
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations made under section 2(2) of the European Communities Act 1972, amend statutory provisions operable in Scotland to make them consistent with, and to clarify their relationship to, Council Regulation (EC) No. 2201/2003 of 27th November 2003 (“the new Council Regulation”) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

The Council Regulation reproduces and repeals Council Regulation (EC) No. 1347/2000 of 29th May 2000 (“the previous Council Regulation”) extending it to include matters of parental responsibility where there are no matrimonial proceedings. Therefore, many of the alterations in these regulations are made to update the statutory provisions operable in Scotland to make reference to the correct Council Regulation and the correct Article therein.

The amendments to the Domicile and Matrimonial Proceedings Act 1973 (Regulation 2) change references to the previous Council Regulation to the equivalent in the new Council Regulation, and update the list of contracting states to the new Council Regulation. Section 11 of the Domicile and Matrimonial Proceedings Act 1973 is amended to take into account Article 19 of the new Council Regulation in respect of the sisting of actions.

The amendments to the Child Abduction and Custody Act 1985 (Regulation 3), make it clear that the provisions of the new Council Regulation, where applicable, will take precedence over the relevant provisions of the Hague Convention on the Civil Aspects of International Child Abduction signed at the Hague on 25th October 1980, and of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed at Luxembourg on 20th May 1980. The amendments also substitute the relevant references to the new Council Regulation.

The amendments to the Family Law Act 1986 (Regulation 4) make clear that the court can sist an action, or a part thereof, when transferring jurisdiction under Article 15 of the new Council Regulation. The amendments make clear that the provisions of the new Council Regulation must be considered before domestic jurisdiction. The amendments also substitute the relevant references to the new Council Regulation.

The amendments to the Children (Scotland) Act 1995 make clear that certain provisions operate subject to the rules of jurisdiction in the new Council Regulation.

The European Communities (Matrimonial Jurisdiction and Judgments) (Scotland) Regulations 2001 (S.S.I. 2001/36) which made amendments to primary legislation in connection with the previous Council Regulation are revoked (regulation 8).

Section 11(1A) of the Children (Scotland) Act 1995 (which was inserted by the European Communities (Matrimonial Jurisdiction and Judgments) (Scotland) Regulations 2001) is repealed (regulation 9).