
SCOTTISH STATUTORY INSTRUMENTS

2001 No. 36

**FAMILY LAW
JUDGMENTS**

**The European Communities (Matrimonial Jurisdiction
and Judgments) (Scotland) Regulations 2001**

Made - - - - - *6th February 2001*
Laid before the Scottish
Parliament - - - - - *7th February 2001*
Coming into force - - - - - *1st March 2001*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the European Communities (Matrimonial Jurisdiction and Judgments) (Scotland) Regulations 2001 and shall come into force on 1st March 2001.

(2) These Regulations extend to Scotland only.

Amendment of the Domicile and Matrimonial Proceedings Act 1973

2.—(1) The Domicile and Matrimonial Proceedings Act 1973⁽²⁾ is amended in accordance with paragraphs (2) to (5) of this regulation.

(2) In section 7⁽³⁾—

(a) in subsection (2), the words “divorce, separation or” are repealed;

(b) after that subsection, insert—

“(2A) The Court shall have jurisdiction to entertain an action for divorce or separation if (and only if)—

(a) the Scottish courts have jurisdiction under the Council Regulation; or

(1) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15. Functions conferred on Ministers of the Crown under section 2(2) were, so far as exercisable within devolved competence, transferred to the Scottish Ministers by section 53 of the Scotland Act

(2) 1973

(3) Section 7 was amended by the Presumption of Death (Scotland) Act 1977 (c. 27), Schedu

- (b) the action is an excluded action and either of the parties to the marriage in question is domiciled in Scotland on the date when the action is begun.”;
 - (c) in subsection (3), the words “or declarator of nullity of marriage” are repealed;
 - (d) after that subsection, insert–
 - “(3A) The Court shall have jurisdiction to entertain an action for declarator of nullity of marriage if (and only if)–
 - (a) the Scottish courts have jurisdiction under the Council Regulation; or
 - (b) the action is one to which subsection (3B) below applies and either of the parties to the marriage–
 - (a) is domiciled in Scotland on the date when the action is begun; or
 - (b) died before that date and either–
 - (i) was at death domiciled in Scotland; or
 - (ii) had been habitually resident in Scotland throughout the period of one year ending with the date of death.
 - (3B) This subsection applies to an action–
 - (a) which is an excluded action; or
 - (b) where one of the parties to the marriage died before the date when the action is begun.”;
 - (e) in subsection (5)–
 - (i) for “or (3) above”, substitute “, (2A), (3) or (3A) above”; and
 - (ii) for “under subsection (2) or (3)”, substitute “under any of those subsections”;
 - (f) after that subsection, insert–
 - “(5A) Subsection (5) does not give the Court jurisdiction to entertain proceedings in contravention of Article 7 of the Council Regulation.”; and
 - (g) in subsection (8), for “subsection (2) or (5) above” substitute “this section”.
- (3) In section 8(4)–
- (a) in subsection (2), for paragraph (a) substitute–
 - “(a) either–
 - (i) the Scottish courts have jurisdiction under the Council Regulation; or
 - (ii) the action is an excluded action where either party to the marriage in question is domiciled in Scotland at the date when the action is begun.”;
 - (b) after subsection (3), insert–
 - “(3A) Subsection (3) does not give the court jurisdiction to entertain an action in contravention of Article 7 of the Council Regulation.”; and
 - (c) in subsection (4), after “enactment or rule of court” add “, provided that entertaining the action would not contravene Article 7 of the Council Regulation”.
- (4) In section 10(5), after subsection (1A) insert–
- “(1B) Subsection (1) above does not give the Court of Session or a sheriff court jurisdiction to entertain an application in proceedings where–

(4) Section 8 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraph

(5) Section 10 was amended by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 2