

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5050 GIBRALTAR Thursday 4th May 2023

LEGAL NOTICE NO. 116 OF 2023

EUROPEAN UNION (WITHDRAWAL) ACT 2019

JURISDICTION AND JUDGMENTS (FAMILY) (AMENDMENT)(EU EXIT) REGULATIONS 2023

In exercise of the powers conferred upon her by sections 11(1) and 11B of, and paragraph 1 of Schedule 3 to the European Union (Withdrawal) Act 2019, and all other enabling powers, the Minister with responsibility for justice has made the following Regulations-

PART 1

Title.

1. These Regulations may be cited as the Civil Jurisdiction and Judgments (Family) (Amendment) (EU Exit) Regulations 2023.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

3. In these Regulations –

“Council Regulation No. 2201/2003” means Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000;

“Council Regulation No. 4/2009” means Council Regulation (EC) No. 4 of 2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark.

PART 2

Revocation of retained direct EU legislation.

Revocation of Council Regulation No. 2201/2003.

4. Council Regulation No 2201/2003 is revoked.

Revocation of Council Regulation No 4/2009.

5. Council Regulation No 4/2009 is revoked.

Revocation of Council Regulation No 2116/2014.

6. Council Regulation (EC) No 2116/2004 amending Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, as regards treaties with the Holy See is revoked.

Revocation of Council Regulation No 664/2009.

7. Council Regulation (EC) No 664/2009 of 7 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, matters of parental responsibility and matters relating to maintenance obligations, and the law applicable to matters relating to maintenance obligations is revoked.

PART 3

Amendment of primary and second legislation.

8. The Schedule, which sets out amendments of primary and secondary legislation, has effect.

PART 4

Saving and transitional provisions.

9. Nothing in these Regulations affects the application of paragraphs 1, 2(b) and (c) and 3(a) and (b) of Article 67 of the withdrawal agreement and legislation amended or revoked by these Regulations continues to have effect for the purposes of those paragraphs as if the amendments and revocations had not been made.

Savings and transitional – post IP completion day to commencement.

10.(1) The amendments and revocations made by these Regulations do not apply in relation to—

- (a) proceedings before a court in Gibraltar seised after IP completion day but before commencement of these Regulations in reliance upon the provisions of Council Regulation No 4/2009 or the provisions of Council Regulation No 2201/2003;
- (b) proceedings before a court seised, after IP completion day whether before or after commencement, in reliance upon a choice of court agreement concluded after IP completion day but before commencement of these Regulations in accordance with Article 4 of Council Regulation No. 4/2009;

(2) For the purposes of this regulation, a court is seised—

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps the applicant was required to take to have service effected on the respondent; or
- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps the applicant was required to take to have the document lodged with the court.

(3) For the purposes of subregulation (2) references to “Member State” in Council Regulation No.2201/2003 and Council Regulation No.4/2009 and any implementing legislation are to be read as including Gibraltar.

SCHEDULE

Amendment of primary and secondary legislation.

PART 1

Amendment of primary legislation.

Amendment of the Civil Jurisdiction and Judgments Act 1993.

1.(1) The Civil Jurisdiction and Judgments Act 1993 is amended in accordance with this paragraph.

(2) In section 2(1) delete the definitions of “the Maintenance Regulation” and “Regulation 2201/2003”.

(3) In section 32-

(a) in subsection (1) delete “Regulation 2201/2003”;

(b) in subsection (3) delete “the Maintenance Regulation,”.

(4) Delete section 38A.

(5) In section 39(1) delete paragraph (b).

(6) Delete Schedule 11.

Amendment of the Matrimonial Causes Act.

2.(1) The Matrimonial Causes Act is amended in accordance with this paragraph.

(2) For section 4 substitute-

“Jurisdiction of the court in divorce, judicial separation and nullity.

4.(1) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) on the date of the application –

(a) both parties to the marriage are habitually resident in Gibraltar;

(b) both parties to the marriage were last habitually resident in Gibraltar and one of them continues to reside there;

(c) the respondent is habitually resident in Gibraltar;

