

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3419 of 22nd July, 2004



I ASSENT,
FRANCIS RICHARDS,
GOVERNOR.

21st July, 2004.



GIBRALTAR

No. 15 of 2004

AN ORDINANCE to amend the Civil Jurisdiction and Judgments Ordinance 1993 consequential to the coming into force of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the enforcement of judgments in civil and commercial matters, to make new provision as respects jurisdiction and the enforcement of judgments between the United Kingdom and Gibraltar, and for matters ancillary thereto.

ENACTED by the Legislature of Gibraltar.

Civil Jurisdiction and Judgments (Amendment) Ordinance 2004
[No. 15 of 2004]

Title.

1. This Ordinance may be cited as the Civil Jurisdiction and Judgments (Amendment) Ordinance 2004.

Amendment of the Civil Jurisdiction and Judgments Ordinance 1993.

2.(1) The Civil Jurisdiction and Judgments Ordinance 1993 is amended in accordance with the provisions of this section.

(2) Section 2 (interpretation) shall be amended as follows—

(a) in subsection (1) after "the Lugano Convention" insert the following—

" "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 "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 "Lugano Contracting State" insert the following—

" "Regulation State" means all member States except Denmark and the United Kingdom." ; and

(c) after subsection (5) insert—

" (6) Any question arising as to whether it is the Regulation, any of the Brussels Conventions, or the Lugano Convention which applies in the

Civil Jurisdiction and Judgments (Amendment) Ordinance 2004
[No. 15 of 2004]

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).".

(3) Section 3 is repealed.

(4) In section 16 (interim relief and protective measures in cases of doubtful jurisdiction)—

(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".".

(5) In section 17 (interim relief 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) subsection (3) shall be amended by deleting paragraphs (a) and (b);

(c) the following subsection shall be inserted after subsection (3)—

“(3A) The Supreme Court shall have power to grant interim relief under section 17(1) in relation to proceedings of the following descriptions, namely–

- (a) proceedings commenced or to be commenced otherwise than in a Brussels or Lugano Contracting State or Regulation State;
- (b) proceedings whose subject-matter is not within the scope of Article 1 of the Regulation, Article 1 of the 1968 Convention or Article 1 of the Lugano Convention respectively.”.

(6) In section 18 (proceedings for torts to immovable property), in subsection (2) after “the 1968 Convention” insert “the Lugano Convention and the Regulation”.

(7) In section 21 (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”.

(8) In section 22 (certain steps not to amount to submission to jurisdiction of overseas court), at the end of subsection (2) add “or the Regulation”.

(9) In section 32 (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 Ordinance” 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".

(10) The following is inserted after section 37–

“Application of the Regulation

38. Schedule 10 (which applies certain provisions of this Ordinance with modifications for the purposes of the Regulation) shall have effect.”.

(11) The following Part is inserted after Part IV–

“PART V

**JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS
BETWEEN THE UNITED KINGDOM AND GIBRALTAR**

Arrangements between the United Kingdom and Gibraltar.

39.(1) For all purposes connected to the operation of the Regulation, Gibraltar and the United Kingdom shall be treated as if each were a separate Regulation State.

(2) A court of law shall have regard to, but shall not be bound by, the principles laid down by and any relevant decision of the European Court in determining any question as to the meaning or effect of any provision of the Regulation for the purposes of this section.”.

(12) The following is inserted after Schedule 9–

“SCHEDULE 10

Section 38

APPLICATION OF THE REGULATION

Interpretation.

1.(1) In this Schedule–

"court", without more, includes a tribunal;

Civil Jurisdiction and Judgments (Amendment) Ordinance 2004
[No. 15 of 2004]

"judgment" has the meaning given by Article 32 of the Regulation;

"maintenance order" means a maintenance judgment within the meaning of the Regulation;

"payer", in relation to a maintenance order, means the person liable to make the payments for which the order provides;

"prescribed" means prescribed by the Chief Justice in rules of court.

(2) In this Schedule, any reference to a numbered Article or Annex is a reference to the Article or Annex so numbered in the Regulation, and any reference to a sub-division of a numbered Article shall be construed accordingly.

