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STATUTORY INSTRUMENTS

2001 No. 3929

JUDGMENTS

The Civil Jurisdiction and Judgments Order 2001

Made - - - - 11th December 2001

Laid before Parliament 3rd January 2002

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 11th day of December 2001

Present,

The Queen's Most Excellent Majesty in Council

Whereas a Convention on jurisdiction and the enforcement of judgments in civil and commercial matters^{M1} was signed on 27th September 1968:

And whereas a Protocol on the interpretation of the Convention by the Court of Justice of the European Communities^{M2} was signed on 3rd June 1971:

And whereas a Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention^{M3} signed by Her Majesty's Government on 9th October 1978, was ratified on 7th October 1986 by Her Majesty's Government and entered into force for the United Kingdom on 1st January 1987:

And whereas the Civil Jurisdiction and Judgments Act 1982^{M4} gave the force of law to these Conventions and to the Protocol in the United Kingdom:

And whereas a Convention on jurisdiction and the enforcement of judgments in civil and commercial matters^{M5} was opened for signature at Lugano on 16th September 1988 and signed by Her Majesty's Government on 18th September 1989:

And whereas the Civil Jurisdiction and Judgments Act 1982, as amended by the Civil Jurisdiction and Judgments Act 1991^{M6}, gave the force of law to that Convention in the United Kingdom:

And whereas a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters^{M7} was done on 22nd December 2000:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 2(2) of the European Communities Act 1972^{M8}, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

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Marginal Citations

- M1** OJ No. L304, 30.10.1978, p. 36.
- M2** OJ No. L304, 30.10.1978, p. 50.
- M3** OJ No. L304, 30.10.1978, p. 1.
- M4** [1982 c.27](#), as amended by the [Civil Jurisdiction and Judgments Act 1991 \(c.12\)](#) and by [S.I. 1989/1346](#), [S.I. 1990/2591](#), [S.I. 1993/603](#) and [S.I. 2000/1824](#).
- M5** OJ No. L391, 25.11.88, p. 9.
- M6** [1991 c.12](#).
- M7** Council Regulation (EC) No. 44/2001.
- M8** [1972 c. 68](#).

Citation and commencement

1. This Order may be cited as the Civil Jurisdiction and Judgments Order 2001 and shall come into force—
 - (a) as to articles 1 and 2, paragraphs 1(a), 1(b)(ii) and 17 of Schedule 2 and, so far as it relates to those paragraphs, article 4, on 25th January 2002; and
 - (b) as to the remainder of this Order, on 1st March 2002.

Interpretation

- 2.—(1) In this Order—
 - “the Act” means the Civil Jurisdiction and Judgments Act 1982;
 - “the Regulation” means Council Regulation [\(EC\) No. 44/2001](#) of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
 - “Regulation State” in any provision, in the application of that provision in relation to the Regulation, has the same meaning as “Member State” in the Regulation, that is all Member States except Denmark.
- (2) In Schedule 2 to this Order, a section, Part, Schedule or paragraph referred to by number alone is a reference to the section, Part, Schedule or paragraph so numbered in the Act.

VALID FROM 01/03/2002

The Regulation

3. Schedule 1 to this Order (which applies certain provisions of the Act with modifications for the purposes of the Regulation) shall have effect.

Amendments to the Civil Jurisdiction and Judgments Act 1982

4. Schedule 2 to this Order (which makes amendments to the Act) shall have effect.

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VALID FROM 01/03/2002

Consequential amendments

5. Schedule 3 to this Order (which makes consequential amendments) shall have effect.

VALID FROM 01/03/2002

Transitional provisions

6.—(1) Where proceedings are begun before 1st March 2002 in any part of the United Kingdom on the basis of jurisdiction determined in accordance with section 16 of, and Schedule 4 to, the Act, the proceedings may be continued as if the amendments made by paragraphs 3 and 4 of Schedule 2 to this Order had not been made and those amendments shall not apply in respect of any proceedings begun before that date.