- (d) the applicant is habitually resident in Gibraltar and has resided there for at least one year immediately before the application was made;
 - (e) the applicant is domiciled and habitually resident in Gibraltar and has resided there for at least six months immediately before the application was made;
 - (f) both parties to the marriage are domiciled in Gibraltar; or
 - (g) either of the parties to the marriage is domiciled in Gibraltar.
- (2) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if) on the date of the application –
- (a) both parties to the marriage are habitually resident in Gibraltar;
 - (b) both parties to the marriage were last habitually resident in Gibraltar and one of them continues to reside there;
 - (c) the respondent is habitually resident in Gibraltar;
 - (d) the applicant is habitually resident in Gibraltar and has resided there for at least one year immediately before the application was made;
 - (e) the applicant is domiciled and habitually resident in Gibraltar and has resided there for at least six months immediately before the application was made;
 - (f) both parties to the marriage are domiciled in Gibraltar; or
 - (g) either of the parties to the marriage –
 - (i) is domiciled in Gibraltar; or
 - (ii) died before the application was made and either was at death domiciled in Gibraltar or had been habitually resident in Gibraltar throughout the period of one year ending with the date of death.”;
- (3) The court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection (1) or (2) above (or of this subsection), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under subsection (1) or (2).”.
- (3) Delete Part X.

Amendment of the Maintenance Act.

3.(1) The Maintenance Act is amended in accordance with this paragraph.

(2) For section 74(2) substitute “The Minister may by Regulations make provisions to give effect to any international measures in relation to maintenance obligations including to give effect to any International Conventions or Protocols.”.

(3) Delete Part VIII.

(4) Delete Schedule 2.

Amendment of the Children Act 2009.

4.(1) The Children Act 2009 is amended in accordance with this paragraph.

(2) In section 2(1), delete the definition of “Council Regulation (EC) No. 2201/2003”.

(3) In section 3, for “Subject to Council Regulation (EC) No 2201/2003, a” substitute “A”;

(4) In section 93A-

(a) delete the definition of “Council Regulation”;

(b) delete the definition of “member State”.

(5) In section 93F-

(a) in subsection (1)(b)(ii) for “; or” substitute “.”;

(b) delete subsection (1)(b)(iii);

(c) in subsection (2)(a)-

(i) in paragraph (b)(ii) for “, or” substitute “.”;

(ii) delete paragraph (b)(iii);

(d) in subsection (2)(d)-

(i) in paragraph (c)(ii) for “;” substitute “.”;

(ii) delete paragraph (d).

(6) Delete section 93G.

(7) Delete section 93L(6).

(8) In section 93M-

(a) for subsection (1) substitute –

“(1) This section applies if the Agency is contemplating placing a child in another Contracting State, within the meaning given by Article 33 of the Convention.”.

(b) for subsection (2) substitute –

“(2) Either the Supreme Court or the Agency, whichever has jurisdiction under Articles 5 to 10 of the Convention (“the authority”) must provide a report to the Central Authority, or other competent authority, of the other Contracting State in accordance with Article 33(1) of the Convention.”.

Amendment of the Magistrates’ Court Act.

5.(1) The Magistrates’ Court Act is amended in accordance with this paragraph.

(2) In section 45(a), delete “, including parental responsibility matters under Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility;”.

PART 2

Amendment of secondary legislation.

Amendment of the Family Proceedings (Matrimonial Causes) Rules 2010.

6.(1) The Family Proceedings (Matrimonial Causes) Rules 2010 are amended in accordance with this paragraph.

(2) In rule 2(1), delete the definition of “Council Regulation”.

(3) In rule 8(1)(d) delete “or under the Council Regulation”.

(4) Delete Part VII.

Amendment of the Family Proceedings (Children)(1996 Hague Convention) Rules 2011.

7.(1) The Family Proceedings (Children)(1996 Hague Convention) Rules 2011 are amended in accordance with this paragraph.

(2) In rule 2-

- (a) in the definition of “child” delete paragraph (c);
 - (b) delete the definition of “Council Regulation”.
- (3) In rule 21, for sub-rule (3) substitute-
- “The applicant must file the application notice and serve it on the respondents not less than 42 days before the hearing of the application.”.

Dated: 4th May 2023.

S. SACRAMENTO,
Minister for Justice.

EXPLANATORY MEMORANDUM

These Regulations are made pursuant to the powers in sections 11 and 11(B) and paragraph 1(b) of Schedule 3 of the European Union (Withdrawal) Act 2019 to address deficiencies arising from withdrawal from the European Union.

Regulation 4 revokes Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. Regulation 5 revokes Council Regulation (EC) No 4/2009 concerning jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. Regulation 6 revokes Council Regulation (EC) No 2116/2004. Regulation 7 revokes Council Regulation No 664/2009. Regulation 8 makes amendments to primary and secondary legislation to reflect the fact that the retained EU law has been revoked. Regulations 9 and 10 make saving and transitional provisions.