(3) References in paragraphs 2 to 8 to a judgment registered under the Regulation include, to the extent of its registration, references to a judgment so registered to that limited extent only.

Enforcement of judgments other than maintenance orders (section 6).

2.(1) Where a judgment is registered under the Regulation, the reasonable costs or expenses of and incidental to its registration shall be recoverable as if they were sums recoverable under the judgment.

(2) A judgment registered under the Regulation shall, for the purposes of its enforcement, be of the same force and effect, the registering court shall have in relation to its enforcement the same powers, and proceedings for or with respect to its enforcement may be taken, as if the judgment had been originally given by the registering court and had (where relevant) been entered.

(3) Sub-paragraph (2) is subject to Article 47 (restriction on enforcement where appeal pending or time for appeal unexpired), to paragraph 5 and to any provision made by rules of court as to the manner in which and conditions subject to which a judgment registered under the Regulation may be enforced.

Recognition and enforcement of maintenance orders (section 7).

3.(1) A maintenance order registered under the Regulation shall, for the purposes of its enforcement, be of the same force and effect, the registering court shall have in relation to its enforcement the same powers, and

proceedings for or with respect to its enforcement may be taken, as if the order had been originally made by the registering court.

(2) Sub-paragraph (1) is subject to Article 47 (restriction on enforcement where appeal pending or time for appeal unexpired), to paragraph 5 and to any provision made by rules of court as to the manner in which and conditions subject to which an order registered under the Regulation may be enforced.

(3) A maintenance order which by virtue of the Regulation is enforceable by the magistrates' court shall be enforceable in the same manner as a maintenance order made by that court under the provisions of the Maintenance Ordinance.

(4) The payer under a maintenance order registered under the Regulation in the magistrates' court shall give notice of any changes of address to the Clerk to the Justices.

A person who without reasonable excuse fails to comply with this sub-paragraph shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Appeals under Article 44 and Annex IV (section 8).

4.(1) The single further appeal on a point of law referred to under Article 44 and Annex IV in relation to the recognition or enforcement of a judgment other than a maintenance order lies to the Court of Appeal.

(2) The single further appeal on a point of law referred to in Article 44 and Annex IV in relation to the recognition or enforcement of a maintenance order lies to the Supreme Court by way of case stated in accordance with the provisions of Part VI of the Magistrates' Courts Ordinance.

Interest on registered judgments (section 9).

5.(1) Subject to sub-paragraph (3), where in connection with an application for registration of a judgment under the Regulation the applicant shows—

- (a) that the judgment provides for the payment of a sum of money; and
- (b) that in accordance with the law of the Regulation State in which the judgment was given interest on that sum is recoverable under the judgment from a particular date or time,

the rate of interest and the date or time from which it is so recoverable shall be registered with the judgment and, subject to rules of court, the debt resulting, apart from paragraph 2(1), from the registration of the judgment shall carry interest in accordance with the registered particulars.

(2) Costs or expenses recoverable by virtue of paragraph 2(1) shall carry interest as if they were the subject of an order for the payment of costs or expenses made by the registering court on the date of registration.

(3) Interest on arrears of sums payable under a maintenance order registered under the Regulation in the magistrates' court shall not be recoverable in that court: without prejudice to the foregoing, interest in relation to any such order may be recovered at the discretion of the court where it is re-registered for enforcement in the Supreme Court.

(4) Except as mentioned in sub-paragraph (3), debts under judgments registered under the Regulation shall carry interest only as provided by this paragraph.

Currency of payment under registered maintenance orders (section 10).

6.(1) Sums payable in Gibraltar under a maintenance order by virtue of its registration under the Regulation, including any arrears so payable, shall be paid in the currency of Gibraltar.

(2) Where the order is expressed in any other currency, the amounts shall be converted on the basis of the exchange rate prevailing on the date of registration of the order.

(3) For the purposes of this paragraph, a written certificate purporting to be signed by an officer of any bank in Gibraltar and stating the exchange rate prevailing on a specified date shall be evidence of the facts stated.

Proof and admissibility of judgments and related documents (section 11).