(2) Where proceedings are begun before 1st March 2002 in any court in Scotland on the basis of jurisdiction determined in accordance with section 20 of, and Schedule 8 to, the Act, the proceedings may be continued as if the amendments made by paragraphs 6 and 7 of Schedule 2 to this Order had not been made and those amendments shall not apply in respect of any proceedings begun before that date.

A.K. Galloway
Clerk of the Privy Council

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VALID FROM 01/03/2002

SCHEDULE 1

Article 3

THE REGULATION

.....

SCHEDULE 2

Article 4

AMENDMENTS TO THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982

PART I—

IMPLEMENTATION OF THE CONVENTIONS

1. In section 1 (interpretation of references to the Conventions and Contracting States)—
 - (a) in subsection (1) after the definition of “the Lugano Convention” insert the following definition—

““the Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.”;
 - (b) in subsection (3)—
 - (i) for the definition of “Brussels Contracting State” substitute—

““Brussels Contracting State” means Denmark (which is not bound by the Regulation, but was one of the parties acceding to the 1968 Convention under the Accession Convention);”

; and
 - (ii) after the definition of “Lugano Contracting State” insert the following definition—

““Regulation State” in any provision, in the application of that provision in relation to the Regulation, has the same meaning as “Member State” in the Regulation, that is all Members States except Denmark.”;

and
 - (c) after subsection (3) insert—

“(4) Any question arising as to whether it is the Regulation, any of the Brussels Conventions, or the Lugano Convention which applies in the circumstances of a particular case shall be determined as follows—

 - (a) in accordance with Article 54B of the Lugano Convention (which determines the relationship between the Brussels Conventions and the Lugano Convention); and
 - (b) in accordance with Article 68 of the Regulation (which determines the relationship between the Brussels Conventions and the Regulation).”.

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VALID FROM 01/03/2002

2. In section 9 (provisions supplementary to Title VII of the 1968 Convention), omit subsection (1A).

VALID FROM 01/03/2002

PART II—

JURISDICTION, AND RECOGNITION AND ENFORCEMENT OF JUDGMENTS, WITHIN THE UNITED KINGDOM

3. In section 16 (allocation within UK of jurisdiction in certain civil proceedings)—
- (a) in subsection (1)—
 - (i) for “Title II of the 1968 Convention” substitute “ Chapter II of the Regulation ”;
 - (ii) for paragraph (a) substitute—
 - “(a) the subject-matter of the proceedings is within the scope of the Regulation as determined by Article 1 of the Regulation (whether or not the Regulation has effect in relation to the proceedings); and”;
 - and
 - (iii) in paragraph (b), for “Article 16 of the 1968 Convention” substitute “ Article 22 of the Regulation ”;
 - (b) omit subsection (2);
 - (c) in subsection (3)(a)—
 - (i) after “Convention” insert “ or Chapter II of the Regulation ”; and
 - (ii) after “that Title” insert “ or that Chapter ”; and
 - (d) in subsection (4), after “subject to” insert “ the Regulation, ”.
4. For Schedule 4 (Title II of 1968 Convention as modified for allocation of jurisdiction within U.K.) substitute—

“SCHEDULE 4

CHAPTER II OF THE REGULATION AS MODIFIED: RULES FOR ALLOCATION OF JURISDICTION WITHIN UK

General

1. Subject to the rules of this Schedule, persons domiciled in a part of the United Kingdom shall be sued in the courts of that part.
2. Persons domiciled in a part of the United Kingdom may be sued in the courts of another part of the United Kingdom only by virtue of rules 3 to 13 of this Schedule.

