

2005 No. 265

JUDGMENTS, ENGLAND AND WALES

FAMILY LAW, ENGLAND AND WALES

FAMILY LAW, NORTHERN IRELAND

**The European Communities (Jurisdiction and Judgments in
Matrimonial and Parental Responsibility Matters) Regulations
2005**

Made - - - - - *7th February 2005*

Laid before Parliament *9th February 2005*

Coming into force - - - *1st March 2005*

The Lord Chancellor, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972^(a) 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, 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 (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005, and shall come into force on 1st March 2005.

2.—(1) Regulations 3 to 5 extend to England and Wales only.

(2) Regulations 6 and 7 extend to England and Wales and Northern Ireland only.

(3) Regulations 8 to 11 extend to England and Wales only.

(4) Regulations 12 to 15 extend to Northern Ireland only.

(5) Regulations 16 to 18 extend to England and Wales and Northern Ireland only.

(6) Regulation 19 extends to Northern Ireland only.

(7) Regulation 22 extends to England and Wales only.

(8) Regulation 23 extends to Northern Ireland only.

(9) Regulation 1, this regulation and regulations 20 and 21 extend to England and Wales and (so far as necessary) to Northern Ireland.

^(a) 1972 c. 68

Amendments to the Domicile and Matrimonial Proceedings Act 1973(a)

- 3.—(1) Amend section 5 (jurisdiction of High Court and county court) as follows.
- (2) In subsection (1A), 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;”.
- (3) In that subsection, in the definition of “Contracting State”, for paragraph (a) substitute—
- “(a) a party to the Council Regulation, that is to say, Belgium, Cyprus, Czech Republic, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Finland, Sweden and the United Kingdom, and”.
- (4) Omit subsection (3A).
- (5) After subsection (6) insert—
- “(6A) Subsection (6) and Schedule 1, and any power as mentioned in subsection (6)(b), are subject to Article 19 of the Council Regulation.”.

Amendments to the Magistrates’ Courts Act 1980(b)

4. In section 65 (meaning of “family proceedings”), after subsection (1)(r) insert—
- “(s) 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, so far as that Regulation relates to jurisdiction, recognition and enforcement in parental responsibility matters;”.

Amendments to the Supreme Court Act 1981(c)

5. In paragraph 3 of Schedule 1 (business assigned to the Family Division of the High Court), omit “and” at the end of sub-paragraph (iv) of paragraph (f) and after that sub-paragraph insert —
- “(v) 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, so far as that Regulation relates to jurisdiction, recognition and enforcement in parental responsibility matters;”.

Amendments to the Child Abduction and Custody Act 1985(d)

6. In section 1 (the Hague Convention), after subsection (2) insert—
- “(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 Hague Convention, in so far as it concerns matters governed by the Regulation).

(a) 1973 c. 45
(b) 1980 c. 43
(c) 1981 c. 54
(d) 1985 c. 60

(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.”.

7. 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 European 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.”.

Amendments to the Family Law Act 1986(a)

8.—(1) Amend section 2 (jurisdiction of courts in England and Wales: general) as follows.

(2) For subsections (1) and (2) substitute—

“(1) A court in England and Wales shall not make a section 1(1)(a) order with respect to a child unless—

- (a) it has jurisdiction under the Council Regulation, or
- (b) the Council Regulation does not apply but—
 - (i) the question of making the order arises in or in connection with matrimonial proceedings and the condition in section 2A of this Act is satisfied, or
 - (ii) the condition in section 3 of this Act is satisfied.”.

(3) For subsection (3) substitute—

“(3) A court in England and Wales shall not make a section 1(1)(d) order unless—

- (a) it has jurisdiction under the Council Regulation, or
- (b) the Council Regulation does not apply but—
 - (i) the condition in section 3 of this Act is satisfied, or
 - (ii) the child concerned is present in England and Wales on the relevant date and the court considers that the immediate exercise of its powers is necessary for his protection.”.

9. In section 2A (jurisdiction in or in connection with matrimonial proceedings), in subsection (4), for—

- (a) “in or in connection with matrimonial proceedings”, and
- (b) “in or in connection with those proceedings”,

substitute “by virtue of section 2(1)(b)(i) of this Act”.

10. In section 3 (habitual residence or presence of child), in subsection (1), for “section 2(2)” substitute “section 2(1)(b)(ii)”.

11.—(1) Amend section 5 (power of court to refuse application or stay proceedings) as follows.

(2) In subsection (2), omit “other than proceedings governed by the Council Regulation,”.

(3) At the end of paragraph (b) of that subsection insert “or”

(a) 1986 c. 55

“(c) that it should exercise its powers under Article 15 of the Council Regulation (transfer to a court better placed to hear the case).”.

