under section 24 of this Act,

are subject to Article 60 of the Council Regulation (by virtue of which the Regulation takes precedence over the Convention, in so far as it concerns matters governed by the Regulation).

(4) "The Council Regulation" means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.".

Amendment of the Family Law Act 1986

4.—(1) The Family Law Act 1986(**8**) is amended in accordance with the following paragraphs of this regulation.

(2) In section 14–

(a) the word "or" immediately following paragraph (a) of subsection (2) is repealed;

(b) after paragraph (b) of that subsection insert–

"or

(c) that it should exercise its powers under Article 15 of the Council Regulation (transfer to a court better placed to hear the case),"; and

(**6**) O.J. No. L 338, 23.12.2003, p.1. Council Regulation (EC) No. 2201/2003 repealed Council Regulation (EC) No. 1347/2000 (O.J. No. L 160, 30.6.2000, p.19)

(**7**) 1985 c. 60. Section 12 was amended by S.S.I. 2001/36.

(**8**) 1986 c. 55.

(c) at the end of subsection (2) add–

"or (as the case may be) exercise its powers under Article 15 of the Council Regulation".

(3) After section 17 add–

"**17A.** The provisions of this Chapter are subject to Sections 2 and 3 of Chapter II of the Council Regulation.".

(4) In section 26(2)(**9**) for "Articles 14 to 20" substitute "Articles 21 to 27, 41(1) and 42(1)".

(5) In section 42(1)(**10**) for the definition of "the Council Regulation" substitute–

""the Council Regulation" means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;".

(6) In Section 45(2)(**11**) for "Articles 14 to 20" substitute "Articles 21 to 27, 41(1) and 42(1)".

(7) In section 54(1)(**12**) for the definition of the Council Regulation substitute–

""the Council Regulation" means Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;".

Amendment of the Children (Scotland) Act 1995

5.—(1) The Children (Scotland) Act 1995(**13**) is amended in accordance with the following paragraphs of this regulation.

(2) At the end of section 14 add–

"(5) The provisions of sections 9, 11, 13 and this section are subject to Sections 2 and 3 of Chapter II of Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.".

(3) After section 86 add–

"**86A.** The provisions of this Chapter are subject to Sections 2 and 3 of Chapter II of Council Regulation (EC) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.".

Transitional

6. Proceedings started under 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(**14**) may continue under that Regulation until decree as if these Regulations had not been made.

Application

7. The amendments to–

(a) the Domicile and Matrimonial Proceedings Act 1973 made by regulation 2;

(**9**) section 26 was amended by S.S.I. 2001/36.
(**10**) section 42(1) was amended by the Children (Scotland) Act 1995, Schedule 4, paragraph 41(9)(a) and by S.S.I. 2001/36.
(**11**) section 45(2) was inserted by S.S.I. 2001/36.
(**12**) section 54(1) was amended by S.S.I. 2001/36.
(**13**) 1995 c. 36.
(**14**) O.J. No. L 160, 30.6.2000, p.19.

(b) the Family Law Act 1986 made by regulation 4; and

(c) the Children (Scotland) Act 1995 made by regulation 5,

shall apply only in respect of proceedings commenced on or after 1st March 2005.

Revocation and repeal

8. The European Communities (Matrimonial Jurisdiction and Judgments) (Scotland) Regulations 2001(**15**) are hereby revoked.

9. Section 11(1A)(**16**) of the Children (Scotland) Act 1995 is hereby repealed.

St Andrew's House, Edinburgh
27th January 2005

CATHY JAMIESON
A member of the Scottish Executive

(**15**) S.S.I. 2001/36.
(**16**) Section 11(1A) was inserted by S.S.I. 2001/36.