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Special jurisdiction

3. A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, be sued—

- (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
- (b) in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
- (c) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
- (d) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
- (e) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
- (f) as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the part of the United Kingdom in which the trust is domiciled;
- (g) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question—

(i) has been arrested to secure such payment; or

(ii) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage;

(h) in proceedings—

(i) concerning a debt secured on immovable property; or

(ii) which are brought to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property,

in the courts of the part of the United Kingdom in which the property is situated.

4. Proceedings which have as their object a decision of an organ of a company or other legal person or of an association of natural or legal persons may, without prejudice to the other provisions of this Schedule, be brought in the courts of the part of the United Kingdom in which that company, legal person or association has its seat.

5. A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, also be sued—

- (a) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected

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that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

- (b) as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
- (c) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
- (d) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the part of the United Kingdom in which the property is situated.

6. Where by virtue of this Schedule a court of a part of the United Kingdom has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that part, shall also have jurisdiction over claims for limitation of such liability.

Jurisdiction over consumer contracts

7.—(1) In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this rule and rules 8 and 9, without prejudice to rule 3(e) and (h)(ii), if—

- (a) it is a contract for the sale of goods on instalment credit terms; or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the part of the United Kingdom in which the consumer is domiciled or, by any means, directs such activities to that part or to other parts of the United Kingdom including that part, and the contract falls within the scope of such activities.

(2) This rule shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation, or to a contract of insurance.

8.—(1) A consumer may bring proceedings against the other party to a contract either in the courts of the part of the United Kingdom in which that party is domiciled or in the courts of the part of the United Kingdom in which the consumer is domiciled.

(2) Proceedings may be brought against a consumer by the other party to the contract only in the courts of the part of the United Kingdom in which the consumer is domiciled.

(3) The provisions of this rule shall not affect the right to bring a counter-claim in the court in which, in accordance with this rule and rules 7 and 9, the original claim is pending.

9. The provisions of rules 7 and 8 may be departed from only by an agreement—

- (a) which is entered into after the dispute has arisen; or
- (b) which allows the consumer to bring proceedings in courts other than those indicated in those rules; or

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- (c) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same part of the United Kingdom, and which confers jurisdiction on the courts of that part, provided that such an agreement is not contrary to the law of that part.

Jurisdiction over individual contracts of employment

10.—(1) In matters relating to individual contracts of employment, jurisdiction shall be determined by this rule, without prejudice to rule 3(e).

(2) An employer may be sued—

- (a) in the courts of the part of the United Kingdom in which he is domiciled; or
- (b) in the courts of the part of the United Kingdom where the employee habitually carries out his work or in the courts of that part where he last did so; or
- (c) if the employee does not or did not habitually carry out his work in any one place, in the courts of the part of the United Kingdom where the business which engaged the employee is or was situated.

(3) An employer may bring proceedings only in the courts of the part of the United Kingdom in which the employee is domiciled.

(4) The provisions of this rule shall not affect the right to bring a counter-claim in the court in which, in accordance with this rule, the original claim is pending.

(5) The provisions of this rule may be departed from only by an agreement on jurisdiction—

- (a) which is entered into after the dispute has arisen; or
- (b) which allows the employee to bring proceedings in courts other than those indicated in this rule.

Exclusive jurisdiction

11. The following courts shall have exclusive jurisdiction, regardless of domicile :—

(a)

- (i) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the part of the United Kingdom in which the property is situated;
- (ii) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the part of the United Kingdom in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same part of the United Kingdom;
- (b) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, the courts of the part of the United Kingdom in which the company, legal person or association has its seat;
- (c) in proceedings which have as their object the validity of entries in public registers, the courts of the part of the United Kingdom in which the register is kept;

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- (d) in proceedings concerned with the enforcement of judgments, the courts of the part of the United Kingdom in which the judgment has been or is to be enforced.

Prorogation of jurisdiction

12.—(1) If the parties have agreed that a court or the courts of a part of the United Kingdom are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, and, apart from this Schedule, the agreement would be effective to confer jurisdiction under the law of that part, that court or those courts shall have jurisdiction.

