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STATUTORY INSTRUMENTS

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**2001 No. 310**

**JUDGMENTS, ENGLAND AND WALES  
FAMILY LAW, ENGLAND AND WALES  
FAMILY LAW, NORTHERN IRELAND**

The European Communities (Matrimonial  
Jurisdiction and Judgments) Regulations 2001

*Made* - - - - 2nd February 2001  
*Laid before Parliament* 8th February 2001  
*Coming into force* - - 1st March 2001

The Lord Chancellor, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to matters relating to jurisdiction over, and the recognition and enforcement of judgments in, matrimonial matters and in matters of parental responsibility for children of both spouses, in exercise of the powers conferred on him by that section, makes the following Regulations—

**Citation, commencement and extent**

1. These Regulations may be cited as the European Communities (Matrimonial Jurisdiction and Judgments) Regulations 2001 and shall come into force on 1st March 2001.
2. Other than regulations 1 and 5 and this regulation, which extend also to Northern Ireland, these Regulations extend to England and Wales only.

**Amendments to the Domicile and Matrimonial Proceedings Act 1973**

- 3.—(1) Section 5 of the Domicile and Matrimonial Proceedings Act 1973<sup>(3)</sup> is amended as follows.
  - (2) In subsection (1) omit the words from “; and in this Part” to the words “Family Proceedings Act 1984”.
  - (3) After subsection (1) insert the following subsection—

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(1) S.I.2000/3238.  
(2) 1972 c. 68.  
(3) 1973 c. 45.

“(1A) In this Part of this Act—

“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<sup>(4)</sup>;

“Contracting State” means—

- (a) one of the original parties to the Council Regulation, that is to say Belgium, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the United Kingdom, and
- (b) a party which has subsequently adopted the Council Regulation; and

“the court” means the High Court and a divorce county court within the meaning of Part V of the Matrimonial and Family Proceedings Act 1984<sup>(5)</sup>.”

(4) For subsection (2) substitute—

“(2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if)—

- (a) the court has jurisdiction under the Council Regulation; or
- (b) no court of a Contracting State has jurisdiction under the Council Regulation and either of the parties to the marriage is domiciled in England and Wales on the date when the proceedings are begun.”.

(5) For subsection (3) substitute—

“(3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if)—

- (a) the court has jurisdiction under the Council Regulation; or
- (b) no court of a Contracting State has jurisdiction under the Council Regulation and either of the parties to the marriage—
  - (i) is domiciled in England and Wales on the date when the proceedings are begun; or
  - (ii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of one year ending with the date of death.”.

(6) After subsection (3) insert—

“(3A) Subsections (2) and (3) above do not give the court jurisdiction to entertain proceedings in contravention of Article 7 of the Council Regulation.”.

4. In paragraph 9(1) of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973, after “in any matrimonial proceedings” insert—

“, other than proceedings governed by the Council Regulation,”.

#### **Amendment to the Child Abduction and Custody Act 1985**

5. In section 12 of the Child Abduction and Custody Act 1985<sup>(6)</sup>, after subsection (2) insert—

“(3) But those provisions of the Convention are subject to Article 37 of 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 (under which the Regulation takes precedence over the

<sup>(4)</sup> OJ No. L160, 30.6.2000, p. 19.

<sup>(5)</sup> 1984 c. 42.

<sup>(6)</sup> 1985 c. 60.

Convention), and the provisions of this Part of this Act, and any rules of court made pursuant to section 24 of this Act, shall be construed accordingly.”.

### **Amendments to the Family Law Act 1986**

6. In section 2(1) of the Family Law Act 1986(7), after the word “unless” insert—

“—

(a) the child concerned is a child of both parties to the matrimonial proceedings and the court has jurisdiction to entertain those proceedings by virtue of the Council Regulation, or

(b)”.

7. In section 5(2) of the Family Law Act 1986, after “for the variation of a Part I order,” insert “other than proceedings governed by the Council Regulation,”.

8. At the end of section 42(1) of the Family Law Act 1986, insert—

““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.”.

9. In section 45 of the Family Law Act 1986—

(a) for “Subject”, substitute “(1) Subject to subsection (2) of this section and”; and

(b) at the end, insert—

“(2) Subsection (1) and the following provisions of this Part do not apply to an overseas divorce, annulment or legal separation as regards which provision as to recognition is made by Articles 14 to 20 of the Council Regulation.”.

10. In section 54(1) of the Family Law Act 1986, after the definition of “annulment” insert—

““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;”.

### **Application**

11. The amendments to the Domicile and Matrimonial Proceedings Act 1973 made by regulations 3 and 4 shall not apply in respect of proceedings commenced before 1st March 2001.

Dated 2nd February 2001

*Irvine of Lairg, C.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, made under section 2(2) of the European Communities Act 1972, amend certain provisions of domestic law to clarify the relationship between those provisions and the provisions of 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.

The purposes of the Council Regulations are to unify the jurisdictional rules in matrimonial matters and in matters of parental responsibility and to simplify the formalities for rapid and automatic recognition and enforcement of judgments relating to these matters. The Council Regulation is directly effective in the United Kingdom and, consequently, the changes effected by these Regulations are limited to those necessary to amend inconsistent provisions of national law.

The amendments to the Domicile and Matrimonial Proceedings Act 1973 (regulations 3 and 4) concern the jurisdiction of courts in England and Wales to entertain proceedings for divorce, judicial separation and nullity of marriage, and concern the power of those courts to stay such proceedings.

The amendment to the Child Abduction and Custody Act 1985 (regulation 5), which applies to England and Wales and Northern Ireland, makes clear that the provisions of the Council Regulation are to take precedence over the provisions 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 in Luxembourg on 20th May 1980.

The amendments to the Family Law Act 1986 (regulations 6, 7, 8, 9 and 10) concern the jurisdiction of courts in England and Wales to make orders in or in connection with matrimonial proceedings with respect to children of both parties, and concern the rules as to recognition in England and Wales of divorces, annulments and judicial separations.