
EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, made under section 2(2) of the European Communities Act 1972, amend certain provisions of domestic law to make it consistent with, and to clarify its relationship to, Council Regulation (EC) No 2201/2003 of 27 November 2003 (the new Council Regulation) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

The new 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 new 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 domestic legislation to make reference to the correct Council Regulation and the correct Article therein.

The amendments to the Domicile and Matrimonial Proceedings Act 1973 (Regulation 3) 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 alphabetically. The spelling of each State is in accordance that State's own spelling of its name, to be consistent with all European documents. A new subsection (6A) is inserted into section 5 of the 1973 Act to take into account Article 19 (lis pendens and dependent actions) of the new Council Regulation in respect of staying cases.

The amendment to the Magistrates' Courts Act 1980 (Regulation 4) is to include proceedings under the new Council Regulation in the list of proceedings that are to be considered as "family proceedings" in the magistrates' courts.

The amendment to the Supreme Court Act 1981 (Regulation 5) is so that proceedings under the new Council Regulation are assigned to the Family Division to be heard.

The amendments to the Child Abduction and Custody Act 1985 (Regulations 6 and 7), which applies to England, Wales and Northern Ireland, make it clear that the provisions of the Council Regulation, where applicable, will take precedence over the relevant Hague Convention provisions. The amendments also substitute the relevant references to the new Council Regulation.

The amendments to the Family Law Act 1986 (Regulations 8 to 18) change the current references to the previous Council Regulation to the correct references in the new Council Regulation and extends the application to cases where there are no subsisting matrimonial proceedings. The amendments also make it clear that that when considering the jurisdiction of the courts in England and Wales and Northern Ireland (sections 2 and 19) that the jurisdiction of the Council Regulation needs to be considered before domestic jurisdiction is looked at.

The amendments to the Matrimonial Causes (Northern Ireland) Order 1978 (Regulation 19) change the current references to the previous Council Regulation to the correct references in the new Council Regulation and update the list of contracting states to the new Council Regulation alphabetically. The spelling of each State is in accordance that State's own spelling of its name, to be consistent with all European documents. Article 49(7) is amended in to take into account Article 19 (lis pendens and dependent actions) of the new Council Regulation in respect of staying cases.