(2) The court or courts of a part of the United Kingdom on which a trust instrument has conferred jurisdiction shall have jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

(3) Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of rule 9, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of rule 11.

13.—(1) Apart from jurisdiction derived from other provisions of this Schedule, a court of a part of the United Kingdom before which a defendant enters an appearance shall have jurisdiction.

(2) This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of rule 11.

Examination as to jurisdiction and admissibility

14. Where a court of a part of the United Kingdom is seised of a claim which is principally concerned with a matter over which the courts of another part of the United Kingdom have exclusive jurisdiction by virtue of rule 11, it shall declare of its own motion that it has no jurisdiction.

15.—(1) Where a defendant domiciled in one part of the United Kingdom is sued in a court of another part of the United Kingdom and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Schedule.

(2) The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

Provisional, including protective, measures

16. Application may be made to the courts of a part of the United Kingdom for such provisional, including protective, measures as may be available under the law of that part, even if, under this Schedule, the courts of another part of the United Kingdom have jurisdiction as to the substance of the matter.”

- 5.** In Schedule 5 (proceedings excluded from Schedule 4), in paragraph 6(a)—
(a) after “Article 57”, insert “, or Article 71 of the Regulation, ”; and

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(b) omit “in the 1968 Convention”.

VALID FROM 01/03/2002

PART III—

JURISDICTION IN SCOTLAND

6. In section 20 (rules as to jurisdiction in Scotland)—
 - (a) in subsection (1), after “Subject to” insert “ the Regulation, to ”;
 - (b) omit subsection (4); and
 - (c) in subsection (5)—
 - (i) omit “and derived to any extent from Title II of the 1968 Convention”;
 - (ii) in paragraph (a), after “Convention” insert “ or Chapter II of the Regulation ”; and
 - (iii) in paragraph (a), after “that Title” insert “ or that Chapter ”.
7. For Schedule 8 (rules as to jurisdiction in Scotland) substitute—

“SCHEDULE 8

RULES AS TO JURISDICTION IN SCOTLAND

General

1. Subject to the following rules, persons shall be sued in the courts for the place where they are domiciled.

Special jurisdiction

2. Subject to rules 3 (jurisdiction over consumer contracts), 4 (jurisdiction over individual contracts of employment), 5 (exclusive jurisdiction) and 6 (prorogation), a person may also be sued—
 - (a) where he has no fixed residence, in a court within whose jurisdiction he is personally cited;
 - (b) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
 - (c) in matters relating to delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
 - (d) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings to the extent that the court has jurisdiction to entertain civil proceedings;
 - (e) in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which has jurisdiction to entertain those proceedings, provided that an action for adherence and aliment or of affiliation and aliment shall be treated as a matter

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- relating to maintenance which is not ancillary to proceedings concerning the status of a person;
- (f) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
 - (g) in his capacity as settlor, trustee or beneficiary of a trust domiciled in Scotland created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the Court of Session, or the appropriate sheriff court within the meaning of section 24A of the Trusts (Scotland) Act 1921;
 - (h) where he is not domiciled in the United Kingdom, in the courts for any place where—
 - (i) any movable property belonging to him has been arrested; or
 - (ii) any immovable property in which he has any beneficial interest is situated;
 - (i) in proceedings which are brought to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, in the courts for the place where the property is situated;
 - (j) in proceedings for interdict, in the courts for the place where it is alleged that the wrong is likely to be committed;
 - (k) in proceedings concerning a debt secured over immovable property, in the courts for the place where the property is situated;
 - (l) in proceedings which have as their object a decision of an organ of a company or other legal person or of an association of natural or legal persons, in the courts for the place where that company, legal person or association has its seat;
 - (m) in proceedings concerning an arbitration which is conducted in Scotland or in which the procedure is governed by Scots law, in the Court of Session;
 - (n) in proceedings principally concerned with the registration in the United Kingdom or the validity in the United Kingdom of patents, trade marks, designs or other similar rights required to be deposited or registered, in the Court of Session;
 - (o)
 - (i) where he is one of a number of defenders, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
 - (ii) as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
 - (iii) on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

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- (p) in matters relating to a contract, if the action may be combined with an action against the same defender in matters relating to rights in rem in immovable property, in the courts for the place where the property is situated;
- (q) as regards a claim for limitation of liability arising from the use or operation of a ship, in the court having jurisdiction in the action relating to such liability.

