

**EXPLANATORY MEMORANDUM TO
THE CIVIL JURISDICTION AND JUDGMENTS REGULATIONS 2009**

2009 No. 3131

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty. It contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

(i) General

2.1 On 30th October 2007 the European Community, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Denmark and the Swiss Confederation agreed on a convention to replace the 1988 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. This new Lugano Convention was ratified by the Council of Ministers on 18th May 2009 and enters into force for the European Community and Norway on 1st January 2010.

2.2 The provisions of the new convention are generally parallel in nature to the equivalent provisions in Council Regulation No. 44/2001 (“the Brussels I Regulation”). The commencement of the new convention will thereby re-establish the parallelism which had earlier existed between the 1988 Lugano Convention and the 1968 Brussels convention and which had been disrupted by the commencement of the Brussels I Regulation in March 2002.

2.3 The regulations amend:

- the Civil Jurisdiction and Judgments Act 1982,
- the Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997,
- the Civil Jurisdiction and Judgments Act 1982 (Provisional and Protective Measures) (Scotland) Order 1997
- the Civil Procedure Rules 1998,
- the Employment Tribunals (Enforcement of Orders in Other Jurisdictions) (Scotland) Regulations 2002
- the Civil Jurisdiction and Judgments (Authentic Instruments and Court Settlements) Order 1993.

2.4 These amendments are of a minor and technical nature and are necessary to give effect to the new convention. The amendments to the 1982 Act generally mirror the provisions contained in the Civil Jurisdiction and Judgments Order 2001 on the commencement of the Brussels I Regulation.

(ii) Transitional arrangements

- 2.5 Certain categories of legal proceeding will continue to fall under the 1988 Lugano Convention and therefore outside the new Lugano Convention. In respect of these proceedings, the legislation which is amended by these regulations will continue to apply in its unamended form.
- 2.6 The first of these categories concern those proceedings which, by virtue of the complex transitional provision in the new Lugano Convention (Article 63), fall outside that instrument. This lays down the general rule that the 1988 Lugano Convention will continue to apply to proceedings started (and documents formally drawn up or registered as authentic instruments) in the State of origin and, where recognition or enforcement of the resulting judgment (or authentic instrument) is sought in the State addressed, before the commencement date of the new Lugano Convention.
- 2.7 This general rule is qualified by an exception in respect of certain cases where the proceedings were started in the State of origin before the commencement date and where recognition and enforcement of the resulting judgment is sought. In these cases the new Lugano Convention will apply. These cases are those, first, where the proceedings were started in the State of origin after the commencement of the 1988 Lugano Convention both in the State of origin and in the State addressed, and secondly, where jurisdiction is based on rules equivalent to those in the new Lugano Convention or in a bilateral agreement between the State of origin and the State addressed (provided that that agreement was in force when the proceedings were started).
- 2.8 The second category of case, which will continue to fall under the 1988 Lugano Convention, concerns proceedings which relate to Switzerland and Iceland. This is because, as at 1st January 2010, those countries will not have ratified the new Lugano Convention. In relation to these countries the 1988 Convention will continue to apply until after such time as they have ratified the new Lugano Convention.

3. Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None

4. Legislative context

- 4.1 These regulations are being made to implement a European Community obligation. Article 249 of the EC Treaty ensures that the new convention is directly applicable in the United Kingdom.

5. Territorial extent and application

- 5.1 In so far as these regulations amend the Civil Jurisdiction and Judgments Act 1982 they apply throughout the United Kingdom. The more limited territorial extent of the other regulations is dealt with regulation 1.

6. European Convention on Human rights

- 6.1 Lord Bach, the Parliamentary Secretary in the Ministry of Justice, has made the following statement regarding human rights:

In my view the provisions of the Civil Jurisdiction and Judgments Regulations 2009 are compatible with the European Convention rights.

7. Policy background

- 7.1 The relevant policy background is set out in Section 2 above.

8. Consultation outcome

- 8.1 The Civil Procedure Rule Committee has been consulted about the amendments to the Civil Procedure Rules 1998. The minor and technical nature of the other amendments contained in these regulations has made it inappropriate to conduct a public consultation exercise in relation to these.

9. Guidance

- 9.1 The minor and technical nature of these regulations makes it inappropriate to publish guidance in relation to them.

10. Impact

- 10.1 The impact of the regulations on (1) business, (2) charities or voluntary bodies, and (3) the public sector is not likely to be significant. In the light of this it is not considered appropriate for an Impact Assessment to be prepared in relation to the regulations.

11. Regulating small business

- 11.1 The regulations are not considered to be likely to have any significant impact in relation to small business.

12. Monitoring and review

- 12.1 The minor and technical nature of the regulations makes it inappropriate to establish a mechanism for their monitoring and review.

13. Contact

- 13.1 The points of contact are:
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