(4) At the end of that subsection insert “or (as the case may be) exercise its powers under Article 15”.

(5) In subsection (3), for “in accordance with subsection (2) above” substitute “by virtue of subsection (2)(a) or (b) above”.

(6) After subsection (3), insert—

“(3A) The court may remove a stay granted under Article 15 of the Council Regulation only in accordance with that Article.”.

(7) In subsection (4), after “Nothing in this section” insert “so far as it relates to proceedings not governed by the Council Regulation”.

12.—(1) Amend section 19 (Northern Ireland: jurisdiction in cases other than divorce etc.) as follows.

(2) For subsections (1) and (2) substitute—

“(1) A court in Northern Ireland shall not make a section 1(1)(c) order with respect to a child unless—

- (a) it has jurisdiction under the Council Regulation, or
- (b) the Council Regulation does not apply but—
 - (i) the question of making the order arises in or in connection with matrimonial proceedings and the condition in section 19A of this Act is satisfied, or
 - (ii) the condition in section 20 of this Act is satisfied.”.

(3) For subsection (3) substitute—

“(3) A court in Northern Ireland shall not make a section 1(1)(e) order unless—

- (a) it has jurisdiction under the Council Regulation, or
- (b) the Council Regulation does not apply but—
 - (i) the condition in section 20 of this Act is satisfied, or
 - (ii) the child concerned is present in Northern Ireland on the relevant date and the court considers that the immediate exercise of its powers is necessary for his protection.”.

13. In section 19A (jurisdiction in or in connection with matrimonial proceedings), in subsection (4), for—

- (a) “in or in connection with matrimonial proceedings”, and
- (b) “in or in connection with those proceedings”,

substitute “by virtue of section 19(1)(b)(i) of this Act”.

14. In section 20 (habitual residence or presence of child), in subsection (1), for “section 19(2)” substitute “section 19(1)(b)(ii)”.

15.—(1) Amend section 22 (power of court to refuse application or stay proceedings) as follows.

(2) In subsection (2), omit “other than proceedings governed by the Council Regulation”.

(3) At the end of 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).”.

(4) At the end of that subsection insert “or (as the case may be) exercise its powers under Article 15”.

(5) In subsection (3), for “in accordance with subsection (2) above” substitute “by virtue of subsection (2)(a) or (b) above”.

(6) After subsection (3), insert—

“(3A) The court may remove a stay granted under Article 15 of the Council Regulation only in accordance with that Article.”.

(7) In subsection (4), after “Nothing in this section” insert “so far as it relates to proceedings not governed by the Council Regulation”.

16. In section 42 (general interpretation of Part 1), in subsection (1), 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;”.

17. In section 45 (recognition in the United Kingdom of overseas divorces, annulments and legal separations), in subsection (2), for “Articles 14 to 20” substitute “Articles 21 to 27, 41(1) and 42(1)”.

18. In section 54 (interpretation of Part 2), in subsection (1), 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;”.

Amendments to the Matrimonial Causes (Northern Ireland) Order 1978(a)

19.—(1) Amend Article 49 (jurisdiction of court) as follows.

(2) Omit paragraph (3A).

(3) In paragraph (7) before “Schedule 1” insert “Subject to Article 19(1) of the Council Regulation,”.

(4) In paragraph (8), 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;”;

(5) In that paragraph, in the definition of “Contracting State”, for paragraph (a) substitute—

“(a) a party to the Council Regulation, that is to say, Belgium, Cyprus, Czech Republic, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Finland, Sweden and the United Kingdom, and”.

Transitional

20. Proceedings started under Council Regulation (EC) No 1347/2000 may continue under that Regulation until judgment as if these Regulations had not been made.

Application

21. The amendments to the Domicile and Matrimonial Proceedings Act 1973 made by regulation 3 and to the Matrimonial Causes (Northern Ireland) Order 1978 made by regulation 19 shall apply in matrimonial matters to proceedings commenced on or after 1st March 2001.

Revocations

22. In the European Communities (Matrimonial Jurisdiction and Judgments) Regulations 2001(b) the following are revoked—

(a) 1978 No 1045 (NI 15)
(b) S.I. 2001/310

- (a) regulation 3(2);
- (b) regulations 5 to 8; and
- (c) regulation 10.

23. In the European Communities (Matrimonial Jurisdiction and Judgments) (Northern Ireland) Regulations 2001^(a) the following are revoked—

- (a) regulation 3(2);
- (b) regulations 5 to 8; and
- (c) regulation 10.

7th February 2005

Falconer of Thoroton, C
Lord Chancellor
Department of Constitutional Affairs

^(a) S.I. 2001/660

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.

STATUTORY INSTRUMENTS

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