Jurisdiction over consumer contracts

3.—(1) In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, subject to rule 5, jurisdiction shall be determined by this rule if—

- (a) it is a contract for the sale of goods on instalment credit terms; or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in Scotland or, by any means, directs such activities to Scotland or to several places including Scotland, and the contract falls within the scope of such activities.

(2) This rule shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

- (3) A consumer may bring proceedings against the other party to a contract only in—
- (a) the courts for the place in which that party is domiciled;
 - (b) the courts for the place in which he is himself domiciled; or
 - (c) any court having jurisdiction by virtue of rule 2(f) or (i).

(4) Proceedings may be brought against a consumer by the other party to the contract only in the courts for the place where the consumer is domiciled or any court having jurisdiction under rule 2(i).

(5) The provisions of this rule shall not affect the right to bring a counterclaim in the court in which, in accordance with this rule, the original claim is pending.

- (6) The provisions of this rule may be departed from only by an agreement—
- (a) which is entered into after the dispute has arisen; or
 - (b) which allows the consumer to bring proceedings in courts other than those indicated in this rule; or
 - (c) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Regulation State, and which confers jurisdiction on the courts of that Regulation State, provided that such an agreement is not contrary to the law of that Regulation State.

Jurisdiction over individual contracts of employment

4.—(1) In matters relating to individual contracts of employment, jurisdiction shall be determined by this rule, without prejudice to rule 2(f).

- (2) An employer may be sued—
- (a) in the courts for the place where he is domiciled; or

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- (b) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so; or
- (c) if the employee does not or did not habitually carry out his work in any one place, in the courts for the place where the business which engaged the employee is or was situated.

(3) An employer may bring proceedings only in the courts for the place in which the employee is domiciled.

(4) The provisions of this rule shall not affect the right to bring a counter-claim in the court in which, in accordance with this rule, the original claim is pending.

(5) The provisions of this rule may be departed from only by an agreement on jurisdiction—

- (a) which is entered into after the dispute has arisen; or
- (b) which allows the employee to bring proceedings in courts other than those indicated in this rule.

Exclusive jurisdiction

5.—(1) Notwithstanding anything contained in any of rules 1 to 4 above or 6 to 9 below but subject to paragraph (3) below, the following courts shall have exclusive jurisdiction:—

- (a) in proceedings which have as their object rights in rem in, or tenancies of, immovable property, the courts for the place where the property is situated;
- (b) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, the courts for the place where the company, legal person or association has its seat;
- (c) in proceedings which have as their object the validity of entries in public registers, the courts for the place where the register is kept;
- (d) in proceedings concerned with the enforcement of judgments, the courts for the place where the judgment has been or is to be enforced.

(2) No court shall exercise jurisdiction in a case where immovable property, the seat of a body mentioned in paragraph (1)(b) above, a public register or the place where a judgment has been or is to be enforced is situated outside Scotland and where paragraph (1) would apply if the property, seat, register or, as the case may be, place of enforcement were situated in Scotland.

(3) In proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts for the place in which the defender is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and tenant are domiciled in Scotland.

Prorogation of jurisdiction

6.—(1) If the parties have agreed that a court is to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court shall have jurisdiction.

(2) Such an agreement conferring jurisdiction shall be either—

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- (a) in writing or evidenced in writing; or
- (b) in a form which accords with practices which the parties have established between themselves; or
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

(3) Any communication by electronic means which provides a durable record of the agreement shall be equivalent to “writing”.