7.(1) For the purposes of the Regulation—

- (a) a document, duly authenticated, which purports to be a copy of a judgment given by a court of a Regulation State other than Gibraltar shall without further proof be deemed to be a true copy, unless the contrary is shown; and
- (b) a certificate obtained in accordance with Article 54 and Annex V shall be evidence that the judgment is enforceable in the Regulation State of origin.

(2) A document purporting to be a copy of a judgment given by any such court as is mentioned in sub-paragraph (1)(a) is duly authenticated for the purposes of this paragraph if it purports—

- (a) to bear the seal of that court; or
- (b) to be certified by any person in his capacity as a judge or officer of that court to be a true copy of a judgment given by that court.

(3) Nothing in this paragraph shall prejudice the admission in evidence of any document which is admissible apart from this paragraph.

Domicile of individuals (section 24).

8.(1) Subject to Article 59 (which contains provisions for determining whether a party is domiciled in a Regulation State), the following provisions of this paragraph determine, for the purposes of the Regulation, whether an individual is domiciled in Gibraltar or in a state other than a Regulation State.

(2) An individual is domiciled in Gibraltar if and only if—

- (a) he is resident in Gibraltar; and
- (b) the nature and circumstances of his residence indicate that he has a substantial connection with Gibraltar.

(3) In the case of an individual who—

- (a) is resident in Gibraltar; and
- (b) has been so resident for the last three months or more,

the requirements of sub-paragraph (2)(b) shall be presumed to be fulfilled unless the contrary is proved.

(4) An individual is domiciled in a state other than a Regulation State if and only if—

- (a) he is resident in that state; and
- (b) the nature and circumstances of his residence indicate that he has a substantial connection with that state.

Seat of company, or other legal person or association for purposes of Article 22(2) (section 26).

9.(1) The following provisions of this paragraph determine where a company, legal person or association has its seat for the purposes of Article 22(2) (which confers exclusive jurisdiction over proceedings relating to the formation or dissolution of such bodies, or to the decisions of their organs).

(2) A company, legal person or association has its seat in Gibraltar if and only if–

- (a) it was incorporated or formed under the law of Gibraltar; or
- (b) its central management and control is exercised in Gibraltar.

(3) Subject to sub-paragraph (4), a company, legal person or association has its seat in a Regulation State other than Gibraltar if and only if–

- (a) it was incorporated or formed under the law of that state; or
- (b) its central management and control is exercised in that state.

(4) A company, legal person or association shall not be regarded as having its seat in a Regulation State other than Gibraltar if–

- (a) it has its seat in Gibraltar by virtue of sub-paragraph (2)(a); or
- (b) it is shown that the courts of that other state would not regard it for the purposes of Article 22(2) as having its seat there.

Persons deemed to be domiciled in Gibraltar for certain purposes (section 27).

10.(1) This paragraph applies to–

- (a) proceedings within Section 3 of Chapter II of the Regulation (insurance contracts);
- (b) proceedings within Section 4 of Chapter II of the Regulation (consumer contracts); and
- (c) proceedings within Section 5 of Chapter II of the Regulation (employment contracts).

(2) A person who, for the purposes of proceedings to which this paragraph applies arising out of the operations of a branch, agency or other

Civil Jurisdiction and Judgments (Amendment) Ordinance 2004
[No. 15 of 2004]

establishment in Gibraltar, is deemed for the purposes of the Regulation to be domiciled in Gibraltar by virtue of—

- (a) Article 9(2) (insurers); or
- (b) Article 15(2) (suppliers of goods, services or credit to consumers); or
- (c) Article 18(2) (employers),

shall, for the purposes of those proceedings, be treated as so domiciled.

Domicile of trusts (section 28).

11.(1) The following provisions of this paragraph determine for the purposes of the Regulation where a trust is domiciled.

(2) A trust is domiciled in Gibraltar if and only if the system of law of Gibraltar is the system of law with which the trust has its closest and most real connection.

Passed by the Gibraltar House of Assembly on the 2nd day of July, 2004.

P.E. MARTINEZ,

Clerk to the Assembly (Acting).

Civil Jurisdiction and Judgments (Amendment) Ordinance 2004
[No. 15 of 2004]