(4) The court on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

(5) Where an agreement or a trust instrument confers jurisdiction on the courts of the United Kingdom or of Scotland, proceedings to which paragraph (1) or, as the case may be, (4) above applies may be brought in any court in Scotland.

(6) Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of rule 5 or where rule 5(2) applies.

7.—(1) Apart from jurisdiction derived from other provisions of this Schedule, a court before whom a defender enters an appearance shall have jurisdiction.

(2) This rule shall not apply where appearance was entered to contest jurisdiction, or where another court has exclusive jurisdiction by virtue of rule 5 or where rule 5(2) applies.

Examination as to jurisdiction and admissibility

8. Where a court is seised of a claim which is principally concerned with a matter over which another court has exclusive jurisdiction by virtue of rule 5, or where it is precluded from exercising jurisdiction by rule 5(2), it shall declare of its own motion that it has no jurisdiction.

9. Where in any case a court has no jurisdiction which is compatible with this Schedule, and the defender does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction.”.

8. In Schedule 9 (proceedings excluded from Schedule 8), in paragraph 14(a)—

- (a) after “Article 57”, insert “ , or Article 71 of the Regulation, ”; and
- (b) omit “in the 1968 Convention”.

VALID FROM 01/03/2002

PART IV—

MISCELLANEOUS PROVISIONS

9. In section 24 (interim relief and protective measures in cases of doubtful jurisdiction)—

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- (a) at the end of subsection (1)(b) insert—
 - “; or
 - (c) the proceedings involve a reference of any matter relating to the Regulation to the European Court under Article 68 of the Treaty establishing the European Community”;

and

- (b) at the end of subsection (2)(b) insert—
 - “; or
 - (c) the proceedings involve a reference of any matter relating to the Regulation to the European Court under Article 68 of the Treaty establishing the European Community”.

10. In section 25 (interim relief in England and Wales and Northern Ireland in the absence of substantive proceedings)—

- (a) in subsection (1)—
 - (i) in paragraph (a), after “State” insert “ or a Regulation State ”; and
 - (ii) for paragraph (b), substitute—
 - “(b) they are or will be proceedings whose subject-matter is within the scope of the Regulation as determined by Article 1 of the Regulation (whether or not the Regulation has effect in relation to the proceedings).”;

and

- (b) in subsection (3)—
 - (i) in paragraph (a), after “State” insert “ or Regulation State ”; and
 - (ii) for paragraph (b), substitute—
 - “(b) proceedings whose subject-matter is not within the scope of the Regulation as determined by Article 1 of the Regulation;”.

11. In section 27 (provisional and protective measures in Scotland in the absence of substantive proceedings)—

- (a) in subsection (2)(a), after “State” insert “ , in another Regulation State ”;
- (b) for subsection (2)(b) substitute—
 - “(b) the subject-matter of the proceedings is within the scope of the Regulation as determined by Article 1 of the Regulation; and”;

and

- (c) in subsection (3)—
 - (i) in paragraph (a), after “State” insert “ or Regulation State ”;
 - (ii) for paragraph (b) substitute—
 - “(b) proceedings whose subject-matter is not within the scope of the Regulation as determined by Article 1 of the Regulation;”;

and

- (iii) in paragraph (d), after “State” insert “ or Regulation State ”.

12. In section 28 (application of s.1 of Administration of Justice (Scotland) Act 1972)—

- (a) after “State” insert “ , in a Regulation State ”; and

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(b) for “1968 Convention” substitute “ Regulation ”.

13. In section 30 (proceedings in England and Wales or Northern Ireland for torts to immovable property), in subsection (2) after “the Lugano Convention” insert “ and the Regulation ”.

14. In section 32 (overseas judgments given in proceedings brought in breach of agreement for settlement of disputes), in subsection (4)(a) after “or the Lugano Convention” insert “ or the Regulation ”.

15. In section 33 (certain steps not to amount to submission to jurisdiction of overseas court), at the end of subsection (2) add “or the Regulation”.

VALID FROM 01/03/2002

PART V—

SUPPLEMENTARY AND GENERAL PROVISIONS

16. In section 43 (seat of corporation or association for purposes of Article 16(2) and related provisions)—

- (a) in subsection (1)(b), for “Articles 5A and 16(2)” substitute “ rules 4 and 11(b) ”; and
- (b) in subsection (1)(c), for “rules 2(12) and 4(1)(b)” substitute “ rules 2(1) and 5(1)(b) ”.

17. In section 48 (matters for which rules of court may provide)—

- (a) in subsection (1), at the end add “or the Regulation”;
- (b) in subsection (2), after “this Act” insert “ or the Regulation ”;
- (c) in subsection (3)—
 - (i) after “Conventions” insert “ , the Regulation ”;
 - (ii) in paragraph (a) after “Contracting State”, in both places where it occurs, insert “ or Regulation State ”;
 - (iii) in paragraph (b) after “Contracting States” insert “ or Regulation States ”;
 - (iv) in paragraph (e) after “Contracting State” insert “ or Regulation State ”; and
 - (v) in paragraph (g) after “Contracting States” insert “ or Regulation States ”.

18. In section 50 (interpretation: general) after the definition of “the 1971 Protocol” insert the following definitions—

- ““the Regulation” has the meaning given by section 1(1);
- “Regulation State” has the meaning given by section 1(3);”.

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SCHEDULE 3

Article 5

CONSEQUENTIAL AMENDMENTS

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order in Council makes legislative changes needed in consequence of the coming into force on 1st March 2002 of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“the Regulation”).

The Regulation applies to all Member States except Denmark and to that extent replaces the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, to which the United Kingdom became party by an Accession Convention signed in 1978. The Conventions were given the force of law in the United Kingdom by the Civil Jurisdiction and Judgments Act 1982 (“the Act”). The Act was later amended by the Civil Jurisdiction and Judgments Act 1991 to give the force of law also to the 1988 Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, which made similar arrangements with a number of non-Member States.

The Brussels Convention, in so far as it governs relationships with Denmark, and the Lugano Convention, remain in place. The main purpose of this Order is to amend the Act so as to preserve the current position in respect of the Brussels Convention, so far as it relates to Denmark, and the Lugano Convention, and to make new but analogous provision in respect of the Regulation. In particular, the Order—

- a)** contains various provisions applicable for the purposes of the Regulation; these are, with appropriate modifications, modelled on the equivalent provisions of the Act (Schedule 1);
- b)** amends certain provisions of the Act to apply for the purposes of the Regulation in the same way that they apply for the purposes of the Brussels and Lugano Conventions (Schedule 2);
- c)** amends the Act to clarify the relationship between the Regulation, the Brussels Convention and the Lugano Convention (Schedule 2, paragraph 1(c));
- d)** amends Schedule 4 to the Act, which contains provisions for the allocation of intra-UK jurisdiction which previously were modelled on the Brussels Convention, broadly so as to bring those provisions into line with the equivalent provisions of the Regulation; an exception is jurisdiction in contractual matters, which continues to be aligned on article 5(1) of the Convention rather than article 5(1) of the Regulation (Schedule 2, paragraphs 3 and 4);
- e)** makes similar amendments to Schedule 8 to the Act, which contains provisions on jurisdiction in Scotland (Schedule 2, paragraphs 6 and 7);

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- f) amends section 48 of the Act to allow for the making of appropriate amendments to rules of court; this provision is commenced early, on 25th January 2002, so that any such amendments to rules of court which rely on section 48 can be made in time to come into force on 1st March 2002 (Schedule 2, paragraph 17); and
- g) makes various consequential amendments (Schedule 3).

Status:

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